

KING & SPALDING LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 556-2100  
Facsimile: (212) 556-2222  
Arthur Steinberg  
Scott Davidson

KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Richard C. Godfrey, P.C. (admitted *pro hac vice*)  
Andrew B. Bloomer, P.C. (admitted *pro hac vice*)

*Attorneys for General Motors LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11
	: :
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	: Case No.: 09-50026 (REG)
f/k/a General Motors Corp., <i>et al.</i>	: :
	: :
Debtors.	: (Jointly Administered)
-----X	
STEVEN GROMAN, ROBIN DELUCO,	: :
ELIZABETH Y. GRUMET, ABC FLOORING,	: :
INC., MARCUS SULLIVAN, KATELYN	: :
SAXSON, AMY C. CLINTON, AND ALLISON	: Adv. Pro. No.: 14-01929 (REG)
C. CLINTON, on behalf of themselves, and all	: :
others similarly situated,	: :
	: :
Plaintiffs,	: :
	: :
-v-	: :
	: :
GENERAL MOTORS LLC,	: :
	: :
Defendant.	: :
-----X	

**CORRECTED NOTICE OF FILING OF THIRD SUPPLEMENT TO  
SCHEDULE "1" TO THE MOTION OF GENERAL MOTORS LLC  
PURSUANT TO 11 U.S.C. §§ 105 AND 363 TO ENFORCE THE  
COURT'S JULY 5, 2009 SALE ORDER AND INJUNCTION**

**PLEASE TAKE NOTICE** that on June 2, 2014,<sup>1</sup> General Motors LLC filed the attached *Third Supplement to Schedule "1" to the Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction* with the United States Bankruptcy Court for the Southern District of New York.

Dated: New York, New York  
June 2, 2014

Respectfully submitted,

/s/ Scott I. Davidson  
Arthur Steinberg  
Scott Davidson  
KING & SPALDING LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 556-2100  
Facsimile: (212) 556-2222

Richard C. Godfrey, P.C. (admitted *pro hac vice*)  
Andrew B. Bloomer, P.C. (admitted *pro hac vice*)  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Attorneys for General Motors LLC*

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<sup>1</sup> This notice is being corrected solely to reflect the filing date of this supplement, which is June 2, 2014 (and not May 30, 2014). All other information remains the same.

**THIRD SUPPLEMENT<sup>2</sup> TO SCHEDULE “1”**  
**CHART OF ADDITIONAL IGNITION SWITCH ACTIONS**  
**COMMENCED SINCE THE FILING OF NEW GM’S**  
**SECOND SUPPLEMENT TO SCHEDULE “1” TO MOTION TO ENFORCE**

	<u>Name</u>	<u>Class Models</u>	<u>Plaintiffs’ Model</u>	<u>Court</u>	<u>Filing Date</u>
1	Higginbotham <sup>3</sup> (Class Action)	Various models from 2003 to 2011	2003 Saturn Ion	Eastern District of Arkansas  4:14-cv-00306	5/20/14
2	Harris <sup>4</sup> (Class Action)	Various models from 2003 to 2011	2004 Saturn Ion  2009 Chevy Cobalt	Southern District of Florida  1:14-cv-21919	5/22/14
3	Lannon <sup>5</sup> (Class Action)	Various models from 2003 to 2011	2011 Chevy HHR  2006 Saturn Ion	Southern District of Florida  1:14-cv-21933	5/23/14
4	Nettleton Auto Sales, Inc. <sup>6</sup> (Class Action)	Various models from 2003 to 2011	Chevy HHR	Eastern District of Arkansas  4:14-cv-318	5/23/14
5	Edwards <sup>7</sup> (Class Action)	Various models from 2003 to 2011	2004 Chevy Malibu  2006 Pontiac G6  2003 Saturn Ion  2004 Saturn Ion	Southern District of Florida  1:14-cv-21949	5/27/14

<sup>2</sup> This schedule supplements the Second Supplement to Schedule “1” [Dkt. No. 12698] filed with the Bankruptcy Court on May 19, 2014, the Supplement to Schedule “1” [Dkt. No. 12672] filed with the Bankruptcy Court on April 30, 2014, and Schedule “1” [Dkt. No. 12620-1] filed with the *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction* on April 21, 2014 [Dkt. No. 12620].

<sup>3</sup> A copy of the complaint filed in the Higginbotham Action is attached hereto as Exhibit “A.”

<sup>4</sup> A copy of the complaint filed in the Harris Action is attached hereto as Exhibit “B.”

<sup>5</sup> A copy of the complaint filed in the Lannon Action is attached hereto as Exhibit “C.”

<sup>6</sup> A copy of the complaint filed in the Nettleton Auto Sales, Inc. Action is attached hereto as Exhibit “D.”

<sup>7</sup> A copy of the complaint filed in the Edwards Action is attached hereto as Exhibit “E.”

6	Spangler <sup>8</sup> (Class Action)	Various models from 2003 to 2011	2007 Chevy HHR	Central District of California 2:14-cv-04031	5/27/14
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<sup>8</sup> A copy of the complaint filed in the Spangler Action is attached hereto as Exhibit "F."

# **Exhibit A**

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

MAY 20 2014

JAMES W. McCORMACK, CLERK  
By: Sus DEP CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS**

**DREW HIGGINBOTHAM, on behalf of  
himself and all others similarly situated,**

**Plaintiff,**

v.

**GENERAL MOTORS LLC and  
GENERAL MOTORS  
CORPORATION,**

**Defendants.**

CASE NO. 4:14 cv 306 Jmm

**JURY TRIAL DEMANDED**

This case assigned to District Judge Moody  
and to Magistrate Hearney

**CLASS ACTION COMPLAINT**

Plaintiff, Drew Higginbotham (“Plaintiff” or “Mr. Higginbotham”), individually and as class representative on behalf of all similarly situated persons, brings this action against Defendants General Motors Corporation and its successor, General Motors LLC (“Defendants,” “GM,” or the “Company”) and states as follows:

**INTRODUCTION**

1. This case arises from GM’s active concealment, for over a decade, of knowledge of a dangerously defective ignition switch installed on millions of GM vehicles. Specifically, as a result of having the defective ignition switch, the vehicles at issue are at risk of shutting down during normal driving conditions – losing power to the engine and to major electrical systems responsible for critical safety features like airbags, power steering, and antilock brakes – thus creating an extreme and unreasonable risk of accident, serious bodily harm, and death.

2. At present, there have been reports of hundreds of accidents attributable to the defective ignition switches, including scores of fatalities.

3. The vehicles at issue (“Defective Vehicles”) include the following make and model years:

- Chevrolet Cobalt (2005-2010 model years);
- Chevrolet HHR (2006-2011 model years);
- Pontiac G5 (2006-2007 model years);
- Pontiac Solstice (2006-2010 model years);
- Saturn Ion (2003-2007 model years); and
- Saturn Sky (2007-2010 model years).

4. Since as early as 2001, GM received reports of ignition switch malfunctions in the Defective Vehicles. On multiple occasions since that time, the Company has opened internal investigations that identified both the cause of the problem and the attendant safety risks. However, choosing to place profit over consumer safety, GM repeatedly elected to do nothing about the problem, even when faced with reports of drivers suffering serious bodily injury and even death as a result of accidents caused by the faulty ignition switches.

5. Further, GM actively concealed knowledge of the ignition switch problems in the Defective Vehicles from the public and from regulators. Internal documents reveal that GM fostered a culture in which profits were placed above consumer safety, and that employees were warned not to be “cute or clever” when investigating potentially dangerous defects in their products. Indeed, employees were admonished not only for using words and phrases like “dangerous,” “death trap,” “potentially disfiguring,” or “Corvair-like” in the course of their work, but even for such benign terms as “safety” and “safety-related.”

6. Only in early 2014, thirteen years after first having knowledge of the problems inherent to the Defective Vehicles, did GM issue a recall. Moreover, while the Company has

issued a recall of the Defective Vehicles, at present there are not sufficient replacement ignition switches to repair the Defective Vehicles. By one estimate, Plaintiff and Class members will have to wait until October of 2014 for GM to repair the Defective Vehicles.

7. As GM's knowledge of the ignition switch problems in the Defective Vehicles has come to light, regulators have continually admonished the Company. The National Highway Transportation Safety Administration ("NHTSA") recently fined GM \$35 million – the maximum amount that the NHTSA has federal authority to exact – for the Company's abuses. GM is also undergoing multiple investigations by Congress, the Justice Department, and state Attorney Generals.

8. Plaintiff brings this action for a Class of all persons in the United States who currently own or lease one or more of the following GM vehicles: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2006-2007 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

9. Plaintiff believes that there are other GM vehicles which suffer from the same or substantially similar ignition switch defects as the Defective Vehicles identified above. Accordingly, Plaintiff will supplement the list of Defective Vehicles to include additional GM vehicles that have defective ignition switches, which result in a loss of vehicle speed control, loss of braking control, and airbag non-deployment as such information becomes available.

10. Plaintiff and the Class have been damaged by GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding highly dangerous vehicles whose value has greatly diminished because of GM's failure to timely disclose the serious and potentially deadly defects. Plaintiff and the Class either



paid more for the Defective Vehicles than they would have had they known of the ignition defects or they would not have purchased the Defective Vehicles at all. As a result of the defects in these vehicles, the Plaintiff and the Class are unable to sell or otherwise realize their full investments in the Defective Vehicles.

11. Defendants' acts and omissions complained of herein amount to violations of the Michigan Consumer Protection Act, MCLS § 445.901, *et seq.*; violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*; breach of implied warranty; breach of implied warranty of fitness for a particular purpose; an instance of unjust enrichment; and acts of fraudulent concealment.

### **PARTIES**

12. Plaintiff and Named Class Representative Drew Higginbotham is a citizen of the State of Arkansas and resides in the city of Little Rock. Plaintiff owns a 2003 Saturn Ion, which was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants.

13. Defendant General Motors Corporation ("Old GM") was a Delaware corporation headquartered in Detroit, Michigan. Through its various subsidiaries and affiliates, Old GM manufactured, marketed, distributed and sold Pontiac, Saturn, Chevrolet and other brand automobiles throughout the United States. In 2009, Old GM filed for bankruptcy, and substantially all of its assets were sold pursuant to a Master Sales and Purchase Agreement to Defendant General Motors LLC.

14. Defendant General Motors LLC ("New GM") is a limited liability company formed under the laws of Delaware with its principal place of business located at 300 Renaissance Center, Detroit, Michigan. New GM was incorporated in 2009, and on July 10,

2009, acquired substantially all assets and assumed certain liabilities of Old GM through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

15. Among the liabilities and obligations expressly retained by New GM after the bankruptcy of Old GM are the following:

From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

16. New GM also expressly assumed:

[a]ll Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws.

17. Because New GM acquired and operated Old GM and ran it as a continuing business enterprise, and because New GM was aware from its inception of the ignition switch defects in the Defective Vehicles, New GM is liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint.

#### **JURISDICTION AND VENUE**

18. The Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action in which some Members of the Class are citizens of states different than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

19. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(a). A substantial part of the events or omissions giving rise to these claims occurred in this district.

### **GENERAL ALLEGATIONS**

#### **A. THE FAULTY IGNITION SWITCH AND THE DEFECTIVE VEHICLES.**

20. During the relevant time period, a faulty ignition switch was installed by GM in the Defective Vehicles.

21. The chief purpose of an ignition switch is to turn on the engine and electrical systems of the car in which it is installed. The ignition switch in the Defective Vehicles has several positions: “Run,” “Accessory,” and “Off.” When in the “Run” position, the vehicle’s engine and electrical systems are engaged. When in the “Accessory” position, the vehicle’s motor is turned off, but power is still supplied to certain portions of the vehicle’s electrical systems, such as the radio. When in the “Off” position, the vehicle has been turned off completely, and power is not flowing to either the engine or the electrical systems.

22. With Defendant’s faulty ignition switches, installed in the Defective Vehicles during the class period, whenever the switch is in the “Run” position and the vehicle’s engine and electrical systems are running – *i.e.*, if the car is being driven – if the driver were to inadvertently bump the key ring with his or her leg, or if the key ring were heavy (containing more than just the vehicle’s key), there is a material risk that the ignition switch will revert to either the “Accessory” or “Off” position. When this failure occurs, the engine in the Defective Vehicle will shut off as a matter of course, and often other critical safety features in the Defective Vehicle will also be disabled, such as power brakes, power steering, and airbags.

23. The Defective Vehicles are, therefore, unreasonably prone to accidents, and those accidents are unreasonably likely to result in serious bodily harm or death to the drivers and passengers of the Defective Vehicles, as well as to other vehicle operators and pedestrians.

24. To date, Defendants have identified the following Defective Vehicles as having had faulty ignition switches installed: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2007-2010 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

**B. STARTING IN 2001, GM RECEIVES REPORTS DETAILING THE FAULTY IGNITION SWITCH AND ATTENDANT SAFETY RISKS, BUT REMAINS SILENT FOR THIRTEEN YEARS.**

25. Defendants knew or had reason to know of the faulty ignition switches in the Defective Vehicles for over a decade, but affirmatively concealed this information from Defective Vehicle owners.

26. Defendants admit that they learned of the ignition switch defects as early as 2001. During the pre-production development of the Saturn Ion – one of the Defective Vehicles – GM engineers learned that the ignition could inadvertently move from the “Run” position to the “Accessory” or “Off” position. Defendants generated an internal report examining the issue, but concluded that a switch design change “had resolved the problem.”<sup>1</sup>

27. In 2002, GM approved the existing ignition switch design, despite warnings from its supplier that the switch did not meet GM’s specifications.<sup>2</sup>

28. In 2003, a new internal document noted a report from a service technician, who had observed a stall in a Saturn Ion while driving. The service technician noted that the weight

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<sup>1</sup> D. Ivory, “G.M. Reveals It Was Told of Ignition Defect in ’01,” *New York Times* (Mar. 12, 2014).

<sup>2</sup> “Key Events in GM’s Ignition Switch Recall,” *Associated Press* (May 16, 2014) (available at <http://abcnews.go.com/Business/wireStory/key-events-gms-ignition-switch-recall-23755301>).

of several keys on the key ring had “worn out” the ignition switch. The ignition switch was replaced and the matter closed.<sup>3</sup>

29. In 2004, Defendants’ engineers encountered the problem again, during before-market test drives of the Chevrolet Cobalt.

30. GM opened an engineering inquiry, known as a “Problem Resolution Tracking System inquiry” (“PRTS”), to investigate the issue. According to the chronology provided to NHTSA by GM, engineers pinpointed the ignition switch defect and were able to replicate this phenomenon during test drives. According to GM, the PRTS engineers believed that “low key cylinder torque effort” was an issue and considered a number of potential solutions. However, after evaluating the cost and amount of time it would take to implement a fix to the problem, GM elected to do nothing. Indeed, the engineering manager of the Cobalt closed the investigation into ignition switch problems, saying that proposed fixes would take too long and cost too much, and that “*none of the solutions represents an acceptable business case.*”<sup>4</sup>

31. As soon as the 2005 Cobalt hit the market, GM began receiving complaints about sudden loss of power, “including instances in which the key moved out of the ‘run’ position when a driver inadvertently contacted the key or steering column.”<sup>5</sup> GM opened additional PRTS inquiries. In one report, engineers claimed to have distilled the problem to two factors: “a lower torque detent<sup>6</sup> in the ignition switch...[and a] low position of the lock module [on] the [steering] column.”

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<sup>3</sup>Danielle Ivory, “G.M. Reveals It Was Told of Ignition Defect in ’01,” *New York Times* (Mar. 12, 2014) (available at <http://www.nytimes.com/2014/03/13/business/gm-reveals-it-was-told-of-ignition-defect-in-01.html>).

<sup>4</sup>“Key Events in GM’s Ignition Switch Recall,” *supra*, n. 2.

<sup>5</sup>Letter from M. Carmen Benavides to Nancy Lewis, NHTSA, “Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” at 1 (Mar. 11, 2014) (available at <http://www.documentcloud.org/documents/1084789-gm-updated-3-12-14.html>).

<sup>6</sup>The “detent” is the part of an ignition switch’s inner workings that keeps the switch from rotating from one setting – “Run,” “Accessory,” and “Off” – to another unless the driver turns the key.

32. In a PRTS opened in May 2005, GM engineers once again assessed the problem and proposed that GM re-design the key head from a “slotted” to a “hole” configuration. After initially approving the proposed fix, GM reversed course and again declined to implement a fix.<sup>7</sup>

33. Instead, in October 2005, GM issued a Technical Service Bulletin (“TSB”) advising service technicians and GM dealers that the inadvertent turning of the key cylinder was causing the failure of the car’s electrical system. Rather than disclose the true nature of the defects and correct them, GM instead instructed technicians to give customers “an insert for the key ring so that it goes from a ‘slot’ design to a hole design” to prevent the key rings from moving up and down in the slot. “[T]he previous key ring” was “replaced with a smaller” one; this change would supposedly keep the keys from hanging as low as they had in the past.<sup>8</sup> According to GM’s records, GM dealers provided key inserts to only 474 customers who brought their vehicles into dealers for service.<sup>9</sup>

34. In 2006, GM approved a design change for the Cobalt’s ignition switch that was supplied by Delphi. The new design included “the use of a new detent plunger and spring that increased torque force in the ignition switch.” But the new design was not produced until the 2007 model year.<sup>10</sup>

35. During approximately this same time period – from 2003 to 2006 – Defendants’ Field Product Reports and PRTS reports found similar engine failures in the Saturn Ion, which were likely attributable to the ignition switch defect.

36. In 2007, NHTSA investigators met with GM to discuss its airbags and informed GM of the July 2005 frontal and fatal crashing involving Amber Marie Rose. Ms. Rose, age 16,

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<sup>7</sup> “Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” *supra*, n. 5.

<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 2.

died after her 2005 Chevrolet Cobalt crashed and the airbag failed to deploy. Her death was the first of the hundreds of deaths and injuries attributable to the ignition switch defects. Data retrieved from the vehicle's diagnostic system indicated that the ignition was in the "accessory" position. GM investigated and tracked similar incidents.

37. By the end of 2007, by GM's own admission, GM knew of 10 collisions involving Defective Vehicles in which the airbag did not deploy.<sup>11</sup> GM continued to receive complaints and continued to investigate crashes in which the airbags did not deploy. Rather than publicly admitting the dangerous safety defects in its vehicles, GM attempted to attribute these and other incidents to "driver error." Every year from 2005 to 2012, first Old GM and then New GM received reports of deaths in Cobalts involving steering and/or airbag failures, including:

- **2005:** 26 Cobalt Death and Injury Incidents, including 1 death citing "airbag" as the component involved.
- **2006:** 69 Cobalt Death and Injury Incidents, including 2 deaths citing "airbag" as the component involved and 4 deaths listing the component involved as "unknown."
- **2007:** 87 Cobalt Death and Injury Incidents, including 3 deaths citing "airbag" as the component involved.
- **2008:** 106 Cobalt Death and Injury Incidents, including 1 death citing "airbag" as the component involved and 2 deaths listing the component involved as "unknown."
- **2009:** 133 Cobalt Death and Injury Incidents, including 1 death citing "airbag" as the component involved, 1 death citing "service brake" as the component involved, 1 death citing "steering" as component involved, and 2 deaths listing the component involved as "unknown."
- **2010:** 400 Cobalt Death and Injury Incidents, including 2 deaths citing "airbag" as the component involved, 12 deaths citing "steering" as the component involved, and 1 death listing the component involved as "unknown."

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<sup>11</sup> *Id.*

- **2011:** 187 Cobalt Death and Injury Incidents, including 2 deaths citing “airbag” as the component involved, 2 deaths citing “steering” as the component involved, and 1 death listing the component involved as “unknown.”
- **2012:** 157 Cobalt Death and Injury Incidents, including 5 deaths citing “airbag” as component involved, and 4 deaths citing “steering” as component involved.

38. Internal documents have recently surfaced demonstrating that during this time period, GM adopted a policy of willfully concealing these dangers from its customers. For example, the New York Times recently reported on “deeply disturbing” GM presentations used to “train employees to obscure some problems.” In a PowerPoint slide titled “What every company vehicle driver must know,” the New York Times article notes that

[w]orkers writing reports were encouraged to avoid using certain words and phrases with negative overtones, including “apocalyptic,” “dangerous,” “death trap,” “potentially disfiguring,” “rolling sarcophagus,” and “Corvair-like,” as well as more benign phrases like “safety” and “safety related.”<sup>12</sup>

39. Per the New York Times, the cynical presentation further instructed employees not to be “cute or clever.” It gave examples of “comments that do not help identify or solve problems,” including, “This is a lawsuit waiting to happen,” and, “Kids and wife panicking over the situation.”<sup>13</sup>

**C. GM WAITED UNTIL 2014 TO FINALLY ORDER A RECALL OF THE DEFECTIVE VEHICLES.**

40. After thirteen years of knowing of the faulty ignition switch in its Defective Vehicles – and engaging in an internal campaign to obfuscate the dangers arising therefrom – GM’s Field Performance Review Committee and the Executive Action Decision Committee

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<sup>12</sup> Matthew L. Wald & Danielle Ivory, “GM Is Fined Over Safety and Called a Lawbreaker,” *The New York Times* (May 16, 2014) (available at <http://www.nytimes.com/2014/05/17/business/us-fines-general-motors-35-million-for-lapses-on-ignition-switch-defect.html>).

<sup>13</sup> “Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” *supra*, n. 5.



(“EFADC”) finally ordered a recall of *some* of the Defective Vehicles on January 31, 2014. Initially, the EFADC only ordered a recall of the Chevrolet Cobalt and Pontiac G5 for model years 2005-2007. Almost one month later, on February 24, 2014, the recall was expanded to include the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, the Saturn Ion for model years 2003-2007, and the Saturn Sky for model year 2007.

41. Since that time, GM has expanded its recall to include more model years. At present, GM has recalled the following makes and model years: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2007-2010 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

42. GM provided dealers with notice of the recall on February 26, 2014 and March 4, 2014, and mailed letters to current owners on March 10 and March 11, 2014.

43. According to GM, “the dealers are to replace the ignition switch,”<sup>14</sup> presumably with one with sufficient torque to prevent the inadvertent shut down of the ignition, power steering, power brakes, and airbags. However, at present few, if any, replacement parts are available. Instead, it is currently estimated that it will be October, 2014 before all of the Defective Vehicles have been fixed.<sup>15</sup>

44. In a video message addressed to GM employees on March 17, 2014, CEO Mary Barra admitted that the Company had made mistakes and needed to change its processes. According to Ms. Barra, “Something went wrong in our processes in this instance, and terrible

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<sup>14</sup> *Id.* at 6.

<sup>15</sup> “Key Events in GM’s Ignition Switch Recall,” *Associated Press* (May 16, 2014) (available at <http://abcnews.go.com/Business/wireStory/key-events-gms-ignition-switch-recall-23755301>).

things happened.” Barra continued to promise, “We will be better because of this tragic situation if we seize this opportunity.”<sup>16</sup>

45. Since GM’s actions first came to light, the outcry has been staggering, not only from the public, but also from law enforcement and legislators. GM has faced scrutiny of the NHTSA – receiving a \$35 million dollar fine, the largest that the federal agency may assess – as well as hearings in both the U.S. House and Senate and a probe by the Department of Justice. GM has been ordered to turn over its internal documents, and CEO Mary Barra testified before the Senate and House in early April 2014.

46. While GM has now appointed a new Vehicle Safety Chief and laid off two engineers, millions of Defective Vehicles remain on the road to this day; and, upon information and belief, other vehicles not yet acknowledged by GM also have the deadly ignition switch defect.

**DEFENDANT’S CONDUCT HAS HARMED  
PLAINTIFF AND CLASS MEMBERS**

47. The ignition switch defects detailed herein have caused damage to Plaintiff and the Class.

48. A vehicle purchased, leased, or retained with a serious safety defect is worth less than the equivalent vehicle leased, purchased, or retained without the defect. Similarly, a vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the risk of accident endemic to the Defective Vehicles.

49. Purchasers and lessees paid a higher purchase price for the Defective Vehicles than they would have had the ignition switch defects been disclosed. Plaintiff and the Class

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<sup>16</sup> Bill Vlasic & Christopher Jensen, “Something Went ‘Very Wrong’ at G.M., Chief Says,” *New York Times* (Mar. 18, 2014) (available at <http://www.nytimes.com/2014/03/18/business/gm-chief-barra-releases-video-on-recalls.html>).

overpaid for their Defective Vehicles and are unable to resell them for what they paid and are incurring costs and expenses to maintain the Defective Vehicles in inventory, including without limitation, interest owed and other expenses. This loss is due to the concealed ignition switch defects. Plaintiff did not and now cannot realize any profit on the purchase of these vehicles and is unable to sell them.

50. Plaintiff and the Class are stuck with unsafe vehicles that are now worth less than they would have been but for GM's failure to disclose the ignition switch defects.

51. GM admits to a least twelve deaths resulting from accidents linked to the ignition switch defects in the Defective Vehicles. However, Plaintiff believes that the actual number is much higher, and that there may be hundreds or even thousands of deaths and injuries attributable to the faulty ignition switch in the Defective Vehicles.

**A. SUCCESSOR LIABILITY.**

52. As discussed in paragraphs 13-17, *supra*, GM expressly assumed certain obligations under, *inter alia*, the TREAD Act, and is liable for Old GM's nondisclosure of the problems associated with the ignition switch in the Defective Vehicles, as well as its own nondisclosures beginning on the date of its formation on July 10, 2009 and continuing to present day.

53. New GM has successor liability for Old GM's acts and omissions in the marketing and sale of the Defective Vehicles because it has continued the business enterprise of Old GM. Additionally, New GM has admitted that it knew of the ignition system defects from the very date of its formation; New GM has continued in the business of designing, manufacturing, and marketing vehicles, including at least some of the same vehicles as Old GM; New GM retained the bulk of the employees of Old GM; New GM acquired, owned, and leased

real property of Old GM, including all machinery, equipment, tools, information technology, product inventory, and intellectual property; New GM acquired the contracts, books, and records of Old GM; and New GM acquired all goodwill and other intangible personal property of Old GM.

**B. TOLLING OF THE STATUTES OF LIMITATION.**

54. All applicable statutes of limitation have been tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged herein. Plaintiff and Class members did not discover – and were not aware of material facts that would have caused a reasonable person to suspect – that Old GM and New GM had information in their possession about the existence and dangerousness of the ignition switches in the Defective Vehicles and that they affirmatively concealed that information until shortly before this Class action was filed.

55. Because of the active concealment by Defendants, any and all limitations periods otherwise applicable to the claims of Plaintiff and members of the Class have been tolled.

**CLASS ALLEGATIONS**

56. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all Members of the following classes (collectively referred to as “the Class” or “Class”):

**National Class:** All persons in the United States who currently own or lease one or more of the following GM vehicles: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2006-2007 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

**Arkansas Sub-Class:** All persons in the State of Arkansas who currently own or lease one or more of the following GM vehicles: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2006-2007 model years); Pontiac Solstice (2006-2010 model years); Saturn Ions (2003-2007 model years); and Saturn Sky (2007-2010 model years).

57. Excluded from the Class are GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons. Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Defective Vehicles.

58. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

59. The Class can be readily identified using registration records, sales records, production records, and other information kept by Defendants in the usual course of business and within their control.

60. The Class is so numerous that joinder of all Members is impracticable. Upon information and belief, Defendants manufactured and sold millions of the Defective Vehicles nationwide.

61. There are questions of law or fact common to the Class. These questions include, but are not limited to, the following:

- a. whether the Defective Vehicles suffer from ignition switch defects detailed in this Complaint;
- b. whether Defendants knew or should have known about the ignition switch defects detailed in this Complaint;
- c. if Defendants knew of the ignition switch defects detailed in this Complaint, how long Defendants knew of such defects;

- d. whether Defendants attempted to conceal the ignition switch defects detailed in this Complaint from Plaintiff and Class members;
- e. whether Defendants misrepresented to Plaintiff and Class members that the Defective Vehicles were safe;
- f. whether Defendants engaged in fraudulent concealment;
- g. whether Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches;
- h. whether the nature of the faulty ignition switches in the Defective Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a Defective Vehicle;
- i. whether Defendants had a duty to disclose the defective nature of the Defective Vehicles to Plaintiff and Class Members;
- j. whether Defendants omitted and failed to disclose material facts about the Defective Vehicles;
- k. whether Defendants' concealment of facts related to the Defective Vehicles induced Plaintiff and Class members to act to their detriment by purchasing the Defective Vehicles;
- l. whether Old GM's and GM's unlawful, unfair and/or deceptive practices harmed Plaintiff and the members of the Class;

- m. whether Defendants violated the Michigan Consumer Protection Act (“MCPA”), Mich. Comp. L. Ann. § 445.901, *et seq.* and, if so, what remedies are available under the MCPA;
- n. whether Defendants violated the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101, *et seq.*, and, if so, what remedies are available under the ADTPA;
- o. whether, and to what extent, GM has successor liability for the acts and omissions of Old GM; and
- p. whether Plaintiff and Class Members are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

62. Plaintiff’s claims are typical of the claims of the Class members and arise from the same course of conduct by Defendants. The relief Plaintiff seeks is typical of the relief sought for the absent Class members.

63. Plaintiff will fairly and adequately represent and protect the interests of all absent Class members. Plaintiff’s interests do not conflict with the interests of the Class Members. Plaintiff is represented by counsel competent and experienced in product liability, vehicle defect, consumer protection, and class action litigation.

64. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

65. Plaintiff asserts that pursuant to Fed. R. Civ. P. 23(b)(3), questions of law or fact common to the Class members predominate over any questions affecting only individual members.

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the individual Class members is impracticable. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for GM. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

### **CAUSES OF ACTION**

#### **COUNT ONE**

**(Violations of the Michigan Consumer Protection Act,  
MCLS § 445.901, *et seq.* (the "MCPA"))  
(Brought on Behalf of the Class)**

67. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

68. Defendants and Plaintiff are each "persons" under MCLS § 445.902(d).

69. The sale of the Defective Vehicles to Plaintiff and the Class was, at all times relevant to this litigation, an act of "trade and commerce" within the meaning of MCLS § 445.902(g).



70. As detailed throughout this Complaint, Defendants committed deceptive and unfair acts in the conduct of trade and commerce as defined in MCLS § 445.903(1).

Specifically, Defendants violated MCLS § 445.903(1) where

- a. Defendants represented that the Defective Vehicles had approval, characteristics, uses, and benefits that they do not have;
- b. Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the safety, performance, reliability, quality, and nature of the Defective Vehicles;
- c. Defendants represented that the Defective Vehicles were of a particular standard, quality, or grade, when they were of another;
- d. Defendants engaged in unconscionable commercial practices in failing to reveal material facts and information about the Defective Vehicles, which did and tended to, mislead Plaintiffs and the Class about facts that could not reasonably be known by the consumer until the 2014 recalls;
- e. Defendants failed to reveal facts concerning the faulty ignition switch in the Defective Vehicles that were material to the transaction in light of representations of fact made in a positive manner;
- f. Defendants failed to reveal material facts concerning the faulty ignition switch in the Defective Vehicles to Plaintiffs and the Class Members, the omission of which would tend to mislead or deceive consumers, including Plaintiffs and the Class;

- g. Defendants made material representations and statements of fact to Plaintiffs and the Class that resulted in Plaintiffs and the Class Members reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
- h. Defendants intended that Plaintiffs and Class Members rely on their misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase or lease the Defective Vehicles.

71. Plaintiff and the Class have suffered an injury, including the loss of money and property, as a result of Defendants' unfair, unlawful, and deceptive practices. Defendants failed to inform Plaintiff and Class members that its Defective Vehicles had a defective ignition switch that could lead to injury or death. Had Plaintiff and the Class known this, they either would not have purchased their vehicles at all, or they would have paid less for them, and they would not have retained their Defective Vehicles. Plaintiff and the Class have therefore suffered a "loss" because of the violations of the MCPA complained of herein.

72. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants' business.

73. Plaintiff requests that this Court enjoin GM from continuing its unfair, unlawful, and deceptive practices; provide to Plaintiff and each Class member either their actual damages as the result of GM's unfair, unlawful, and deceptive trade practices, or \$250 per Class member, whichever is higher; award reasonable attorneys' fees; and provide other appropriate relief pursuant to MCLS § 445.911.

**COUNT TWO**

**(Violations of the Arkansas Deceptive Trade Practices Act,  
Ark. Code Ann. § 4-88-101, *et seq.* (the “ADTPA”))  
(Brought on Behalf of the Arkansas Sub-Class)**

74. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

75. Defendants and Plaintiff are each “persons” under Ark. Code Ann. § 4-88-102(5).

76. As detailed throughout this Complaint, Defendants committed deceptive and unfair acts in the conduct of trade and commerce as prohibited by Ark. Code Ann. § 4-88-107(a). Specifically, Defendants violated Ark. Code Ann. § 4-88-107(a) where

- a. Defendants represented that the Defective Vehicles had approval, characteristics, uses, and benefits that they do not have;
- b. Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the safety, performance, reliability, quality, and nature of the Defective Vehicles;
- c. Defendants represented that the Defective Vehicles were of a particular standard, quality, or grade, when they were of another;
- d. Defendants engaged in unconscionable commercial practices in failing to reveal material facts and information about the Defective Vehicles, which did and tended to, mislead Plaintiffs and the Class about facts that could not reasonably be known by the consumer until the 2014 recalls;
- e. Defendants failed to reveal facts concerning the faulty ignition switch in the Defective Vehicles that were material to the transaction in light of representations of fact made in a positive manner;

- f. Defendants failed to reveal material facts concerning the faulty ignition switch in the Defective Vehicles to Plaintiffs and the Class Members, the omission of which would tend to mislead or deceive consumers, including Plaintiffs and the Class;
- g. Defendants made material representations and statements of fact to Plaintiffs and the Class that resulted in Plaintiffs and the Class Members reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
- h. Defendants intended that Plaintiffs and Class Members rely on their misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase or lease the Defective Vehicles.

77. Defendants' fraudulent concealment of material facts, as complained of herein, is also a violation of Ark. Code Ann. § 4-88-108.

78. Plaintiff and the Class have suffered an injury, including the loss of money and property, as a result of Defendants' unfair, unlawful, and deceptive practices. Defendants failed to inform Plaintiff and Class members that its Defective Vehicles had a defective ignition switch that could lead to injury or death. Had Plaintiff and the Class known this, they either would not have purchased their vehicles at all or they would have paid less for them, and they would not have retained their Defective Vehicles. Plaintiff and the Class have therefore suffered a "loss" because of the violations of the ADTPA complained of herein.

79. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants' business.

80. Plaintiff requests that this Court enjoin GM from continuing its unfair, unlawful, and deceptive practices, and award to Plaintiff and each Class member their actual damages as the result of GM's unfair, unlawful, and deceptive trade practices, reasonable attorneys' fees, and other appropriate relief pursuant to Ark. Code Ann. § 4-88-113.

**COUNT THREE**  
**(Breach of Implied Warranty)**  
**(Brought on behalf of the Class)**

81. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

82. The Defective Vehicles were defective at the time they left Defendants' control and were not reasonably safe for the reasonably foreseeable uses to which they would be put.

83. Defendants are in the business of manufacturing, designing, distributing, marketing, selling and/or supplying into the stream of commerce the Defective Vehicles.

84. At the time Defendants designed, manufactured, marketed, sold, and/or distributed the Defective Vehicles, Defendants intended and impliedly warranted the Defective Vehicles to be of merchantable quality and safe for such use.

85. Plaintiff and Class members reasonably relied upon the skill and judgment of Defendants as to whether Defective Vehicles were of merchantable quality and safe for their intended use and upon Defendants' implied warranty as to such matters.

86. Defendants breached their implied warranty in the design of Defective Vehicles such that the damages suffered by Plaintiff and Class members were foreseeable by Defendants; the likelihood of the occurrence of the damage suffered by Plaintiff and Class members was foreseeable by Defendants at the time they distributed Defective Vehicles; there was a reasonable alternative design available, and such alternative design was practicable and would have reduced the foreseeable risk of harm posed by Defendants' Defective Vehicles; and

Defendants' failure to adopt the available and practicable reasonable alternative design rendered Defendants' Defective Vehicles not reasonably safe for use by a consumer.

87. Defendants breached their implied warranty in the manufacturing of Defective Vehicles such that the Defective Vehicles were unreasonably dangerous, not fit for the ordinary purpose for which they were intended, and not manufactured in such a way as to eliminate unreasonable risks of foreseeable injury. Furthermore, Defendants failed to make reasonable inspections or conduct adequate testing of Defective Vehicles. Despite knowing of the problems associated with the Defective Vehicles, Defendants took no action for approximately thirteen years to cure or disclose the defects.

88. Defendants breached their implied warranty in the labeling of Defective Vehicles such that Defendants knew or should have known that the products were unreasonably dangerous and created significant risks of serious harm and/or death, yet they failed to provide adequate warnings to consumers of such significant risks of serious harm and/or death.

89. The Defective Vehicles manufactured, designed, sold, distributed, supplied, and/or placed in the stream of commerce by Defendants were defective in their manufacture, construction, design, and labeling as described above at the time they left Defendants' control.

90. As a direct and proximate result of Plaintiff's and Class members' purchase, use and ownership of Defective Vehicles as manufactured, designed, sold, supplied, and introduced into the stream of commerce by Defendants, Plaintiff and Class members have suffered harm, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

91. The defects at issue herein were a legal and/or proximate cause of Plaintiff's and Class members' harm, damages, and economic loss.

92. Neither Plaintiff nor Class member knew that the Defective Vehicles were defective and dangerous until after purchase.

93. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class members suffered the injuries and compensable damages in an amount to be determined at trial.

**COUNT FOUR**  
**(Breach of Implied Warranty of Fitness for a Particular Purpose)**  
**(Brought on behalf of the Class)**

94. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

95. Defendants knew at the time they sold vehicles to Plaintiff and Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

96. Defendants knew at the time they manufactured and sold vehicles to Plaintiff and Class members that those individuals chose to buy their vehicles from Defendants at least in part because of the reputation of Defendants' cars and trucks as safe vehicles with high resale value.

97. Defendants knew that Plaintiff and Class members were relying on Defendants' skill and judgment in manufacturing vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value.

98. Defendants breached the implied warranty of fitness for a particular purpose because the Defective Vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the Defective Vehicles has resulted in a substantial diminishment in their resale value.

99. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members suffered injuries and compensable damages in an amount to be determined at trial.

**COUNT FIVE**  
**(Unjust Enrichment)**  
**(Brought on behalf of the Class)**

100. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

101. As a result of Defendants' wrongful conduct as described herein, Defendants were enriched at the expense of Plaintiffs and the Class, through the receipt of money from the purchase, sale and/or lease of the Defective Vehicles as described herein.

102. Under these circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten monies that it received from Plaintiff and the Class. Because the Defective Vehicles were not safe and reliable as represented by Defendants, it would be unjust and inequitable for GM to retain the benefit of enrichment through the sale of a known Defective Vehicle. Plaintiff and the Class seek restitution for the monies received by Defendants for the sale or lease of the Defective Vehicles.

**COUNT SIX**  
**(Fraudulent Concealment)**  
**(Brought on behalf of the Class)**

103. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

104. Defendants concealed and suppressed material facts concerning the ignition switch in the Defective Vehicles.

105. GM has successor liability for the acts of concealment and suppression of material facts of Old GM as set forth in paragraphs 13-17, *supra*.



106. Defendants had a duty to disclose the ignition switch defects in the Defective Vehicles. Defendant knew that such knowledge was not known or reasonably discoverable by Plaintiff and the Class.

107. Defendants' omissions were material because they directly implicate the safety of the Defective Vehicles. Whether a vehicle has an increased risk of losing power to the motor and/or major electrical systems in the course of driving is a material safety concern.

108. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits and avoid a costly recall, and they did so at the expense of Plaintiff and the Class.

109. On information and belief, Defendants have still not made full and adequate disclosure with regard to the full extent of affected Defective Vehicles.

110. Plaintiff and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiff's and the Class's actions were justified.

111. Because of the concealment and/or suppression of material facts, Plaintiff and the Class sustained damage because, *inter alia*, they purchased and retained vehicles that are now diminished in value from what they would have been had Defendants timely disclosed the ignition switch defects.

112. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, in reckless disregard of Plaintiff's and the Class's rights and well-being, and for the sole purpose of enriching Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, in an amount to be determined according to proof at trial.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff, individually and on behalf of the Class he seeks to represent, demands a jury on any issue so triable of right by a jury.

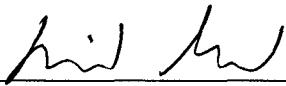
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all Class Members, requests judgment be entered against Defendant and that the Court grant the following:

1. An order determining that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class representative, that Plaintiff's attorneys be appointed Class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, and that Class notice be promptly issued;
2. Judgment against Defendant for Plaintiff's and Class Members' asserted causes of action;
3. Appropriate declaratory relief against Defendant;
4. Preliminary and permanent injunctive relief against Defendant;
5. Equitable relief in the form of restitution and disgorgement of revenues wrongfully obtained as a result of Defendant's wrongful conduct;
6. An award of actual damages and compensatory damages in an amount to be determined;
7. An award of punitive damages;
8. An award of reasonable attorney's fees and other litigation costs reasonably incurred; and
9. Any and all relief to which Plaintiff and the Class may be entitled.

DATED: May 20, 2014

Respectfully submitted,

BY: 

David F. Slade, ABN 2013143  
Randall K. Pulliam, ABN 98105  
Allen Carney, ABN 94122  
Hank Bates, ABN 98063  
CARNEY BATES & PULLIAM, PLLC  
11311 Arcade Drive, Suite 200  
Little Rock, AR 72212  
Telephone: 501.312.8500  
Facsimile: 501.312.8505  
[dslade@cbplaw.com](mailto:dslade@cbplaw.com)  
[rpulliam@cbplaw.com](mailto:rpulliam@cbplaw.com)  
[acarney@cbplaw.com](mailto:acarney@cbplaw.com)  
[hbates@cbplaw.com](mailto:hbates@cbplaw.com)

*Attorney for Plaintiff Drew Higginbotham*

# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ALICIA HARRIS and  
KRISTIN TOTH, individually  
and on behalf of all others similarly  
situated,

**CLASS ACTION**  
**JURY TRIAL DEMANDED**

Plaintiffs,

vs.

GENERAL MOTORS LLC,  
DELPHI AUTOMOTIVE PLC, and  
DELPHI AUTOMOTIVE SYSTEMS, LLC,

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiffs Alicia Harris and Kristin Toth (“Plaintiffs”), individually and on behalf of all similarly situated persons, bring this action against Defendant General Motors, LLC (“GM”), Defendant Delphi Automotive PLC, and Defendant Delphi Automotive Systems, LLC (both Delphi Defendants collectively “Delphi”) (“GM” and “Delphi” Defendants collectively “Defendants”) for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c), (“RICO”), assert additional statutory and common law claims, and allege as follows:

**NATURE OF THE CASE**

1. This case arises from New GM’s recent string of recalls (collectively “the Recall”), the culmination of GM and Delphi’s scheme to defraud GM consumers through their unconscionable failure to disclose and active concealment of a defect in certain GM vehicles that renders them unsafe to drive and has killed at least 13 innocent victims and possibly hundreds

more.<sup>1</sup> The Department of Transportation announced on May 16, 2014 that GM will pay a \$35 million penalty for delays in reporting the defect — “the single highest civil penalty amount ever paid as a result of a [National Highway Traffic Safety Administration] investigation of violations stemming from a recall.” U.S. Secretary of Transportation Anthony Foxx stated that “GM did not act and did not alert us in a timely manner. What GM did was break the law. They failed to make their public safety obligations . . . .” The NHTSA has stated that their review of GM found “systemic” issues regarding how information was shared and the Recall unfolded, and that it was “hard to point to one single fault.” Apart from the penalty, GM will be now be subject to “unprecedented oversight” as a result of the NHTSA’s investigation of the Recall.

2. The defect involves the vehicles’ ignition switch system, which is dangerously susceptible to failure during normal and foreseeable driving conditions (the “Ignition Switch Defect”). When the system fails, the switch turns from the “Run” (or “On”) position to either the “Off” or the “accessory” position, which then results in a loss of power, speed control, and braking, as well as a disabling of the vehicle’s airbags.

3. Delphi manufactured and supplied the defective ignition switches.

4. Delphi knew its ignition switches were defective yet it continued to manufacture and sell the defective ignition switch systems knowing they would be used in the vehicles of Plaintiffs and the Class. Congress has initiated an investigation into Delphi’s role in the enterprise with both Old and New GM.

5. The vehicles that have this defect (“Defective Vehicles”) are:

- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky

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<sup>1</sup> Both GM and Delphi were involved in bankruptcy proceedings that are set forth in more detail below. For purposes of clarity, Plaintiffs will refer to the pre-bankruptcy Defendant entities as “Old GM” and “Old Delphi” when the distinction is appropriate. Similarly, Plaintiffs will refer to the post-bankruptcy Defendant entities as “New GM” and “New Delphi.”

- 2005-2010 Pontiac G5
- 2006-2010 Pontiac Solstice
- 2005-2010 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR

6. So far, there are approximately 2.6 million Defective Vehicles.

7. New GM, acknowledging that “[s]omething went wrong with our process in this instance and terrible things happened,” has recalled the Defective Vehicles to replace their ignition switch systems. But merely replacing the ignition switch systems will not completely solve the problem, make the Defective Vehicles safe, or restore the Defective Vehicles’ value because the design defect pervades the entire structure of the ignition switch and has destroyed the reputation of the Defective Vehicles. Specifically, the design defect also includes the location of the ignition switch, a lack of adequate protection of the ignition switch from forces of inadvertent driver contact, and the type of key that is used.

8. Plaintiffs bring this action on behalf of a Class of all persons in the United States who currently own or lease one or more Defective Vehicles.

9. In light of the recent Recall, Defendants’ scheme to defraud and gross misconduct have harmed Plaintiffs and Class Members and caused them actual damages. Plaintiffs and Class Members did not receive the benefit of their bargains as purchasers and lessees as they received vehicles that were less safe, less useful, of lower quality, and, most significantly, are now less valuable in light of the Recall. Plaintiffs and Class Members contracted to purchase or lease vehicles that do not unexpectedly turn off and become uncontrollable without airbag protection, but because of the Ignition Switch Defect, received defective vehicles that unexpectedly turn off and become uncontrollable without airbag protection. As a result of publicity regarding the Ignition Switch Defect and both Old and New GM’s misconduct, punctuated by the Recall, the

value of the Defective Vehicles has diminished and Plaintiffs and Class Members have lost the opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct. New GM's offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs' and Class Members' vehicles or the loss of Plaintiffs' and Class Members' opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct.

### **JURISDICTION AND VENUE**

10. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and more than two-thirds of the Class is diverse from Defendants. This Court also has original federal question jurisdiction because Plaintiffs' first claim arises under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO") and Plaintiffs' fourth claim arises under the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* ("Magnuson-Moss"). The Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over Defendants because Defendants conduct substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Defendants have caused harm to Class Members residing in this District, including, but not limited to, Plaintiffs.



## PARTIES

13. Plaintiff Alicia Harris is a citizen of Montevallo, Alabama. Plaintiff Harris owns a 2004 Saturn Ion, which she bought new. Plaintiff Harris's Saturn has trouble cranking, especially in extremely cold or hot weather. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Saturn, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

14. Plaintiff Kristin Toth is a citizen of Toledo, Ohio. Plaintiff Toth owned a 2009 Chevrolet Cobalt, which she bought used on June 16, 2011 for \$10,700.00. On Tuesday, February 6, 2014, while driving on I-75, Plaintiff Toth was hit by a semi-truck. Plaintiff's vehicle would not start back after being hit, stranding her in the middle of the interstate. Plaintiff was then hit by another semi-truck on the driver's side. Plaintiff's vehicle was totaled and Plaintiff suffered injuries. Plaintiff's purchase of the Chevrolet was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Chevrolet, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

15. Defendant GM is a limited liability company formed under the laws of Delaware with its principal place of business in Michigan. New GM was incorporated in 2009, and on July 10, 2009, acquired substantially all the assets and assumed certain liabilities of General Motors Corporation (“Old GM”) through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code, pursuant to a Master Sales and Purchase Agreement (“Agreement”).

16. Under the Agreement, New GM expressly assumed the following obligation:

From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicles parts manufactured or distributed by [Old GM].

17. New GM also expressly assumed:

All Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws.

18. Based on the express language of the Agreement, New GM assumed liability for the claims at issue in this lawsuit.

19. New GM is also liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint, because New GM acquired and operated Old GM and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, New GM was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New GM

and Old GM concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

20. Defendant Delphi Automotive PLC is a foreign corporation based in the United Kingdom.

21. Defendant Delphi Automotive Systems, LLC is a foreign corporation organized and formed under the laws of the State of Delaware with its principal place of business in Michigan.

22. Once a subsidiary of Old GM, Old Delphi spun-off in 1999 and became an independent publicly held corporation. Both Old and New Delphi, through their various entities, have designed, manufactured, and supplied GM with motor vehicle components, including the defective ignition switches at issue here.

23. Notwithstanding Old Delphi's 2005 bankruptcy, New Delphi is also liable through successor liability for the deceptive and unfair acts and omissions of Old Delphi, as alleged in this Complaint, because New Delphi acquired and operated Old Delphi and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, New Delphi was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New Delphi and Old Delphi concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

## **FACTUAL ALLEGATIONS**

### **A. Defendants' Decade of Concealment**

24. In documents filed with the federal government, New GM has admitted that Old GM learned of the Ignition Switch Defect in 2001, during the pre-preproduction development of the Saturn Ion. At that time, an internal report indicated that the car was stalling due to problems

with the ignition switch, which included “low detent plunger force” in the ignition switch. The report stated that “an ignition switch design change” solved the problem, but it obviously did not.

25. Old GM nonetheless began manufacturing and selling the Ion in 2002 (for the 2003 model year) with the defective ignition switch systems, which were manufactured by Delphi.

26. In 2003, an internal Old GM inquiry documented that a service technician observed the Saturn Ion stall after the ignition had switched off while driving. The technician noticed that “[t]he owner had several keys on the key ring,” and the report stated that “[t]he additional weight of the keys had worn out the ignition switch.” The technician replaced the ignition switch, and the inquiry was closed without further action.

27. In 2004, three Old GM employees driving production Ions reported that their cars had stalled from a loose ignition switch. “The switch should be raised at least one inch toward the wiper stalk . . . . This is a basic design flaw and should be corrected if we want repeat sales,” one engineer reported.

28. Despite these reports, after considering “lead time required, cost, and effectiveness,” Old GM decided to do nothing.

29. Even worse, when Old GM began manufacturing and selling the Chevrolet Cobalt in 2004 (for the 2005 model year), which was essentially the same car as the Saturn Ion, it installed the same ignition switch system as it installed in the Ion.

30. Soon after the Cobalt entered the market, Old GM began receiving complaints about incidents of vehicles losing engine power, including instances in which the key moved out of the “run” position when a driver inadvertently contacted the key or steering column.

Engineering inquiries, known within Old GM as Problem Resolution Tracking System (“PRTS”) reports, were opened to assess the issue.

31. In February 2005, Old GM engineers concluded that the problem had two causes: “a lower torque detent in the ignition switch . . . [and the] low position of the lock module on the [steering] column.” Again, however, Old GM decided not to take action.

32. On February 28, 2005, Old GM issued a Service Bulletin to its dealers addressing “the potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effect” in 2005 Cobalts and 2005 Pontiac Pursuits, which Old GM stated was “more likely to occur if the driver is short and has a large heavy key chain.” Notably, Old GM did not disseminate this information to Plaintiffs and the Class members.

33. The February 28, 2005 Service Bulletin directed the dealers to advise customers that “removing unessential items from their key chains” would prevent the ignition from being turned off inadvertently.

34. But Old GM knew at that time that the problem was a result of design defects in the key and ignition system, and not short drivers using heavy key chains. Moreover, Old GM knew that the “fix” it directed dealers to offer customers was insufficient to prevent the problem with the ignition.

35. Old GM transmitted the February 28, 2005 Service Bulletin to its dealers through the mail or wires.

36. During the course of a PRTS opened in May 2005, an engineer proposed that Old GM redesign the key head from a “slotted” to a “hole” configuration. The slot design allowed the key chain to hang lower on the key, which placed more torque on the ignition switch when the chain was contacted or moved. The proposal was initially approved, but later cancelled.

37. In June 2005, the *New York Times* reported that Chevrolet dealers were telling customers to lighten their key rings to prevent intermittent stalling and the loss of electrical power in their cars. The article included a statement from Alan Adler, Old GM's Manager for Safety Communications, in which he reassured the public that the problem only occurred in "rare cases when a combination of factors is present," that customers "can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings," and that "when [the stalling] happens, the Cobalt is still controllable" and the "engine can be restarted after shifting to neutral." Old GM intended Adler's statement to be disseminated to the public through the mail or wires.

38. These statements were false because Old GM's internal documents showed that these incidents occurred when drivers were using keys with the standard key fob, and that removing non-essential items from the key ring would not "virtually eliminate" the risk of an incident.

39. In July 2005, Amber Marie Rose, who was 16-years old, was killed when she drove her 2005 Cobalt off the road and struck a tree. Her driver's side airbag did not deploy, even though it should have given the circumstances of the head-on crash, and the car's ignition switch was in the "accessory/off" position at the time of the crash. Old GM learned of these facts in 2005 and documented them in an internal investigation file.

40. Instead of fixing the defect, in December 2005, Old GM issued a service bulletin to its dealers that reiterated much of the same deceptive message Adler delivered earlier in the year. It indicated that the possibility of the driver inadvertently turning off the ignition was more likely to occur if the driver is short and has a large or heavy key chain, and recommended that drivers remove unessential items from key chains. In addition, it informed dealers that it had

developed an insert for the key ring to prevent it from moving up and down in the slot, and that the key ring had been replaced with a smaller design that would not hang as low as in the past. The service bulletin applied to 2003-06 Saturn Ions, 2005-06 Chevrolet Cobalts, the 2006 Chevrolet HHR, and the 2006 Pontiac Solstice, all of which were equipped with the same defective ignition switch system. Old GM issued the December 2005 Service Bulletin to its dealers through the mail or wires.

41. In October 2006, Old GM updated its December 2005 Service bulletin to include the 2007 Saturn Ion, the 2007 Saturn Sky, the 2007 Chevrolet Cobalt, the 2007 Chevrolet HHR, the 2007 Pontiac G5, and the 2007 Pontiac Solstice. Old GM issued this update to its dealers through the mail or wires.

42. In 2006, at least two fatal accidents involving Cobalts occurred in which the cars' data recorders indicated that the ignition switches were in the "accessory" position and the front airbags failed to deploy. Old GM learned of this information in 2006.

43. In 2007 and 2008, Old GM became aware of at least four more such fatal accidents.

44. NHTSA's Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in 2005-07 Cobalts and 2003-07 Ions where the airbag failed to deploy in non-rear impact crashes.

45. Old GM finally made some changes to the design of the ignition switch system in 2006 to include a new detent plunger and spring. The new switch, however, did not receive a new part number, which is considered a "cardinal sin" in the engineering community, and further concealed the defect in the switch that was installed in the Defective Vehicles.

46. In May 2012, New GM engineers studied 44 vehicles across a range of make and model years, and results revealed that vehicles tested from model years 2003 through 2007 exhibited torque performance below the original specifications established by GM. Rather than immediately notify NHTSA of the results of this study or conduct a recall, New GM continued to conceal the nature of the Ignition Switch Defect.

47. In September 2012, New GM assigned a special engineer to examine the changes between the 2007 and 2008 Chevrolet Cobalt models following reported crashes where the airbags failed to deploy and the ignition switch was found in the “off” or “accessory” position.

48. In October 2012, GM Engineer Ray DeGiorgio sent an email to Brian Stouffer of GM regarding the “2005-7 Cobalt and Ignition Switch Effort,” stating, “If we replaced switches on ALL the model years, i.e., 2005, 2006, 2007 the piece price would be about \$10.00 per switch. This cost is based on volume of 1.5 units total.” This email makes clear that New GM considered implementing a recall to fix the Defective Ignition Switches, but decided against it to save money.

49. In April 2013, New GM hired an outside engineering consulting firm to investigate the ignition switch system. The external report concluded that ignition switches installed in early model Cobalt and Ion vehicles did not meet GM’s torque specification. Rather than immediately notify NHTSA of the results of this report, New GM continued to conceal the nature of the Ignition Switch Defect. In fact, in April and May of 2013, two New GM employees — Brian Stouffer and Ray DeGiorgio — have downplayed or outright denied the existence of any Ignition Switch Defect in depositions in the personal injury action of *Melton v. General Motors*.



50. In October 2013, Delphi delivered documentation to New GM confirming that a change to the ignition switch in the Cobalt and other vehicles was made in April 2006.

51. Brian Stouffer, in an email to Delphi regarding the ignition switch in the Chevy Cobalt, acknowledged that the ignition switch in early Cobalt vehicles was different than the switch in later Cobalt vehicles notwithstanding the fact that both switches had the same part number. Delphi responded that Old GM authorized the change in 2006 but the part number remained the same.

#### **B. GM Finally Discloses the Ignition Switch Defect**

52. It was not until February of 2014 — almost thirteen years after first recognizing the defect — that New GM finally admitted publicly that the ignition switch system is defective and agreed to recall the Defective Vehicles to replace the old ignition switch with the re-designed version.

53. In a February 14, 2014 letter to the NHTSA regarding the Recall, New GM finally acknowledged — in contrast to its prior representations to the agency — that changes were made to the ignition switches during the 2007 model year. Specifically, New GM stated that on “April 26, 2006, the GM design engineer responsible for the Cobalt’s ignition switch signed a document approving changes to the ignition switch proposed by the supplier, Delphi Mechatronics.” The GM design engineer referenced was Ray DeGiorgio.

54. On March 17, 2014, New GM’s CEO Mary T. Barra issued an internal video to employees, wherein she admits that “[t]hese are serious developments that shouldn’t surprise anyone. After all, something went wrong with our process in this instance and terrible things happened.”<sup>2</sup>

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<sup>2</sup> The Ignition Switch Defect is not the only example of GM’s misconduct when it comes to concealing defects. Recent reports indicate that GM “waited years to recall nearly 335,000 Saturn Ions for power steering failures

55. On April 2, 2014, Barra testified under oath before Congress. She has been with GM for thirty-three years as a key executive with both Old and New GM. Before becoming CEO, she held numerous high-ranking engineering positions, including Executive Director of Manufacturing Engineering in 2005, Executive Director of Vehicle Manufacturing Engineering from 2005 to 2008, Vice President of Global Manufacturing from 2008 to 2009, and Executive Vice President of Global Product Development up until her appointment as CEO in January 2014.

56. Despite the utter disregard for public safety, both Old and New GM vehicles have been marketed based on safety from 2002 through the present. For example, in 2005, Chevrolet emphasized on its website that “[y]our family’s safety is important to us . . . . That’s why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind.” Likewise, in advertisements for Saturns, GM utilized the slogan, “Saturn. People First,” and stated that, “[i]n cars, it’s about things like reliability, durability, and of course, safety. That’s where we started when developing our new line of cars.”

57. While New GM has publicly stated that the Ignition Switch Defect has been linked to thirty-one frontal crashes and thirteen deaths, others have reported that the actual number of deaths or serious injuries is in the hundreds.

58. Despite having knowledge of the Ignition Switch Defect, both Old and New GM delayed the Recall to maximize profits, placing millions of people in danger.

59. New GM’s Recall is insufficient because it does not address the location of the ignition switch system or how low the key fob hangs on the steering column, all of which create

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despite getting thousands of consumer complaints and more than 30,000 warranty repair claims.” This *other* defect — the power steering defect — can cause the affected vehicle to lose power steering, making turning the vehicle much more difficult. Complaints filed with the NHTSA reveal incidents in which 2004 Saturn Ion steering wheels locked, causing the affected vehicles to crash into a tree or get pulled into oncoming traffic. New GM has admitted that it didn’t do enough to take care of the power steering problem.

a risk of inadvertent driver contact and an inadvertent turning of the switch. The Recall also fails to account for the permanent loss of value of (and reputation to) the Defective Vehicles.

60. Under the Transportation Recall Enhancement, Accountability and Documentation Act (“TREAD Act”), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defect. If it is determined that the vehicle is defective, the manufacturer must notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. Both Old and New GM repeatedly violated the TREAD Act by actively concealing information about the Ignition Switch Defect for more than a decade.

61. Throughout the relevant period, both Old and New GM possessed vastly superior knowledge and information to that of consumers — if not exclusive information — about the design and function on the ignition switches in the Defective Vehicles and the existence of the defects in those vehicles.

62. The Ignition Switch Defect has caused actual damages to Plaintiffs and the Class.

63. A vehicle purchased, leased, or retained with a known serious safety defect is worth less than the equivalent vehicle leased, purchased or retained without the known defect.

64. A vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the unreasonable risk of catastrophic accident because of the ignition switch defects.

65. As a result of publicity regarding the Ignition Switch Defect and GM’s misconduct, punctuated by the Recall, the value of the Defective Vehicles has diminished, and New GM’s offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs’ and Class Members’ vehicles. Plaintiffs and the Class are stuck

with unsafe vehicles that are now worth less than they would have been but for Old and New GM's wrongful conduct.

66. Moreover, Defendants' scheme has deprived Plaintiffs and the Class Members of the right and entitlement to sell or enjoy their property unhampered by fraudulent conduct.

#### **STATUTES OF LIMITATION**

67. There are no applicable statutes of limitations because the claims of Plaintiffs and the Class did not accrue until the Recall, the instant the value of the Defective Vehicles diminished.

68. Alternatively, any applicable statutes of limitation have been tolled by Defendants' knowing and active fraudulent concealment and denial of the Ignition Switch Defect. On information and belief, Defendants have been aware of the Ignition Switch Defect since at least 2001, and have concealed from Plaintiffs, the Class, the public, and the government the complete nature of the Ignition Switch Defect.

69. Even now, after the Defective Vehicles have been recalled, Defendants continue to engage in their scheme to defraud by downplaying the significance, danger, and nature of the Ignition Switch Defect.

70. Plaintiffs and the Class did not discover and could not have discovered with reasonable diligence the facts that would have caused a reasonable person to suspect that the Ignition Switch Defect existed or that Defendants did not report information within their knowledge regarding the existence of a dangerous defect to federal authorities or consumers until shortly before this class action was filed.

71. Defendants actively concealed the true character, quality, and nature of the Defective Vehicles. Plaintiffs and the Class relied on Defendants' active concealment of these facts. Moreover, GM was and remains under a continuing duty to disclose to NHTSA, Plaintiffs,

and the Class the true character, quality, and nature of the Defective Vehicles. Defendants are therefore estopped from relying on any statutes of limitation in this action.

### CLASS ALLEGATIONS

72. Under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs brings this action on behalf of herself and a Class initially defined as follows:

All persons in the United States who currently own or lease one or more of the following GM vehicles: 2003-07 Saturn Ion; 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2006-11 Chevrolet HHR; 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the “Defective Vehicles”).

73. Excluded from the Class are GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case. Also excluded from the Class are Delphi, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees. Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Defective Vehicles.

74. The Class can be readily identified using registration records, sales records, production records, and other information kept by GM or third parties in the usual course of business and within their control.

75. As there are approximately 2.6 million Defective Vehicles, the number of Class Members is great enough that joinder is impracticable.

76. The claims of Plaintiffs are typical of the claims of the Class, as Plaintiffs and Class Members alike purchased or leased Defective Vehicles and were harmed in the same way by Defendants' uniform misconduct.

77. Plaintiffs will fairly and adequately protect the interests of the other members of the Class. Plaintiffs' counsel has substantial experience in prosecuting class actions. Plaintiffs and his counsel are committed to vigorously prosecuting this action, have the financial resources to do so, and do not have any interests adverse to the Class.

78. There are numerous questions of law and fact that are common to the Class and predominate over questions affecting only individual members, including the following:

- (a) Whether Defendants, as part of a racketeering scheme to defraud, concealed information about the dangerous and defective condition of the relevant vehicles from Plaintiffs and the Class;
- (b) Whether Defendants, through their RICO Enterprise, as described below, used the mail or wires in furtherance of their scheme to defraud;
- (c) Whether the Defective Vehicles suffer from Ignition Switch Defects;
- (d) Whether Defendants concealed the defects;
- (e) Whether Defendants misrepresented that the Defective Vehicles were safe;
- (f) Whether Defendants owed Plaintiffs and the Class a duty to disclose the Ignition Switch Defect;
- (g) Whether Defendants engaged in fraudulent concealment;
- (h) Whether Defendants engaged in unfair, deceptive, unlawful or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches; and
- (i) Whether Defendants' unlawful, unfair or deceptive practices harmed Plaintiffs and the Class.

79. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Likewise, because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

80. The prosecution of separate actions by the individual Class members would also create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for Defendants. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

#### COUNT I

#### **VIOLATION OF RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS ACT (18 U.S.C. § 1962(c)) (Against Defendants)**

81. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth at length herein.

82. This claim is brought on behalf of all Classes.

83. Defendants violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the "RICO Enterprise" through a "pattern of racketeering activity."

84. At all times relevant, Old GM, New GM, Old Delphi, New Delphi, their associates-in-fact, Plaintiffs, and the Class members were and are each a "person," as that term is defined in 18 U.S.C. § 1961(3).

85. At all times relevant, Plaintiffs and each Class member were and are a “person injured in his or her business or property by reason of a violation of RICO within the meaning of 18 U.S.C. § 1964(c).

86. At all times relevant, Defendants were and are a “person” who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While Defendants participated in the RICO Enterprise, they have an existence separate and distinct from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging.

87. At all times relevant, Defendants were associated with, operated, or controlled the RICO Enterprise, and participated in the operation and management of the affairs of the RICO Enterprise, through a variety of actions described herein. Defendants’ participation in the RICO Enterprise was necessary for the successful operation of their scheme to defraud.

**The RICO Enterprise**

88. Section 1961(4) of RICO defines an “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”

89. The following persons, and others presently unknown, have been members of and constitute the “enterprise” within the meaning of RICO, which are referred to herein collectively as the RICO Enterprise:

- a. Defendant General Motors, LLC;
- b. Both Old and New GM’s Officers, Executives, and Engineers, who have collaborated and colluded with each other and with other associates-in-fact in the Enterprise to deceive Plaintiffs and other Class members into purchasing dangerous and defective vehicles,



and actively concealing the danger and defect from Plaintiffs and the other Class members, including, but not limited to Alan Adler, GM's Manager for Safety Communications who, in June of 2005, issued the deceptive public statement regarding the ignition problem; Ray DeGiorgio, GM's design engineer who signed off on the ignition switch change that was never disclosed; and Mary T. Barra, GM's current CEO;

c. Defendants Delphi Automotive PLC and Delphi Automotive Systems, LLC, who, at all times material, manufactured and supplied the defective ignition switch system for GM, even though they knew that the system did not meet GM's own design specifications. Delphi also manufactured and supplied the ignition switch system after the 2007 change implemented by GM without reflecting a corresponding change in part number;

d. GM's Dealers, who GM instructed to present false and misleading information to Plaintiffs and other members of the Class, through, *inter alia*, multiple Service Bulletins, and who did in fact present such false and misleading information.

90. The RICO Enterprise of Old GM, New GM, GM's officers, executives, and engineers, Old Delphi, New Delphi, and GM's dealers, which engaged in, and whose activities affected interstate and foreign commerce, is an association-in-fact within the meaning of 18 U.S.C. § 1961(4) and consists of "persons" associated together for the common purpose of employing the multiple deceptive, abusive and fraudulent acts described herein. The RICO Enterprise is an ongoing organization with an ascertainable structure, and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging. The RICO Enterprise was and is used as a tool to effectuate the pattern of racketeering activity.

91. The members of the RICO Enterprise all had a common purpose: to increase and maximize Defendants' revenues by deceiving Plaintiffs and other Class members into purchasing dangerous and defective vehicles, and actively concealing the Ignition Switch Defect from Plaintiffs and the other Class members. The members of the RICO Enterprise shared the bounty of their enterprise, *e.g.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud. Each member of the RICO Enterprise benefited from the common purpose of the scheme to defraud: both Old and New GM sold or leased more vehicles with the Ignition Switch Defect, both Old and New Delphi sold more of the defective ignition switches, and GM's dealers sold and serviced more vehicles with the Ignition Switch Defect.

92. Defendants conducted and participated in the affairs of this RICO Enterprise through a pattern of racketeering activity that lasted more than a decade, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, which prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

93. As part and in furtherance of the scheme to defraud, Defendants' deceptive scheme to increase revenue depended on actionable deceptive conduct. Defendants actively concealed the dangerous and defective condition of GM's vehicles from its customers through deceptive misrepresentations and omitting material information.

**Predicate Acts: Mail and Wire Fraud**

94. Section 1961(1) of RICO provides that "racketeering activity" is, among other things, any act that is indictable under any of the provisions of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

95. As set forth below, to carry out, or attempt to carry out its scheme to defraud, Defendants have engaged in, and continue to engage in, the affairs of the RICO Enterprise through the following pattern of racketeering activity, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):

a. Both Old and New GM, with the assistance and collaboration of the other persons associated in fact with the enterprise devised and employed a scheme or artifice to defraud by use of the telephone and internet and transmitted, or caused to be transmitted, by means of wire communication travelling in interstate or foreign commerce, writing(s) or signal(s), including GM's website, Service Bulletins to dealers, and communications with other members of the Enterprise, for the purpose of executing such scheme or artifice to defraud, in violation of 18 U.S.C. § 1341 and § 1343.

b. As part of the scheme to defraud, the RICO Enterprise utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the false pretenses and artifice to defraud, as described herein.

c. The concealment of the dangerous and defective condition of the defective GM vehicles is the core purpose of the underlying racketeering offense. The Enterprise had an ascertainable structure by which GM operated and managed the association-in-fact by using its Dealers and Delphi to concoct, obfuscate, carry out, and attempt to justify the fraudulent scheme described herein.

96. Old GM's February 28, 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including

Plaintiffs and other members of the Class. The February 28, 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

97. In 2005, in furtherance of its scheme to defraud, Old GM emphasized on its Chevrolet website that “[y]our family’s safety is important to us . . . . That’s why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind.” This false statement, maintained on the internet through the wires, constitutes a violation of 18 U.S.C. § 1343.

98. In June of 2005, Old GM issued a public statement through the mail or wires in furtherance of its scheme to defraud. The statement provided the public, including Plaintiffs and the other Class members, with false and misleading information about the dangerous and defective condition of the defective vehicles, and sought to conceal that condition by minimizing the issue and offering an ineffective fix. As such, the statement constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

99. Old GM’s December 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM’s dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class — namely, that the issue could be resolved by removing items from key chains. The December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

100. In October of 2006, Old GM issued an update to its December 2005 Service Bulletin in furtherance of its scheme to defraud. The update repeated the instruction to GM’s dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the

Class. The update to the December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

101. In furtherance of the scheme to defraud, GM communicated with Delphi via the mail or wires regarding the manufacture of the defective ignition switch system. Through those communications, GM instructed Delphi to continue manufacturing the defective part even though it did not meet GM's own specifications. Delphi followed these instructions and continued to manufacture the defective parts. Through those communications, GM also instructed Delphi to make a change to the defective ignition switch system in 2006, and to fraudulently conceal the change by not assigning a new part number. Delphi also followed these instructions, making a change to the defective ignition switch system in 2006 and fraudulently concealing the change by not assigning a new part number. GM's communications with Delphi, and Delphi's responses, constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

102. Defendants' conduct in furtherance of this scheme was intentional. Plaintiffs and the other Class members were harmed in that they relied to their detriment on Defendants' conduct and, as a result, purchased dangerous and defective vehicles that saw their value plummet the moment New GM issued the Recall. Defendants unfairly reaped millions of dollars in excessive sales revenue as a result of this scheme and its conduct in furtherance of this scheme.

103. As described throughout this Complaint, Defendants engaged in a pattern of related and continuous predicate acts for over a decade: the scheme began sometime in or around 2000 and is ongoing.

104. The predicate acts constituted a variety of unlawful activities, each conducted in furtherance of the Enterprise and with the common purpose of defrauding Plaintiffs and other

Class members and obtaining significant funds while providing defective vehicles that are now worth significantly less in light of the Recall. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

105. The predicate acts all had the purpose of generating significant revenue and profits for Defendants at the expense of Plaintiffs and the other Class members, who were never informed of the Ignition Switch Defect in their defective vehicles and who have now been damaged by the diminution in value caused by the Recall. The predicate acts were committed or caused to be committed by Defendants, through their participation in the RICO Enterprise and in furtherance of their fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and all other Class members' funds.

106. Plaintiffs and Class Members have a protected property interest in current or prospective contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise. This deprivation of Plaintiffs' and Class Members' property interest is distinct from the injury suffered as a result of the diminished value of the vehicles.

107. Defendants' RICO Enterprise deprived Plaintiffs and Class Members of their protected property interest in, and entitlement to, current or prospective business or contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise

108. Count I seeks relief pursuant to 18 U.S.C. § 1964(c) from Defendants for violation of 18 U.S.C. § 1962(c).

**COUNT II**

**VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT  
(Michigan Comp. Laws Ann. § 445, *et seq.*)  
(Against Defendants)**

109. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

110. This claim is brought on behalf of all Classes.

111. Plaintiffs and Class Members are all “persons” under the Michigan Consumer Protection Act (“MCPA”), M.C.L.A. § 445.902(1)(d).

112. Defendants were each a “person” engaged in “trade or commerce” under the MCPA, M.C.L.A. § 445.902(1)(d) and (g).

113. The MCPA prohibits any “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” M.C.L.A. § 445.903(1).

114. Defendants’ conduct, as alleged in the preceding paragraphs, constitutes unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. In particular, Defendants violated the MCPA by

a. “[f]ailing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer,” M.C.L.A. § 445.903(s);

b. “[m]aking a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is,” M.C.L.A. § 405.903(bb); and

c. “[f]ailing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner,” M.C.L.A. § 405.903(cc).

115. GM’s practices that violated the MCPA include, without limitation, the following:

a. GM represented that the Defective Vehicles had safety characteristics that they do not have;

b. GM represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. GM knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature, even though GM knew that such information was material to the transaction in light of GM's prior representations;

d. GM failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government;

e. GM intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and Class Members would purchase or lease the Defective Vehicles; and

f. GM repeatedly violated the TREAD Act.

116. Delphi's practices that violated the MCPA include, without limitation, the following:

a. Delphi represented that the defective ignition switches had safety characteristics that they do not have;

b. Delphi represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. Delphi knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature;



d. Delphi failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government; and

e. Delphi intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and the Class would purchase or lease the Defective Vehicles;

117. Defendants' acts and practices were unfair and unconscionable, because their acts and practices offend established public policy, and because the harm Defendants caused consumers greatly outweighs any benefits associated with its acts and practices. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs and the Class from making fully informed decisions about whether to lease, purchase, or retain Defective Vehicles.

118. Plaintiffs and the Class have suffered an injury, including the loss of money or property, as a result of Defendants' unfair, unlawful, or deceptive practices. Had Plaintiffs and the Class known about the full extent of the Ignition Switch Defect, they would not have purchased their vehicles at all or would have paid less for them, and would not have retained their Defective Vehicles only to suffer the diminution in value caused by the Recall. Plaintiffs and the Class have therefore suffered a "loss" because of the violations of the MCPA complained of here.

119. All of the wrongful conduct alleged here occurred, and continues to occur, in the conduct of Defendants' business.

120. Plaintiffs requests that this Court enjoin Defendants from continuing their unfair, unlawful, or deceptive practices; require Defendants to repair Plaintiffs' and Class Members' vehicles to completely eliminate the Ignition Switch Defect; provide to Plaintiffs and each Class Member either their actual damages as the result of Defendants' unfair, unlawful, and deceptive trade practices, or \$250 per Class member, whichever is higher; award reasonable attorneys' fees; and provide other appropriate relief under the MCPA.

121. Plaintiffs also seek punitive damages against Defendants because they carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others. Defendants intentionally, willfully, and repeatedly misrepresented the reliability and safety of the Defective Vehicles, and continued to conceal material facts that only they knew, even while numerous innocent victims were being killed as a result of its conduct. Defendants' unlawful conduct constitutes malice, oppression, and fraud justifying punitive damages.

**COUNT III**  
**FRAUD BY CONCEALMENT**  
**(Against Defendants)**

122. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

123. This claim is brought on behalf of all Classes.

124. Defendants concealed and suppressed material facts concerning the Ignition Switch Defect.

125. Defendants had a duty to disclose the Ignition Switch Defect because GM consistently represented that its vehicles were reliable and safe and proclaimed that it maintained the highest safety standards, and the defect was known or accessible only to Defendants, who had superior knowledge and access to the facts, and Defendants knew that the facts were not

known to or reasonably discoverable by Plaintiffs and the Class. These omitted and concealed facts were material because they directly impact the safety of the Defective Vehicles, and GM's prior representations regarding the safety of its vehicles became materially misleading when Defendants concealed facts regarding the Ignition Switch Defect.

126. Defendants actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class Members to purchase or lease the Defective Vehicles at high prices, and to protect Defendants' profits and avoid a costly recall, and Defendants did so at the expense of Plaintiffs and the Class.

127. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed or suppressed facts. Plaintiffs' and the Class's actions were justified.

128. Because of the concealment or suppression of the facts, Plaintiffs and the Class sustained damages because the value of the Defective Vehicles has been diminished by the Recall, the direct result of Defendants' wrongful conduct.

129. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

**COUNT IV**  
**VIOLATIONS OF MAGNUSON-MOSS CONSUMER PRODUCTS**  
**WARRANTIES ACT ("Magnuson-Moss")**  
**(15 U.S.C. § 2301, et seq.)**  
**(Against GM)**

130. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

131. Magnuson-Moss provides a private right of action by purchasers of consumer products against manufacturers or retailers who, among other things, fail to comply with the terms of the written, express, or implied warranties. *See* 15 U.S.C. § 2310(d)(1). As alleged above, GM has failed to comply with the terms of its implied warranties.

132. The Defective Vehicles are “consumer products,” as that term is defined in 15 U.S.C. § 2301(1).

133. GM is a “warrantor,” as that term is defined in 15 U.S.C. § 2301(5).

134. Plaintiffs and each member of the Classes are “consumers,” as that term is defined in 15 U.S.C. § 2301(3).

135. As a warrantor, GM is obligated to afford the Classes, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity.

136. Magnuson-Moss provides a cause of action for, among other things, breach of warranty. *See* 15 U.S.C. § 2310(d)(1). GM has breached its implied warranties of merchantability, which it cannot disclaim under Magnuson-Moss, *see* 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs and the Classes have suffered damages as a result of GM’s breaches of implied warranties as set forth above. *See* 15 U.S.C. § 2310(d)(1)-(2).

137. GM was on notice of the ignition switch defects as early as 2001, yet did not undertake any opportunity to cure until 2014, nearly thirteen years later, when GM’s knowledge of the ignition switch defects was first made public. Also, once Plaintiffs’ representative capacity is determined, notice and opportunity to cure on behalf of the Classes — through Plaintiffs — can be provided under 15 U.S.C. § 2310(e).

138. Plaintiffs and the Class members have suffered, and are entitled to recover, damages as a result of GM’s breaches of warranty and violations of Magnuson-Moss.

139. Additionally, or in the alternative, Magnuson-Moss provides for “other legal and equitable” relief where there has been a breach of warranty or failure to abide by other obligations imposed by Magnuson-Moss. *See* 15 U.S.C. § 2310(d)(1). Rescission and Revocation of Acceptance are equitable remedies available to Plaintiffs and the Class members under Magnuson-Moss.

140. Plaintiffs also seek an award of costs and expenses, including attorney’s fees, under Magnuson Moss to prevailing consumers in connection with the commencement and prosecution of this action. *See* 15 U.S.C. § 2310(d)(2). Plaintiffs and the Class intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendants, and grant the following relief:

A. Determine that this action may be maintained as a Class action and certify it as such under Rule 23(b)(3) and or 23(b)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class Representative and Plaintiffs’ chosen counsel as Class Counsel;

B. Declare, adjudge, and decree that Defendants violated 18 U.S.C. § 1962(c) by conducting the affairs of the RICO Enterprise through a pattern of racketeering activity;

C. Declare, adjudge, and decree the conduct of Defendants as alleged herein to be unlawful, unfair or deceptive, and enjoin any such future conduct;

D. Declare, adjudge, and decree that the ignition switches in the Defective Vehicles are defective;

E. Declare, adjudge, and decree that Defendants must disgorge, for the benefit of Plaintiffs and Class Members all or part of the ill-gotten gains it received from the sale or lease of the Defective Vehicles;

F. Award Plaintiffs and Class Members actual, compensatory damages, or, in the alternative, statutory damages, as proven at trial;

G. Award Plaintiffs and Class Members treble damages pursuant to 18 U.S.C. § 1964(c).

H. Alternatively, if elected by Plaintiffs and Class Members, require Defendants to repair the defective ignition switches or provide a comparable vehicle that does not have ignition switch defects;

I. Award Plaintiffs and Class Members punitive damages in such amount as proven at trial;

J. Award Plaintiffs and Class Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and

K. Award Plaintiffs and Class Members such other further and different relief as the case may require or as determined to be just, equitable, and proper by this Court.

### **JURY TRIAL DEMAND**

Plaintiffs requests a trial by jury on all the legal claims alleged in this Complaint.

Respectfully submitted,

KOZYAK TROPIN, & THROCKMORTON P.A.  
*Counsel for Plaintiffs*  
2525 Ponce de Leon Blvd., 9th Floor  
Coral Gables, Florida 33134

Telephone: (305) 372-1800

By: /s/ Adam M. Moskowitz

Adam M. Moskowitz

[amm@kttlaw.com](mailto:amm@kttlaw.com)

Harley S. Tropin

[hst@kttlaw.com](mailto:hst@kttlaw.com)

Thomas A. Tucker Ronzetti

[tr@kttlaw.com](mailto:tr@kttlaw.com)

Tal J. Lifshitz

[tjl@kttlaw.com](mailto:tjl@kttlaw.com)

Robert Neary

[rn@kttlaw.com](mailto:rn@kttlaw.com)

Wiggins, Childs, Quinn & Pantazis, LLC

The Kress Building

301 19<sup>th</sup> Street North

Birmingham, Alabama 35203

Telephone: 205-314-0500

Gregory O. Wiggins (*pro hac vice* to be filed)

[gwiggins@wcqp.com](mailto:gwiggins@wcqp.com)

Kevin W. Jent (*pro hac vice* to be filed)

[kjent@wcqp.com](mailto:kjent@wcqp.com)

GRAY & WHITE

713 E. Market Street, 2nd Floor

Louisville, Kentucky 40202

Telephone: (502) 805-1800

Mark K. Gray (*pro hac vice* to be filed)

[MGray@grayandwhitelaw.com](mailto:MGray@grayandwhitelaw.com)

Matthew L. White (*pro hac vice* to be filed)

[MWhite@grayandwhitelaw.com](mailto:MWhite@grayandwhitelaw.com)

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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Alicia Harris and Kristin Toth

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Harley S. Tropin, Adam M. Moskowitz, Thomas A. Tucker Ronzetti, Tal J. Lifshitz & Robert Neary,

(d) Check County Where Action Arose: Kozvak Tropin & Throckmorton P A 2525 Ponce de Leon 9th Floor

MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

DEFENDANTS

General Motors LLC; Delphi Automotive PLC; and Delphi Automotive Systems, LLC

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 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 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)

PTF DEF PTF DEF Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, CIVIL RIGHTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE DOCKET NUMBER MDL 2543

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

RICO, 18 U.S.C. section 1962(c)

LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

May 22, 2014

Adam M. Moskowitz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT 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.C.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; 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 clerks 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 seven 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.

**Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.**

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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. 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

**VIII. 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 dollar amount (in thousands of dollars) 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.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# Exhibit C

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

MICHELLE LANNON and  
JEANINNE LITTLE, individually  
and on behalf of all others similarly  
situated,

**CLASS ACTION  
JURY TRIAL DEMANDED**

Plaintiffs,

vs.

GENERAL MOTORS LLC,  
DELPHI AUTOMOTIVE PLC, and  
DELPHI AUTOMOTIVE SYSTEMS, LLC,

Defendants.

**CLASS ACTION COMPLAINT**

Plaintiffs Michelle Lannon and Jeaninne Little (“Plaintiffs”), individually and on behalf of all similarly situated persons, bring this action against Defendant General Motors, LLC (“GM”), Defendant Delphi Automotive PLC, and Defendant Delphi Automotive Systems, LLC (both Delphi Defendants collectively “Delphi”) (“GM” and “Delphi” Defendants collectively “Defendants”) for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c), (“RICO”), among other statutory and common law claims, and allege as follows:

**NATURE OF THE CASE**

1. This case arises from New GM’s<sup>1</sup> recent string of recalls (collectively “the Recall”), the culmination of GM and Delphi’s scheme to defraud GM consumers through their

---

<sup>1</sup> Both GM and Delphi were involved in bankruptcy proceedings that are set forth in more detail below. For purposes of clarity, Plaintiffs will refer to the pre-bankruptcy Defendant entities as “Old GM” and “Old Delphi” when the distinction is appropriate. Similarly, Plaintiffs will refer to the post-bankruptcy Defendant entities as “New GM” and “New Delphi.”

unconscionable failure to disclose and active concealment of a defect in certain GM vehicles that renders them unsafe to drive and has killed at least 13 innocent victims and possibly hundreds more. The Department of Transportation announced on May 16, 2014, that GM will pay a \$35 million penalty for delays in reporting the defect — “the single highest civil penalty amount ever paid as a result of a [National Highway Traffic Safety Administration (the “NHTSA”)] investigation of violations stemming from a recall.” U.S. Secretary of Transportation Anthony Foxx stated that “GM did not act and did not alert us in a timely manner. What GM did was break the law. They failed to make their public safety obligations . . . .” The NHTSA has stated that their review of GM found “systemic” issues regarding how information was shared and the Recall unfolded, and that it was “hard to point to one single fault.” Apart from the penalty, GM will be now be subject to “unprecedented oversight” as a result of the NHTSA’s investigation of the Recall.

2. The defect involves the vehicles’ ignition switch system, which is dangerously susceptible to failure during normal and foreseeable driving conditions (the “Ignition Switch Defect”). When the system fails, the switch turns from the “Run” (or “On”) position to either the “Off” or the “Accessory” position, which then results in a loss of power, speed control, and braking, as well as a disabling of the vehicle’s airbags.

3. Delphi manufactured and supplied the defective ignition switches.

4. Delphi knew its ignition switches were defective yet it continued to manufacture and sell the defective ignition switch systems knowing they would be used in the vehicles of Plaintiffs and the Class. Congress has initiated an investigation into Delphi’s role in the enterprise with both Old and New GM.

5. The vehicles that have this defect (the “Defective Vehicles”) are:

- 2003-2007 Saturn Ion;
- 2007-2010 Saturn Sky;
- 2005-2010 Pontiac G5;
- 2006-2010 Pontiac Solstice;
- 2005-2010 Chevrolet Cobalt; and
- 2006-2011 Chevrolet HHR.

6. So far, there are approximately 2.6 million Defective Vehicles.

7. New GM, acknowledging that “[s]omething went wrong with our process in this instance and terrible things happened,” has recalled the Defective Vehicles to replace their ignition switch systems. But merely replacing the ignition switch systems will not completely solve the problem, make the Defective Vehicles safe, or restore the Defective Vehicles’ value because the design defect pervades the entire structure of the ignition switch and has destroyed the reputation of the Defective Vehicles. Specifically, the design defect also includes the location of the ignition switch, a lack of adequate protection of the ignition switch from forces of inadvertent driver contact, and the type of key that is used.

8. Plaintiffs bring this action on behalf of a Class of all persons in the United States who currently own or lease one or more Defective Vehicles.

9. In Defendants’ scheme to defraud and gross misconduct, as established by the Recall, have harmed Plaintiffs and Class Members and caused them actual damages. Plaintiffs and Class Members did not receive the benefit of their bargains as purchasers and lessees as they received vehicles that were less safe, less useful, of lower quality, and, most significantly, are now less valuable in light of the Recall. Plaintiffs and Class Members contracted to purchase or lease vehicles that do not unexpectedly turn off and become uncontrollable without airbag protection, but because of the Ignition Switch Defect, received defective vehicles that unexpectedly turn off and become uncontrollable without airbag protection. As a result of

publicity regarding the Ignition Switch Defect and both Old and New GM's misconduct, punctuated by the Recall, the value of the Defective Vehicles has diminished and Plaintiffs and Class Members have lost the opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct. New GM's offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs' and Class Members' vehicles or the loss of Plaintiffs' and Class Members' opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct.

### **JURISDICTION AND VENUE**

10. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and more than two-thirds of the Class is diverse from Defendants. This Court also has original federal question jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' first claim arises under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO") and Plaintiffs' fourth claim arises under the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* ("Magnuson-Moss"). The Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367.

11. This Court has general personal jurisdiction over Defendants because Defendants conduct substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because

Defendants have caused harm to Class Members residing in this District, including, but not limited to, Plaintiffs.

### **PARTIES**

13. Plaintiff Michelle Lannon is a citizen of San Diego, California. Plaintiff Lannon owns a 2011 Chevrolet HHR, which she bought used on September 10, 2012 for \$15,000.00. Plaintiff Lannon's Chevrolet will not start at times and, at times, will not shut off. The vehicle also has electrical issues where the panel (odometer, radio, etc.) will turn on even when the key is not in the ignition. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Chevrolet, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

14. Plaintiff Jeaninne Little is a citizen of Santa Maria, California. Plaintiff Little owns a 2006 Saturn Ion, which she bought used on October 30, 2012 for \$11,000.00. Plaintiff Little's Saturn has had issues with (1) the key not coming out of the ignition when the vehicle is in the Off position; (2) the vehicle not starting; (3) the vehicle shutting off at random times; and (4) the power steering shutting off while driving. Plaintiff's purchase of the Saturn was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Saturn, or would have paid less than she did, and would not have retained the vehicle only to suffer the

diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

15. Defendant GM is a limited liability company formed under the laws of Delaware with its principal place of business in Michigan. New GM was incorporated in 2009, and on July 10, 2009, acquired substantially all the assets and assumed certain liabilities of General Motors Corporation ("Old GM") through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code, pursuant to a Master Sales and Purchase Agreement ("Agreement").

16. Under the Agreement, New GM expressly assumed the following obligation:

From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicles parts manufactured or distributed by [Old GM].

17. New GM also expressly assumed:

All Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws.

18. Based on the express language of the Agreement, New GM assumed liability for the claims at issue in this lawsuit.

19. New GM is also liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint, because New GM acquired and operated Old GM and ran it as a continuing business enterprise, utilizing substantially the same brand



names, logos, plants, offices, leadership, personnel, engineers, and employees, New GM was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New GM and Old GM concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

20. Defendant Delphi Automotive PLC is a foreign corporation based in the United Kingdom.

21. Defendant Delphi Automotive Systems, LLC is a foreign corporation organized and formed under the laws of the State of Delaware with its principal place of business in Michigan.

22. Once a subsidiary of Old GM, Old Delphi spun-off in 1999 and became an independent publicly held corporation. Both Old and New Delphi, through their various entities, have designed, manufactured, and supplied GM with motor vehicle components, including the defective ignition switches at issue here.

23. Notwithstanding Old Delphi's 2005 bankruptcy, New Delphi is also liable through successor liability for the deceptive and unfair acts and omissions of Old Delphi, as alleged in this Complaint, because New Delphi acquired and operated Old Delphi and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, New Delphi was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New Delphi and Old Delphi concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

## FACTUAL ALLEGATIONS

### A. Defendants' Decade of Concealment

24. In documents filed with the federal government, New GM has admitted that Old GM learned of the Ignition Switch Defect in 2001, during the pre-production development of the Saturn Ion. At that time, an internal report indicated that the car was stalling due to problems with the ignition switch, which included "low detent plunger force" in the ignition switch. The report stated that "an ignition switch design change" solved the problem, but it obviously did not.

25. Old GM nonetheless began manufacturing and selling the Ion in 2002 (for the 2003 model year) with the defective ignition switch systems, which were manufactured by Delphi.

26. In 2003, an internal Old GM inquiry documented that a service technician observed the Saturn Ion stall after the ignition had switched off while driving. The technician noticed that "[t]he owner had several keys on the key ring," and the report stated that "[t]he additional weight of the keys had worn out the ignition switch." The technician replaced the ignition switch, and the inquiry was closed without further action.

27. In 2004, three Old GM employees driving production Ions reported that their cars had stalled from a loose ignition switch. "The switch should be raised at least one inch toward the wiper stalk . . . . This is a basic design flaw and should be corrected if we want repeat sales," one engineer reported.

28. Despite these reports, after considering "lead time required, cost, and effectiveness," Old GM decided to do nothing.

29. Even worse, when Old GM began manufacturing and selling the Chevrolet Cobalt in 2004 (for the 2005 model year), which was essentially the same car as the Saturn Ion, it installed the same ignition switch system as it installed in the Ion.

30. Soon after the Cobalt entered the market, Old GM began receiving complaints about incidents of vehicles losing engine power, including instances in which the key moved out of the “run” position when a driver inadvertently contacted the key or steering column. Engineering inquiries, known within Old GM as Problem Resolution Tracking System (“PRTS”) reports, were opened to assess the issue.

31. In February 2005, Old GM engineers concluded that the problem had two causes: “a lower torque detent in the ignition switch . . . [and the] low position of the lock module on the [steering] column.” Again, however, Old GM decided not to take action.

32. On February 28, 2005, Old GM issued a Service Bulletin to its dealers addressing “the potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effect” in 2005 Cobalts and 2005 Pontiac Pursuits, which Old GM stated was “more likely to occur if the driver is short and has a large heavy key chain.” Notably, Old GM did not disseminate this information to Plaintiffs and the Class members.

33. The February 28, 2005 Service Bulletin directed the dealers to advise customers that “removing unessential items from their key chains” would prevent the ignition from being turned off inadvertently.

34. But Old GM knew at that time that the problem was a result of design defects in the key and ignition system, and not short drivers using heavy key chains. Moreover, Old GM knew that the “fix” it directed dealers to offer customers was insufficient to prevent the problem with the ignition.

35. Old GM transmitted the February 28, 2005 Service Bulletin to its dealers through the mail or wires.

36. During the course of a PRTS opened in May 2005, an engineer proposed that Old GM redesign the key head from a “slotted” to a “hole” configuration. The slot design allowed the key chain to hang lower on the key, which placed more torque on the ignition switch when the chain was contacted or moved. The proposal was initially approved, but later cancelled.

37. In June 2005, the *New York Times* reported that Chevrolet dealers were telling customers to lighten their key rings to prevent intermittent stalling and the loss of electrical power in their cars. The article included a statement from Alan Adler, Old GM’s Manager for Safety Communications, in which he reassured the public that the problem only occurred in “rare cases when a combination of factors is present,” that customers “can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings,” and that “when [the stalling] happens, the Cobalt is still controllable” and the “engine can be restarted after shifting to neutral.” Old GM intended Adler’s statement to be disseminated to the public through the mail or wires.

38. These statements were false because Old GM’s internal documents showed that these incidents occurred when drivers were using keys with the standard key fob, and that removing non-essential items from the key ring would not “virtually eliminate” the risk of an incident.

39. In July 2005, Amber Marie Rose, who was 16-years old, was killed when she drove her 2005 Cobalt off the road and struck a tree. Her driver’s side airbag did not deploy, even though it should have given the circumstances of the head-on crash, and the car’s ignition

switch was in the “accessory/off” position at the time of the crash. Old GM learned of these facts in 2005 and documented them in an internal investigation file.

40. Instead of fixing the defect, in December 2005, Old GM issued a service bulletin to its dealers that reiterated much of the same deceptive message Adler delivered earlier in the year. It indicated that the possibility of the driver inadvertently turning off the ignition was more likely to occur if the driver is short and has a large or heavy key chain, and recommended that drivers remove unessential items from key chains. In addition, it informed dealers that it had developed an insert for the key ring to prevent it from moving up and down in the slot, and that the key ring had been replaced with a smaller design that would not hang as low as in the past. The service bulletin applied to 2003-06 Saturn Ions, 2005-06 Chevrolet Cobalts, the 2006 Chevrolet HHR, and the 2006 Pontiac Solstice, all of which were equipped with the same defective ignition switch system. Old GM issued the December 2005 Service Bulletin to its dealers through the mail or wires.

41. In October 2006, Old GM updated its December 2005 Service bulletin to include the 2007 Saturn Ion, the 2007 Saturn Sky, the 2007 Chevrolet Cobalt, the 2007 Chevrolet HHR, the 2007 Pontiac G5, and the 2007 Pontiac Solstice. Old GM issued this update to its dealers through the mail or wires.

42. In 2006, at least two fatal accidents involving Cobalts occurred in which the cars’ data recorders indicated that the ignition switches were in the “accessory” position and the front airbags failed to deploy. Old GM learned of this information in 2006.

43. In 2007 and 2008, Old GM became aware of at least four more such fatal accidents.

44. NHTSA's Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in 2005-07 Cobalts and 2003-07 Ions where the airbag failed to deploy in non-rear impact crashes.

45. Old GM finally made some changes to the design of the ignition switch system in 2006 to include a new detent plunger and spring. The new switch, however, did not receive a new part number, which is considered a "cardinal sin" in the engineering community, and further concealed the defect in the switch that was installed in the Defective Vehicles.

46. In May 2012, New GM engineers studied 44 vehicles across a range of make and model years, and results revealed that vehicles tested from model years 2003 through 2007 exhibited torque performance below the original specifications established by GM. Rather than immediately notify NHTSA of the results of this study or conduct a recall, New GM continued to conceal the nature of the Ignition Switch Defect.

47. In September 2012, New GM assigned a special engineer to examine the changes between the 2007 and 2008 Chevrolet Cobalt models following reported crashes where the airbags failed to deploy and the ignition switch was found in the "Off" or "Accessory" position.

48. In October 2012, GM Engineer Ray DeGiorgio sent an email to Brian Stouffer of GM regarding the "2005-7 Cobalt and Ignition Switch Effort," stating, "If we replaced switches on ALL the model years, i.e., 2005, 2006, 2007 the piece price would be about \$10.00 per switch. This cost is based on volume of 1.5 units total." This email makes clear that New GM considered implementing a recall to fix the Defective Ignition Switches, but decided against it to save money.

49. In April 2013, New GM hired an outside engineering consulting firm to investigate the ignition switch system. The external report concluded that ignition switches

installed in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than immediately notify NHTSA of the results of this report, New GM continued to conceal the nature of the Ignition Switch Defect. In fact, in April and May of 2013, two New GM employees — Brian Stouffer and Ray DeGiorgio — have downplayed or outright denied the existence of any Ignition Switch Defect in depositions in the personal injury action of *Melton v. General Motors*.

50. In October 2013, Delphi delivered documentation to New GM confirming that a change to the ignition switch in the Cobalt and other vehicles was made in April 2006.

51. Brian Stouffer, in an email to Delphi regarding the ignition switch in the Chevy Cobalt, acknowledged that the ignition switch in early Cobalt vehicles was different than the switch in later Cobalt vehicles notwithstanding the fact that both switches had the same part number. Delphi responded that Old GM authorized the change in 2006 but the part number remained the same.

**B. GM Finally Discloses the Ignition Switch Defect**

52. It was not until February of 2014 — almost thirteen years after first recognizing the defect — that New GM finally admitted publicly that the ignition switch system is defective and agreed to recall the Defective Vehicles to replace the old ignition switch with the re-designed version.

53. In a February 14, 2014 letter to the NHTSA regarding the Recall, New GM finally acknowledged — in contrast to its prior representations to the agency — that changes were made to the ignition switches during the 2007 model year. Specifically, New GM stated that on “April 26, 2006, the GM design engineer responsible for the Cobalt’s ignition switch signed a document

approving changes to the ignition switch proposed by the supplier, Delphi Mechatronics.” The GM design engineer referenced was Ray DeGiorgio.

54. On March 17, 2014, New GM’s CEO Mary T. Barra issued an internal video to employees, wherein she admits that “[t]hese are serious developments that shouldn’t surprise anyone. After all, something went wrong with our process in this instance and terrible things happened.”<sup>2</sup>

55. On April 2, 2014, Barra testified under oath before Congress. She has been with GM for thirty-three years as a key executive with both Old and New GM. Before becoming CEO, she held numerous high-ranking engineering positions, including Executive Director of Manufacturing Engineering in 2005, Executive Director of Vehicle Manufacturing Engineering from 2005 to 2008, Vice President of Global Manufacturing from 2008 to 2009, and Executive Vice President of Global Product Development up until her appointment as CEO in January 2014.

56. Despite the utter disregard for public safety, both Old and New GM vehicles have been marketed based on safety from 2002 through the present. For example, in 2005, Chevrolet emphasized on its website that “[y]our family’s safety is important to us . . . . That’s why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind.” Likewise, in advertisements for Saturns, GM utilized the slogan, “Saturn. People First,” and stated that, “[i]n cars, it’s about things like reliability, durability, and of course, safety. That’s where we started when developing our new line of cars.”

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<sup>2</sup> The Ignition Switch Defect is not the only example of GM’s misconduct when it comes to concealing defects. Recent reports indicate that GM “waited years to recall nearly 335,000 Saturn Ions for power steering failures despite getting thousands of consumer complaints and more than 30,000 warranty repair claims.” This *other* defect — the power steering defect — can cause the affected vehicle to lose power steering, making turning the vehicle much more difficult. Complaints filed with the NHTSA reveal incidents in which 2004 Saturn Ion steering wheels locked, causing the affected vehicles to crash into a tree or get pulled into oncoming traffic. New GM has admitted that it didn’t do enough to take care of the power steering problem.



57. While New GM has publicly stated that the Ignition Switch Defect has been linked to thirty-one frontal crashes and thirteen deaths, others have reported that the actual number of deaths or serious injuries is in the hundreds.

58. Despite having knowledge of the Ignition Switch Defect, both Old and New GM delayed the Recall to maximize profits, placing millions of people in danger.

59. New GM's Recall is insufficient because it does not address the location of the ignition switch system or how low the key fob hangs on the steering column, all of which create a risk of inadvertent driver contact and an inadvertent turning of the switch. The Recall also fails to account for the permanent loss of value of (and reputation to) the Defective Vehicles.

60. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defect. If it is determined that the vehicle is defective, the manufacturer must notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. Both Old and New GM repeatedly violated the TREAD Act by actively concealing information about the Ignition Switch Defect for more than a decade.

61. Throughout the relevant period, both Old and New GM possessed vastly superior knowledge and information to that of consumers — if not exclusive information — about the design and function on the ignition switches in the Defective Vehicles and the existence of the defects in those vehicles.

62. The Ignition Switch Defect has caused actual damages to Plaintiffs and the Class.

63. A vehicle purchased, leased, or retained with a known serious safety defect is worth less than the equivalent vehicle leased, purchased or retained without the known defect.

64. A vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the unreasonable risk of catastrophic accident because of the Ignition Switch Defects.

65. As a result of publicity regarding the Ignition Switch Defect and GM's misconduct, punctuated by the Recall, the value of the Defective Vehicles has diminished, and New GM's offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs' and Class Members' vehicles. Plaintiffs and the Class are stuck with unsafe vehicles that are now worth less than they would have been but for Old and New GM's wrongful conduct.

66. Moreover, Defendants' scheme has deprived Plaintiffs and the Class Members of the right and entitlement to sell or enjoy their property unhampered by fraudulent conduct.

#### **STATUTES OF LIMITATION**

67. There are no applicable statutes of limitations because the claims of Plaintiffs and the Class did not accrue until the Recall, the instant the value of the Defective Vehicles diminished.

68. Alternatively, any applicable statutes of limitation have been tolled by Defendants' knowing, and active, fraudulent concealment and denial of the Ignition Switch Defect. On information and belief, Defendants have been aware of the Ignition Switch Defect since at least 2001, and have concealed from Plaintiffs, the Class, the public, and the government the complete nature of the Ignition Switch Defect.

69. Even now, after the Defective Vehicles have been recalled, Defendants continue to engage in their scheme to defraud by downplaying the significance, danger, and nature of the Ignition Switch Defect.

70. Plaintiffs and the Class did not discover and could not have discovered with reasonable diligence the facts that would have caused a reasonable person to suspect that the Ignition Switch Defect existed or that Defendants did not report information within their knowledge regarding the existence of a dangerous defect to federal authorities or consumers until shortly before this class action was filed.

71. Defendants actively concealed the true character, quality, and nature of the Defective Vehicles. Plaintiffs and the Class relied on Defendants' active concealment of these facts. Moreover, GM was and remains under a continuing duty to disclose to NHTSA, Plaintiffs, and the Class the true character, quality, and nature of the Defective Vehicles. Defendants are therefore estopped from relying on any statutes of limitation in this action.

#### **CLASS ALLEGATIONS**

72. Under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs brings this action on behalf of herself and a Class initially defined as follows:

All persons in the United States who currently own or lease one or more of the following GM vehicles: 2003-07 Saturn Ion; 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2006-11 Chevrolet HHR; 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the "Defective Vehicles").

73. Excluded from the Class are GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case. Also excluded from the Class are Delphi, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees.

Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Defective Vehicles.

74. The Class can be readily identified using registration records, sales records, production records, and other information kept by GM or third parties in the usual course of business and within their control.

75. As there are approximately 2.6 million Defective Vehicles, the number of Class Members is great enough that joinder is impracticable.

76. The claims of Plaintiffs are typical of the claims of the Class, as Plaintiffs and Class Members alike purchased or leased Defective Vehicles and were harmed in the same way by Defendants' uniform misconduct.

77. Plaintiffs will fairly and adequately protect the interests of the other members of the Class. Plaintiffs' counsel has substantial experience in prosecuting class actions. Plaintiffs and counsel are committed to vigorously prosecuting this action, have the financial resources to do so, and do not have any interests adverse to the Class.

78. There are numerous questions of law and fact that are common to the Class and predominate over questions affecting only individual members, including the following:

- (a) Whether Defendants, as part of a racketeering scheme to defraud, concealed information about the dangerous and defective condition of the relevant vehicles from Plaintiffs and the Class;
- (b) Whether Defendants, through their RICO Enterprise, as described below, used the mail or wires in furtherance of their scheme to defraud;
- (c) Whether the Defective Vehicles suffer from Ignition Switch Defects;
- (d) Whether Defendants concealed the defects;
- (e) Whether Defendants misrepresented that the Defective Vehicles were safe;

- (f) Whether Defendants owed Plaintiffs and the Class a duty to disclose the Ignition Switch Defect;
- (g) Whether Defendants engaged in fraudulent concealment;
- (h) Whether Defendants engaged in unfair, deceptive, unlawful or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches; and
- (i) Whether Defendants' unlawful, unfair or deceptive practices harmed Plaintiffs and the Class.

79. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Likewise, because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

80. The prosecution of separate actions by the individual Class members would also create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for Defendants. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

### COUNT I

#### **VIOLATION OF RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS ACT (18 U.S.C. § 1962(c)) (Against Defendants)**

81. Plaintiffs incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

82. This claim is brought on behalf of all Classes.

83. Defendants violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the “RICO Enterprise” through a “pattern of racketeering activity.”

84. At all times relevant, Old GM, New GM, Old Delphi, New Delphi, their associates-in-fact, Plaintiffs, and the Class members were and are each a “person,” as that term is defined in 18 U.S.C. § 1961(3).

85. At all times relevant, Plaintiffs and each Class member were and are a “person injured in his or her business or property by reason of a violation of RICO within the meaning of 18 U.S.C. § 1964(c).

86. At all times relevant, Defendants were and are a “person” who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While Defendants participated in the RICO Enterprise, they have an existence separate and distinct from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging.

87. At all times relevant, Defendants were associated with, operated, or controlled the RICO Enterprise, and participated in the operation and management of the affairs of the RICO Enterprise, through a variety of actions described herein. Defendants’ participation in the RICO Enterprise was necessary for the successful operation of their scheme to defraud.

### **The RICO Enterprise**

88. Section 1961(4) of RICO defines an “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”

89. The following persons, and others presently unknown, have been members of and constitute the “enterprise” within the meaning of RICO, which are referred to herein collectively as the RICO Enterprise:

- a. Defendant General Motors, LLC;
- b. Both Old and New GM’s Officers, Executives, and Engineers, who have collaborated and colluded with each other and with other associates-in-fact in the Enterprise to deceive Plaintiffs and other Class members into purchasing dangerous and defective vehicles, and actively concealing the danger and defect from Plaintiffs and the other Class members, including, but not limited to Alan Adler, GM’s Manager for Safety Communications who, in June of 2005, issued the deceptive public statement regarding the ignition problem; Ray DeGiorgio, GM’s design engineer who signed off on the ignition switch change that was never disclosed; and Mary T. Barra, GM’s current CEO;
- c. Defendants Delphi Automotive PLC and Delphi Automotive Systems, LLC, who, at all times material, manufactured and supplied the defective ignition switch system for GM, even though they knew that the system did not meet GM’s own design specifications. Delphi also manufactured and supplied the ignition switch system after the 2007 change implemented by GM without reflecting a corresponding change in part number;
- d. GM’s Dealers, who GM instructed to present false and misleading information to Plaintiffs and other members of the Class, through, *inter alia*, multiple Service Bulletins, and who did in fact present such false and misleading information.

90. The RICO Enterprise of Old GM, New GM, GM’s officers, executives, and engineers, Old Delphi, New Delphi, and GM’s dealers, which engaged in, and whose activities affected interstate and foreign commerce, is an association-in-fact within the meaning of 18

U.S.C. § 1961(4) and consists of “persons” associated together for the common purpose of employing the multiple deceptive, abusive and fraudulent acts described herein. The RICO Enterprise is an ongoing organization with an ascertainable structure, and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging. The RICO Enterprise was and is used as a tool to effectuate the pattern of racketeering activity.

91. The members of the RICO Enterprise all had a common purpose: to increase and maximize Defendants’ revenues by deceiving Plaintiffs and other Class members into purchasing dangerous and defective vehicles, and actively concealing the Ignition Switch Defect from Plaintiffs and the other Class members. The members of the RICO Enterprise shared the bounty of their enterprise, *e.g.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud. Each member of the RICO Enterprise benefited from the common purpose of the scheme to defraud: both Old and New GM sold or leased more vehicles with the Ignition Switch Defect, both Old and New Delphi sold more of the defective ignition switches, and GM’s dealers sold and serviced more vehicles with the Ignition Switch Defect.

92. Defendants conducted and participated in the affairs of this RICO Enterprise through a pattern of racketeering activity that lasted more than a decade, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, which prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

93. As part and in furtherance of the scheme to defraud, Defendants’ deceptive scheme to increase revenue depended on actionable deceptive conduct. Defendants actively



concealed the dangerous and defective condition of GM's vehicles from its customers through deceptive misrepresentations and omitting material information.

**Predicate Acts: Mail and Wire Fraud**

94. Section 1961(1) of RICO provides that "racketeering activity" is, among other things, any act that is indictable under any of the provisions of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

95. As set forth below, to carry out, or attempt to carry out its scheme to defraud, Defendants have engaged in, and continue to engage in, the affairs of the RICO Enterprise through the following pattern of racketeering activity, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):

a. Both Old and New GM, with the assistance and collaboration of the other persons associated in fact with the enterprise devised and employed a scheme or artifice to defraud by use of the telephone and internet and transmitted, or caused to be transmitted, by means of wire communication travelling in interstate or foreign commerce, writing(s) or signal(s), including GM's website, Service Bulletins to dealers, and communications with other members of the Enterprise, for the purpose of executing such scheme or artifice to defraud, in violation of 18 U.S.C. § 1341 and § 1343.

b. As part of the scheme to defraud, the RICO Enterprise utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the false pretenses and artifice to defraud, as described herein.

c. The concealment of the dangerous and defective condition of the defective GM vehicles is the core purpose of the underlying racketeering offense. The Enterprise had an ascertainable structure by which GM operated and managed the association-in-fact by using its

Dealers and Delphi to concoct, obfuscate, carry out, and attempt to justify the fraudulent scheme described herein.

96. Old GM's February 28, 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class. The February 28, 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

97. In 2005, in furtherance of its scheme to defraud, Old GM emphasized on its Chevrolet website that "[y]our family's safety is important to us . . . . That's why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind." This false statement, maintained on the internet through the wires, constitutes a violation of 18 U.S.C. § 1343.

98. In June of 2005, Old GM issued a public statement through the mail or wires in furtherance of its scheme to defraud. The statement provided the public, including Plaintiffs and the other Class members, with false and misleading information about the dangerous and defective condition of the defective vehicles, and sought to conceal that condition by minimizing the issue and offering an ineffective fix. As such, the public statement constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

99. Old GM's December 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class — namely, that the issue could be resolved by

removing items from key chains. The December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

100. In October of 2006, Old GM issued an update to its December 2005 Service Bulletin in furtherance of its scheme to defraud. The update repeated the instruction to GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class. The update to the December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

101. In furtherance of the scheme to defraud, GM communicated with Delphi via the mail or wires regarding the manufacture of the defective ignition switch system. Through those communications, GM instructed Delphi to continue manufacturing the defective part even though it did not meet GM's own specifications. Delphi followed these instructions and continued to manufacture the defective parts. Through those communications, GM also instructed Delphi to make a change to the defective ignition switch system in 2006, and to fraudulently conceal the change by not assigning a new part number. Delphi also followed these instructions, making a change to the defective ignition switch system in 2006 and fraudulently concealing the change by not assigning a new part number. GM's communications with Delphi, and Delphi's responses, constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

102. Defendants' conduct in furtherance of this scheme was intentional. Plaintiffs and the other Class members were harmed in that they relied to their detriment on Defendants' conduct and, as a result, purchased dangerous and defective vehicles that saw their value plummet the moment New GM issued the Recall. Defendants unfairly reaped millions of dollars

in excessive sales revenue as a result of this scheme and its conduct in furtherance of this scheme.

103. As described throughout this Complaint, Defendants engaged in a pattern of related and continuous predicate acts for over a decade: the scheme began sometime in or around 2000 and is ongoing.

104. The predicate acts constituted a variety of unlawful activities, each conducted in furtherance of the Enterprise and with the common purpose of defrauding Plaintiffs and other Class members and obtaining significant funds while providing defective vehicles that are now worth significantly less in light of the Recall. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

105. The predicate acts all had the purpose of generating significant revenue and profits for Defendants at the expense of Plaintiffs and the other Class members, who were never informed of the Ignition Switch Defect in their defective vehicles and who have now been damaged by the diminution in value caused by the Recall. The predicate acts were committed or caused to be committed by Defendants, through their participation in the RICO Enterprise and in furtherance of their fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and all other Class members' funds.

106. Plaintiffs and Class Members have a protected property interest in current or prospective contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise. This deprivation of Plaintiffs' and Class Members' property interest is distinct from the injury suffered as a result of the diminished value of the vehicles.

107. Defendants' RICO Enterprise deprived Plaintiffs and Class Members of their protected property interest in, and entitlement to, current or prospective business or contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise

108. Count I seeks relief pursuant to 18 U.S.C. § 1964(c) from Defendants for violation of 18 U.S.C. § 1962(c).

**COUNT II**  
**VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT**  
**(Michigan Comp. Laws Ann. § 445, *et seq.*)**  
**(Against Defendants)**

109. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

110. This claim is brought on behalf of all Classes.

111. Plaintiffs and Class Members are all "persons" under the Michigan Consumer Protection Act ("MCPA"), M.C.L.A. § 445.902(1)(d).

112. Defendants were each a "person" engaged in "trade or commerce" under the MCPA, M.C.L.A. § 445.902(1)(d) and (g).

113. The MCPA prohibits any "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." M.C.L.A. § 445.903(1).

114. Defendants' conduct, as alleged in the preceding paragraphs, constitutes unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. In particular, Defendants violated the MCPA by:

a. "[f]ailing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer," M.C.L.A. § 445.903(s);

b. “[m]aking a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is,” M.C.L.A. § 405.903(bb); and

c. “[f]ailing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner,” M.C.L.A. § 405.903(cc).

115. GM’s practices that violated the MCPA include, without limitation, the following:

a. GM represented that the Defective Vehicles had safety characteristics that they do not have;

b. GM represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. GM knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature, even though GM knew that such information was material to the transaction in light of GM’s prior representations;

d. GM failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government;

e. GM intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and Class Members would purchase or lease the Defective Vehicles; and

f. GM repeatedly violated the TREAD Act.

116. Delphi’s practices that violated the MCPA include, without limitation, the following:

a. Delphi represented that the defective ignition switches had safety characteristics that they do not have;

b. Delphi represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. Delphi knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature;

d. Delphi failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government; and

e. Delphi intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and the Class would purchase or lease the Defective Vehicles.

117. Defendants' acts and practices were unfair and unconscionable, because their acts and practices offend established public policy, and because the harm Defendants caused consumers greatly outweighs any benefits associated with its acts and practices. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs and the Class from making fully informed decisions about whether to lease, purchase, or retain Defective Vehicles.

118. Plaintiffs and the Class have suffered an injury, including the loss of money or property, as a result of Defendants' unfair, unlawful, or deceptive practices. Had Plaintiffs and the Class known about the full extent of the Ignition Switch Defect, they would not have purchased their vehicles at all or would have paid less for them, and would not have retained

their Defective Vehicles only to suffer the diminution in value caused by the Recall. Plaintiffs and the Class have therefore suffered a “loss” because of the violations of the MCPA complained of here.

119. All of the wrongful conduct alleged here occurred, and continues to occur, in the conduct of Defendants’ business.

120. Plaintiffs requests that this Court enjoin Defendants from continuing their unfair, unlawful, or deceptive practices; require Defendants to repair Plaintiffs’ and Class Members’ vehicles to completely eliminate the Ignition Switch Defect; provide to Plaintiffs and each Class Member either their actual damages as the result of Defendants’ unfair, unlawful, and deceptive trade practices, or \$250 per Class member, whichever is higher; award reasonable attorneys’ fees; and provide other appropriate relief under the MCPA.

121. Plaintiffs also seek punitive damages against Defendants because they carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others. Defendants intentionally, willfully, and repeatedly misrepresented the reliability and safety of the Defective Vehicles, and continued to conceal material facts that only they knew, even while numerous innocent victims were being killed as a result of its conduct. Defendants’ unlawful conduct constitutes malice, oppression, and fraud justifying punitive damages.

**COUNT III**  
**FRAUD BY CONCEALMENT**  
**(Against Defendants)**

122. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

123. This claim is brought on behalf of all Classes.



124. Defendants concealed and suppressed material facts concerning the Ignition Switch Defect.

125. Defendants had a duty to disclose the Ignition Switch Defect because GM consistently represented that its vehicles were reliable and safe and proclaimed that it maintained the highest safety standards, and the defect was known or accessible only to Defendants, who had superior knowledge and access to the facts, and Defendants knew that the facts were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted and concealed facts were material because they directly impact the safety of the Defective Vehicles, and GM's prior representations regarding the safety of its vehicles became materially misleading when Defendants concealed facts regarding the Ignition Switch Defect.

126. Defendants actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class Members to purchase or lease the Defective Vehicles at high prices, and to protect Defendants' profits and avoid a costly recall, and Defendants did so at the expense of Plaintiffs and the Class.

127. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed or suppressed facts. Plaintiffs' and the Class's actions were justified.

128. Because of the concealment or suppression of the facts, Plaintiffs and the Class sustained damages because the value of the Defective Vehicles has been diminished by the Recall, the direct result of Defendants' wrongful conduct.

129. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich

Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

**COUNT IV**  
**VIOLATIONS OF MAGNUSON-MOSS CONSUMER PRODUCTS WARRANTIES ACT**  
**("Magnuson-Moss")**  
**(15 U.S.C. § 2301, *et seq.*)**  
**(Against GM)**

130. Plaintiffs and the Class incorporate by reference paragraphs 1 through 80 as though fully set forth at length herein.

131. Magnuson-Moss provides a private right of action by purchasers of consumer products against manufacturers or retailers who, among other things, fail to comply with the terms of the written, express, or implied warranties. *See* 15 U.S.C. § 2310(d)(1). As alleged above, GM has failed to comply with the terms of its implied warranties.

132. The Defective Vehicles are "consumer products," as that term is defined in 15 U.S.C. § 2301(1).

133. GM is a "warrantor," as that term is defined in 15 U.S.C. § 2301(5).

134. Plaintiffs and each member of the Classes are "consumers," as that term is defined in 15 U.S.C. § 2301(3).

135. As a warrantor, GM is obligated to afford the Classes, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity.

136. Magnuson-Moss provides a cause of action for, among other things, breach of warranty. *See* 15 U.S.C. § 2310(d)(1). GM has breached its implied warranties of merchantability, which it cannot disclaim under Magnuson-Moss, *see* 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs and the Classes have suffered damages as a result of GM's breaches of implied warranties as set forth above. *See* 15 U.S.C. § 2310(d)(1)-(2).

137. GM was on notice of the ignition switch defects as early as 2001, yet did not undertake any opportunity to cure until 2014, nearly thirteen years later, when GM's knowledge of the ignition switch defects was first made public. Also, once Plaintiffs' representative capacity is determined, notice and opportunity to cure on behalf of the Classes — through Plaintiffs — can be provided under 15 U.S.C. § 2310(e).

138. Plaintiffs and the Class members have suffered, and are entitled to recover, damages as a result of GM's breaches of warranty and violations of Magnuson-Moss.

139. Additionally, or in the alternative, Magnuson-Moss provides for "other legal and equitable" relief where there has been a breach of warranty or failure to abide by other obligations imposed by Magnuson-Moss. *See* 15 U.S.C. § 2310(d)(1). Rescission and Revocation of Acceptance are equitable remedies available to Plaintiffs and the Class members under Magnuson-Moss.

140. Plaintiffs also seek an award of costs and expenses, including attorney's fees, under Magnuson Moss to prevailing consumers in connection with the commencement and prosecution of this action. *See* 15 U.S.C. § 2310(d)(2). Plaintiffs and the Class intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendants, and grant the following relief:

A. Determine that this action may be maintained as a Class action and certify it as such under Rule 23(b)(3) and or 23(b)(2), or alternatively certify all issues and claims

that are appropriately certified; and designate and appoint Plaintiffs as Class Representative and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge, and decree that Defendants violated 18 U.S.C. § 1962(c) by conducting the affairs of the RICO Enterprise through a pattern of racketeering activity;

C. Declare, adjudge, and decree the conduct of Defendants as alleged herein to be unlawful, unfair or deceptive, and enjoin any such future conduct;

D. Declare, adjudge, and decree that the ignition switches in the Defective Vehicles are defective;

E. Declare, adjudge, and decree that Defendants must disgorge, for the benefit of Plaintiffs and Class Members all or part of the ill-gotten gains it received from the sale or lease of the Defective Vehicles;

F. Award Plaintiffs and Class Members actual, compensatory damages, or, in the alternative, statutory damages, as proven at trial;

G. Award Plaintiffs and Class Members treble damages pursuant to 18 U.S.C. § 1964(c);

H. Alternatively, if elected by Plaintiffs and Class Members, require Defendants to repair the defective ignition switches or provide a comparable vehicle that does not have ignition switch defects;

I. Award Plaintiffs and Class Members punitive damages in such amount as proven at trial;

J. Award Plaintiffs and Class Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and

K. Award Plaintiffs and Class Members such other further and different relief as the case may require or as determined to be just, equitable, and proper by this Court.

**JURY TRIAL DEMAND**

Plaintiffs requests a trial by jury on all the legal claims alleged in this Complaint.

Respectfully submitted,

RIVERO MESTRE LLP  
*Counsel for Plaintiffs*  
2525 Ponce de Leon Blvd., Suite 1000  
Miami, Florida 33134  
Telephone: (305) 445-2500

By: /s/ Andrés Rivero  
Andrés Rivero  
arivero@riveromestre.com  
Jorge A. Mestre  
jmestre@riveromestre.com

KOZYAK TROPIN, & THROCKMORTON P.A.  
2525 Ponce de Leon Blvd., 9th Floor  
Coral Gables, Florida 33134  
Telephone: (305) 372-1800  
Adam M. Moskowitz  
amm@kttlaw.com  
Harley S. Tropin  
hst@kttlaw.com  
Thomas A. Tucker Ronzetti  
tr@kttlaw.com  
Tal J. Lifshitz  
tjl@kttlaw.com  
Robert Neary  
rn@kttlaw.com

Wiggins, Childs, Quinn & Pantazis, LLC  
The Kress Building  
301 19<sup>th</sup> Street North  
Birmingham, Alabama 35203  
Telephone: 205-314-0500  
Gregory O. Wiggins (*pro hac vice* to be filed)  
[gwiggins@wcqp.com](mailto:gwiggins@wcqp.com)  
Kevin W. Jent (*pro hac vice* to be filed)  
[kjent@wcqp.com](mailto:kjent@wcqp.com)

# **Exhibit D**

MAY 23 2014

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS**

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_  
DEP CLERK

**NETTLETON AUTO SALES, INC., on  
behalf of itself and all others similarly  
situated,**

**Plaintiff,**

v.

**GENERAL MOTORS LLC and  
GENERAL MOTORS  
CORPORATION,**

**Defendants.**

CASE NO. 4:14 cv 318 DPM

**JURY TRIAL DEMANDED**

This case assigned to District Judge Marshall  
and to Magistrate Judge Volpe

**CLASS ACTION COMPLAINT**

Plaintiff, Nettleton Auto Sales, Inc. ("Plaintiff" or "Nettleton"), individually, and as class representative on behalf of all similarly situated persons, brings this action against Defendants General Motors Corporation and its successor, General Motors LLC ("Defendants," "GM," or the "Company") and states as follows:

**INTRODUCTION**

1. This case arises from GM's active concealment, for over a decade, of knowledge of a dangerously defective ignition switch installed on millions of GM vehicles. Specifically, as a result of having the defective ignition switch, the vehicles at issue are at risk of shutting down during normal driving conditions – losing power to the engine and to major electrical systems responsible for critical safety features like airbags, power steering, and antilock brakes – thus creating an extreme and unreasonable risk of accident, serious bodily harm, and death.

2. At present, there have been reports of hundreds of accidents attributable to the defective ignition switches, including scores of fatalities.



3. The vehicles at issue (“Defective Vehicles”) include the following make and model years:

- Chevrolet Cobalt (2005-2010 model years);
- Chevrolet HHR (2006-2011 model years);
- Pontiac G5 (2006-2007 model years);
- Pontiac Solstice (2006-2010 model years);
- Saturn Ion (2003-2007 model years); and
- Saturn Sky (2007-2010 model years).

4. Since as early as 2001, GM received reports of ignition switch malfunctions in the Defective Vehicles. On multiple occasions since that time, the Company has opened internal investigations that identified both the cause of the problem and the attendant safety risks. However, choosing to place profit over consumer safety, GM repeatedly elected to do nothing about the problem, even when faced with reports of drivers suffering serious bodily injury and even death as a result of accidents caused by the faulty ignition switches.

5. Further, GM actively concealed knowledge of the ignition switch problems in the Defective Vehicles from the public and from regulators. Internal documents reveal that GM fostered a culture in which profits were placed above consumer safety, and that employees were warned not to be “cute or clever” when investigating potentially dangerous defects in their products. Indeed, employees were admonished not only for using words and phrases like “dangerous,” “death trap,” “potentially disfiguring,” or “Corvair-like” in the course of their work, but even for such benign terms as “safety” and “safety-related.”

6. Only in early 2014, thirteen years after first having knowledge of the problems inherent to the Defective Vehicles, did GM issue a recall. Moreover, while the Company has

issued a recall of the Defective Vehicles, at present there are not sufficient replacement ignition switches to repair the Defective Vehicles. By one estimate, Plaintiff and Class members will have to wait until October of 2014 for GM to repair the Defective Vehicles.

7. As GM's knowledge of the ignition switch problems in the Defective Vehicles has come to light, regulators have continually admonished the Company. The National Highway Transportation Safety Administration ("NHTSA") recently fined GM \$35 million – the maximum amount that the NHTSA has federal authority to exact – for the Company's abuses. GM is also undergoing multiple investigations by Congress, the Justice Department, and state Attorney Generals.

8. Plaintiff brings this action for a Class of all car dealerships in the United States that, subsequent to January 31, 2014, have sold or leased a Defective Vehicle or retained a Defective Vehicle in their inventory, when such Defective Vehicle was purchased prior to January 31, 2014.

9. Plaintiff believes that there are other GM vehicles which suffer from the same or substantially similar ignition switch defects as the Defective Vehicles identified above. Accordingly, Plaintiff will supplement the list of Defective Vehicles to include additional GM vehicles that have defective ignition switches, which result in a loss of vehicle speed control, loss of braking control, and airbag non-deployment as such information becomes available.

10. Plaintiff and the Class have been damaged by GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now holding highly dangerous vehicles whose value has greatly diminished because of GM's failure to timely disclose the serious and potentially deadly defects. Plaintiff and the Class either paid more for the Defective Vehicles than they would have had they known of the ignition

defects or they would not have purchased the Defective Vehicles at all. As a result of the defects in these vehicles, the Plaintiff and the Class are unable to sell or otherwise realize their full investments in the Defective Vehicles and, when the Defective Vehicles lie dormant in Plaintiff's and Class members' inventory, Plaintiff and Class members suffer injury in the form of carrying costs, including but not limited to finance costs, interest, depreciation, maintenance and service costs.

11. Defendants' acts and omissions complained of herein amount to violations of the Michigan Consumer Protection Act, MCLS § 445.901, *et seq.*; violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*; breach of implied warranty; breach of implied warranty of fitness for a particular purpose; an instance of unjust enrichment; and acts of fraudulent concealment.

### **PARTIES**

12. Plaintiff and Named Class Representative Nettleton Auto Sales, Inc. is a car dealership organized under the laws of the State of Arkansas, with its principal place of business in Jonesboro, Arkansas. In the ordinary course of business, Plaintiff presently owns three defective Vehicles – Chevrolet HHR – which were manufactured, sold, distributed, advertised, marketed, and warranted by Defendants.

13. Defendant General Motors Corporation (“Old GM”) was a Delaware corporation headquartered in Detroit, Michigan. Through its various subsidiaries and affiliates, Old GM manufactured, marketed, distributed and sold Pontiac, Saturn, Chevrolet and other brand automobiles throughout the United States. In 2009, Old GM filed for bankruptcy, and substantially all of its assets were sold pursuant to a Master Sales and Purchase Agreement to Defendant General Motors LLC.

14. Defendant General Motors LLC (“New GM”) is a limited liability company formed under the laws of Delaware with its principal place of business located at 300 Renaissance Center, Detroit, Michigan. New GM was incorporated in 2009, and on July 10, 2009, acquired substantially all assets and assumed certain liabilities of Old GM through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

15. Among the liabilities and obligations expressly retained by New GM after the bankruptcy of Old GM are the following:

From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

16. New GM also expressly assumed:

[a]ll Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws.

17. Because New GM acquired and operated Old GM and ran it as a continuing business enterprise, and because New GM was aware from its inception of the ignition switch defects in the Defective Vehicles, New GM is liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint.

#### **JURISDICTION AND VENUE**

18. The Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in

controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action in which some Members of the Class are citizens of states different than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

19. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(a). A substantial part of the events or omissions giving rise to these claims occurred in this district.

### **GENERAL ALLEGATIONS**

#### **A. THE FAULTY IGNITION SWITCH AND THE DEFECTIVE VEHICLES.**

20. During the relevant time period, a faulty ignition switch was installed by GM in the Defective Vehicles.

21. The chief purpose of an ignition switch is to turn on the engine and electrical systems of the car in which it is installed. The ignition switch in the Defective Vehicles has several positions: “Run,” “Accessory,” and “Off.” When in the “Run” position, the vehicle’s engine and electrical systems are engaged. When in the “Accessory” position, the vehicle’s motor is turned off, but power is still supplied to certain portions of the vehicle’s electrical systems, such as the radio. When in the “Off” position, the vehicle has been turned off completely, and power is not flowing to either the engine or the electrical systems.

22. With Defendant’s faulty ignition switches, installed in the Defective Vehicles during the class period, whenever the switch is in the “Run” position and the vehicle’s engine and electrical systems are running – *i.e.*, if the car is being driven – if the driver were to inadvertently bump the key ring with his or her leg, or if the key ring were heavy (containing more than just the vehicle’s key), there is a material risk that the ignition switch will revert to either the “Accessory” or “Off” position. When this failure occurs, the engine in the Defective

Vehicle will shut off as a matter of course, and often other critical safety features in the Defective Vehicle will also be disabled, such as power brakes, power steering, and airbags.

23. The Defective Vehicles are therefore unreasonably prone to accidents, and those accidents are unreasonably likely to result in serious bodily harm or death to the drivers and passengers of the Defective Vehicles, as well as to other vehicle operators and pedestrians.

24. To date, Defendants have identified the following Defective Vehicles as having had faulty ignition switches installed: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2007-2010 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

**B. STARTING IN 2001, GM RECEIVES REPORTS DETAILING THE FAULTY IGNITION SWITCH AND ATTENDANT SAFETY RISKS, BUT REMAINS SILENT FOR THIRTEEN YEARS.**

25. Defendants knew or had reason to know of the faulty ignition switches in the Defective Vehicles for over a decade, but affirmatively concealed this information from Defective Vehicle owners.

26. Defendants admit that they learned of the ignition switch defects as early as 2001. During the pre-production development of the Saturn Ion – one of the Defective Vehicles – GM engineers learned that the ignition could inadvertently move from the “Run” position to the “Accessory” or “Off” position. Defendants generated an internal report examining the issue, but concluded that a switch design change “had resolved the problem.”<sup>1</sup>

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<sup>1</sup> D. Ivory, “G.M. Reveals It Was Told of Ignition Defect in '01,” *New York Times* (Mar. 12, 2014).

27. In 2002, GM approved the existing ignition switch design, despite warnings from its supplier that the switch did not meet GM's specifications.<sup>2</sup>

28. In 2003, a new internal document noted a report from a service technician, who had observed a stall in a Saturn Ion while driving. The service technician noted that the weight of several keys on the key ring had "worn out" the ignition switch. The ignition switch was replaced and the matter closed.<sup>3</sup>

29. In 2004, Defendants' engineers encountered the problem again, during before-market test drives of the Chevrolet Cobalt.

30. GM opened an engineering inquiry, known as a "Problem Resolution Tracking System inquiry" ("PRTS"), to investigate the issue. According to the chronology provided to NHTSA by GM, engineers pinpointed the ignition switch defect and were able to replicate this phenomenon during test drives. According to GM, the PRTS engineers believed that "low key cylinder torque effort" was an issue and considered a number of potential solutions. However, after evaluating the cost and amount of time it would take to implement a fix to the problem, GM elected to do nothing. Indeed, the engineering manager of the Cobalt closed the investigation into ignition switch problems, saying that proposed fixes would take too long and cost too much, and that "*none of the solutions represents an acceptable business case.*"<sup>4</sup>

31. As soon as the 2005 Cobalt hit the market, GM began receiving complaints about sudden loss of power, "including instances in which the key moved out of the 'run' position

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<sup>2</sup> "Key Events in GM's Ignition Switch Recall," *Associated Press* (May 16, 2014) (available at <http://abcnews.go.com/Business/wireStory/key-events-gms-ignition-switch-recall-23755301>).

<sup>3</sup> Danielle Ivory, "G.M. Reveals It Was Told of Ignition Defect in '01," *New York Times* (Mar. 12, 2014) (available at <http://www.nytimes.com/2014/03/13/business/gm-reveals-it-was-told-of-ignition-defect-in-01.html>).

<sup>4</sup> "Key Events in GM's Ignition Switch Recall," *supra*, n. 2.

when a driver inadvertently contacted the key or steering column.”<sup>5</sup> GM opened additional PRTS inquiries. In one report, engineers claimed to have distilled the problem to two factors: “a lower torque detent<sup>6</sup> in the ignition switch... [and a] low position of the lock module [on] the [steering] column.”

32. In a PRTS opened in May 2005, GM engineers once again assessed the problem and proposed that GM re-design the key head from a “slotted” to a “hole” configuration. After initially approving the proposed fix, GM reversed course and again declined to implement a fix.<sup>7</sup>

33. Instead, in October 2005, GM issued a Technical Service Bulletin (“TSB”) advising service technicians and GM dealers that the inadvertent turning of the key cylinder was causing the failure of the car’s electrical system. Rather than disclose the true nature of the defects and correct them, GM instead instructed technicians to give customers “an insert for the key ring so that it goes from a ‘slot’ design to a hole design” to prevent the key rings from moving up and down in the slot. “[T]he previous key ring” was “replaced with a smaller” one; this change would supposedly keep the keys from hanging as low as they had in the past.<sup>8</sup> According to GM’s records, GM dealers provided key inserts to only 474 customers who brought their vehicles into dealers for service.<sup>9</sup>

34. In 2006, GM approved a design change for the Cobalt’s ignition switch that was supplied by Delphi. The new design included “the use of a new detent plunger and spring that

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<sup>5</sup>Letter from M. Carmen Benavides to Nancy Lewis, NHTSA, “Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” at 1 (Mar. 11, 2014) (available at <http://www.documentcloud.org/documents/1084789-gm-updated-3-12-14.html>).

<sup>6</sup>The “detent” is the part of an ignition switch’s inner workings that keeps the switch from rotating from one setting – “Run,” “Accessory,” and “Off” – to another unless the driver turns the key.

<sup>7</sup>“Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” *supra*, n. 5.

<sup>8</sup>*Id.* at 1-2.

<sup>9</sup>*Id.* at 3.



increased torque force in the ignition switch.” But the new design was not produced until the 2007 model year.<sup>10</sup>

35. During approximately this same time period – from 2003 to 2006 – Defendants’ Field Product Reports and PRTS reports found similar engine failures in the Saturn Ion, which were likely attributable to the ignition switch defect.

36. In 2007, NHTSA investigators met with GM to discuss its airbags and informed GM of the July 2005 frontal and fatal crashing involving Amber Marie Rose. Ms. Rose, age 16, died after her 2005 Chevrolet Cobalt crashed and the airbag failed to deploy. Her death was the first of the hundreds of deaths and injuries attributable to the ignition switch defects. Data retrieved from the vehicle’s diagnostic system indicated that the ignition was in the “accessory” position. GM investigated and tracked similar incidents.

37. By the end of 2007, by GM’s own admission, GM knew of 10 collisions involving Defective Vehicles in which the airbag did not deploy.<sup>11</sup> GM continued to receive complaints and continued to investigate crashes in which the airbags did not deploy. Rather than publicly admitting the dangerous safety defects in its vehicles, GM attempted to attribute these and other incidents to “driver error.” Every year from 2005 to 2012, first Old GM and then New GM received reports of deaths in Cobalts involving steering and/or airbag failures, including:

- **2005:** 26 Cobalt Death and Injury Incidents, including 1 death citing “airbag” as the component involved.
- **2006:** 69 Cobalt Death and Injury Incidents, including 2 deaths citing “airbag” as the component involved and 4 deaths listing the component involved as “unknown.”
- **2007:** 87 Cobalt Death and Injury Incidents, including 3 deaths citing “airbag” as the component involved.

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

- **2008:** 106 Cobalt Death and Injury Incidents, including 1 death citing “airbag” as the component involved and 2 deaths listing the component involved as “unknown.”
- **2009:** 133 Cobalt Death and Injury Incidents, including 1 death citing “airbag” as the component involved, 1 death citing “service brake” as the component involved, 1 death citing “steering” as component involved, and 2 deaths listing the component involved as “unknown.”
- **2010:** 400 Cobalt Death and Injury Incidents, including 2 deaths citing “airbag” as the component involved, 12 deaths citing “steering” as the component involved, and 1 death listing the component involved as “unknown.”
- **2011:** 187 Cobalt Death and Injury Incidents, including 2 deaths citing “airbag” as the component involved, 2 deaths citing “steering” as the component involved, and 1 death listing the component involved as “unknown.”
- **2012:** 157 Cobalt Death and Injury Incidents, including 5 deaths citing “airbag” as component involved, and 4 deaths citing “steering” as component involved.

38. Internal documents have recently surfaced demonstrating that during this time period, GM adopted a policy of willfully concealing these dangers from its customers. For example, the New York Times recently reported on “deeply disturbing” GM presentations used to “train employees to obscure some problems.” In a PowerPoint slide titled “What every company vehicle driver must know,” the New York Times article notes that

[w]orkers writing reports were encouraged to avoid using certain words and phrases with negative overtones, including “apocalyptic,” “dangerous,” “death trap,” “potentially disfiguring,” “rolling sarcophagus,” and “Corvair-like,” as well as more benign phrases like “safety” and “safety related.”<sup>12</sup>

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<sup>12</sup> Matthew L. Wald & Danielle Ivory, “GM Is Fined Over Safety and Called a Lawbreaker,” *The New York Times* (May 16, 2014) (available at <http://www.nytimes.com/2014/05/17/business/us-fines-general-motors-35-million-for-lapses-on-ignition-switch-defect.html>).

39. Per the New York Times, the cynical presentation further instructed employees not to be “cute or clever.” It gave examples of “comments that do not help identify or solve problems,” including, “This is a lawsuit waiting to happen,” and, “Kids and wife panicking over the situation.”<sup>13</sup>

**C. GM WAITED UNTIL 2014 TO FINALLY ORDER A RECALL OF THE DEFECTIVE VEHICLES.**

40. After thirteen years of knowing of the faulty ignition switch in its Defective Vehicles – and engaging in an internal campaign to obfuscate the dangers arising therefrom – GM’s Field Performance Review Committee and the Executive Action Decision Committee (“EFADC”) finally ordered a recall of *some* of the Defective Vehicles on January 31, 2014. Initially, the EFADC only ordered a recall of the Chevrolet Cobalt and Pontiac G5 for model years 2005-2007. Almost one month later, on February 24, 2014, the recall was expanded to include the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, the Saturn Ion for model years 2003-2007, and the Saturn Sky for model year 2007.

41. Since that time, GM has expanded its recall to include more model years. At present, GM has recalled the following makes and model years: Chevrolet Cobalt (2005-2010 model years); Chevrolet HHR (2006-2011 model years); Pontiac G5 (2007-2010 model years); Pontiac Solstice (2006-2010 model years); Saturn Ion (2003-2007 model years); and Saturn Sky (2007-2010 model years).

42. GM provided dealers with notice of the recall on February 26, 2014 and March 4, 2014, and mailed letters to current owners on March 10 and March 11, 2014.

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<sup>13</sup> “Chronology Re: Recall of 2006 Chevrolet HHR and Pontiac Solstice, 2003-2007 Saturn Ion, and 2007 Sky Vehicles,” *supra*, n. 5.

43. According to GM, “the dealers are to replace the ignition switch,”<sup>14</sup> presumably with one with sufficient torque to prevent the inadvertent shut down of the ignition, power steering, power brakes, and airbags. However, at present few, if any, replacement parts are available. Instead, it is currently estimated that it will be October, 2014 before all of the Defective Vehicles have been fixed.<sup>15</sup>

44. In a video message addressed to GM employees on March 17, 2014, CEO Mary Barra admitted that the Company had made mistakes and needed to change its processes. According to Ms. Barra, “Something went wrong in our processes in this instance, and terrible things happened.” Barra continued to promise, “We will be better because of this tragic situation if we seize this opportunity.”<sup>16</sup>

45. Since GM’s actions first came to light, the outcry has been staggering, not only from the public, but also from law enforcement and legislators. GM has faced scrutiny of the NHTSA – receiving a \$35 million dollar fine, the largest that the federal agency may assess – as well as hearings in both the U.S. House and Senate and a probe by the Department of Justice. GM has been ordered to turn over its internal documents, and CEO Mary Barra testified before the Senate and House in early April 2014.

46. While GM has now appointed a new Vehicle Safety Chief and laid off two engineers, millions of Defective Vehicles remain on the road to this day; and, upon information and belief, other vehicles not yet acknowledged by GM also have the deadly ignition switch defect.

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<sup>14</sup> *Id.* at 6.

<sup>15</sup> “Key Events in GM’s Ignition Switch Recall,” *Associated Press* (May 16, 2014) (available at <http://abcnews.go.com/Business/wireStory/key-events-gms-ignition-switch-recall-23755301>).

<sup>16</sup> Bill Vlasic & Christopher Jensen, “Something Went ‘Very Wrong’ at G.M., Chief Says,” *New York Times* (Mar. 18, 2014) (available at <http://www.nytimes.com/2014/03/18/business/gm-chief-barra-releases-video-on-recalls.html>).

**DEFENDANT'S CONDUCT HAS HARMED  
PLAINTIFF AND CLASS MEMBERS**

47. The ignition switch defects detailed herein have caused damage to Plaintiff and the Class.

48. A vehicle purchased, leased, or retained with a serious safety defect is worth less than the equivalent vehicle leased, purchased, or retained without the defect. Similarly, a vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the risk of accident endemic to the Defective Vehicles.

49. Plaintiff's and Class members' core business practice is to sell cars to consumers, and purchasers and lessees will pay a significantly lower purchase price for the Defective Vehicles now that the ignition switch defects have come to light. Plaintiff and the Class paid a higher price for the Defective Vehicles, prior to GM's recall, than they would have had they known of the inherent safety issues with the Defective Vehicles. Plaintiff and Class members are now stuck with drastically depreciated inventory. Plaintiff and Class members thus overpaid for their Defective Vehicles, as they are unable to resell them for what they paid and are incurring costs and expenses to maintain the Defective Vehicles in inventory, including without limitation, interest owed and other expenses. This loss is due to the concealed ignition switch defects. Plaintiff did not and now cannot realize reasonable profit on the purchase of these vehicles and is unable to sell them.

50. Plaintiff and the Class are stuck with unsafe vehicles that are now worth less than they would have been but for GM's failure to disclose the ignition switch defects.

51. GM admits to at least twelve deaths resulting from accidents linked to the ignition switch defects in the Defective Vehicles. However, Plaintiff believes that the actual number is

much higher, and that there may be hundreds or even thousands of deaths and injuries attributable to the faulty ignition switch in the Defective Vehicles.

**A. SUCCESSOR LIABILITY.**

52. As discussed in paragraphs 13-17, *supra*, GM expressly assumed certain obligations under, *inter alia*, the TREAD Act, and is liable for Old GM's nondisclosure of the problems associated with the ignition switch in the Defective Vehicles, as well as its own nondisclosures beginning on the date of its formation on July 10, 2009 and continuing to present day.

53. New GM has successor liability for Old GM's acts and omissions in the marketing and sale of the Defective Vehicles because it has continued the business enterprise of Old GM. Additionally, New GM has admitted that it knew of the ignition system defects from the very date of its formation; New GM has continued in the business of designing, manufacturing, and marketing vehicles, including at least some of the same vehicles as Old GM; New GM retained the bulk of the employees of Old GM; New GM acquired, owned, and leased real property of Old GM, including all machinery, equipment, tools, information technology, product inventory, and intellectual property; New GM acquired the contracts, books, and records of Old GM; and New GM acquired all goodwill and other intangible personal property of Old GM.

**B. TOLLING OF THE STATUTES OF LIMITATION.**

54. All applicable statutes of limitation have been tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged herein. Plaintiff and Class members did not discover – and were not aware of material facts that would have caused a reasonable person to suspect – that Old GM and New GM had information in their possession

about the existence and dangerousness of the ignition switches in the Defective Vehicles and that they affirmatively concealed that information until shortly before this Class action was filed.

55. Because of the active concealment by Defendants, any and all limitations periods otherwise applicable to the claims of Plaintiff and members of the Class have been tolled.

### **CLASS ALLEGATIONS**

56. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all Members of the following classes (collectively referred to as “the Class” or “Class”):

**National Class:** All car dealerships in the United States that, subsequent to January 31, 2014, have sold or leased a Defective Vehicle or retained a Defective Vehicle in their inventory, when such Defective Vehicle was purchased prior to January 31, 2014.

**Arkansas Sub-Class:** All car dealerships in the State of Arkansas that, subsequent to January 31, 2014, have either sold or leased a Defective Vehicle or retained a Defective Vehicle in their inventory, when such Defective Vehicle was purchased prior to January 31, 2014.

57. Excluded from the Class are GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons. Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Defective Vehicles.

58. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

59. The Class can be readily identified using registration records, sales records, production records, and other information kept by Defendants in the usual course of business and within their control.

60. The Class is so numerous that joinder of all Members is impracticable. Upon information and belief, Defendants manufactured and sold millions of the Defective Vehicles nationwide.

61. There are questions of law or fact common to the Class. These questions include, but are not limited to, the following:

- a. whether the Defective Vehicles suffer from ignition switch defects detailed in this Complaint;
- b. whether Defendants knew or should have known about the ignition switch defects detailed in this Complaint;
- c. if Defendants knew of the ignition switch defects detailed in this Complaint, how long Defendants knew of such defects;
- d. whether Defendants attempted to conceal the ignition switch defects detailed in this Complaint from Plaintiff and Class members;
- e. whether Defendants misrepresented to Plaintiff and Class members that the Defective Vehicles were safe;
- f. whether Defendants engaged in fraudulent concealment;
- g. whether Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches;



- h. whether the nature of the faulty ignition switches in the Defective Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a Defective Vehicle;
- i. whether Defendants had a duty to disclose the defective nature of the Defective Vehicles to Plaintiff and Class Members;
- j. whether Defendants omitted and failed to disclose material facts about the Defective Vehicles;
- k. whether Defendants' concealment of facts related to the Defective Vehicles induced Plaintiff and Class members to act to their detriment by purchasing the Defective Vehicles;
- l. whether Old GM's and GM's unlawful, unfair and/or deceptive practices harmed Plaintiff and the members of the Class;
- m. whether Defendants violated the Michigan Consumer Protection Act ("MCPA"), Mich. Comp. L. Ann. § 445.901, *et seq.* and, if so, what remedies are available under the MCPA;
- n. whether Defendants violated the Arkansas Deceptive Trade Practices Act ("ADTPA"), Ark. Code Ann. § 4-88-101, *et seq.*, and, if so, what remedies are available under the ADTPA;
- o. whether, and to what extent, GM has successor liability for the acts and omissions of Old GM; and
- p. whether Plaintiff and Class Members are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

62. Plaintiff's claims are typical of the claims of the Class members and arise from the same course of conduct by Defendants. The relief Plaintiff seeks is typical of the relief sought for the absent Class members.

63. Plaintiff will fairly and adequately represent and protect the interests of all absent Class members. Plaintiff's interests do not conflict with the interests of the Class Members. Plaintiff is represented by counsel competent and experienced in product liability, vehicle defect, consumer protection, and class action litigation.

64. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

65. Plaintiff asserts that pursuant to Fed. R. Civ. P. 23(b)(3), questions of law or fact common to the Class members predominate over any questions affecting only individual members.

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the individual Class members is impracticable. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for GM. The conduct of this action as a class action presents

far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

**CAUSES OF ACTION**

**COUNT ONE**

**(Violations of the Michigan Consumer Protection Act,  
MCLS § 445.901, *et seq.* (the "MCPA"))  
(Brought on Behalf of the Class)**

67. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

68. Defendants and Plaintiff are each "persons" under MCLS § 445.902(d).

69. The sale of the Defective Vehicles to Plaintiff and the Class was, at all times relevant to this litigation, an act of "trade and commerce" within the meaning of MCLS § 445.902(g).

70. As detailed throughout this Complaint, Defendants committed deceptive and unfair acts in the conduct of trade and commerce as defined in MCLS § 445.903(1).

Specifically, Defendants violated MCLS § 445.903(1) where

- a. Defendants represented that the Defective Vehicles had approval, characteristics, uses, and benefits that they do not have;
- b. Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the safety, performance, reliability, quality, and nature of the Defective Vehicles;
- c. Defendants represented that the Defective Vehicles were of a particular standard, quality, or grade, when they were of another;

- d. Defendants engaged in unconscionable commercial practices in failing to reveal material facts and information about the Defective Vehicles, which did and tended to, mislead Plaintiffs and the Class about facts that could not reasonably be known by the consumer until the 2014 recalls;
- e. Defendants failed to reveal facts concerning the faulty ignition switch in the Defective Vehicles that were material to the transaction in light of representations of fact made in a positive manner;
- f. Defendants failed to reveal material facts concerning the faulty ignition switch in the Defective Vehicles to Plaintiffs and the Class Members, the omission of which would tend to mislead or deceive consumers, including Plaintiffs and the Class;
- g. Defendants made material representations and statements of fact to Plaintiffs and the Class that resulted in Plaintiffs and the Class Members reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
- h. Defendants intended that Plaintiffs and Class Members rely on their misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase or lease the Defective Vehicles.

71. Plaintiff and the Class have suffered an injury, including the loss of money and property, as a result of Defendants' unfair, unlawful, and deceptive practices. Defendants failed to inform Plaintiff and Class members that its Defective Vehicles had a defective ignition switch that could lead to injury or death. Had Plaintiff and the Class known this, they either would not have purchased their vehicles at all, or they would have paid less for them. Plaintiff and the

Class have therefore suffered a “loss” because of the violations of the MCPA complained of herein.

72. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants’ business.

73. Plaintiff requests that this Court enjoin GM from continuing its unfair, unlawful, and deceptive practices; provide to Plaintiff and each Class member either their actual damages as the result of GM’s unfair, unlawful, and deceptive trade practices, or \$250 per Class member, whichever is higher; award reasonable attorneys’ fees; and provide other appropriate relief pursuant to MCLS § 445.911.

**COUNT TWO**  
**(Violations of the Arkansas Deceptive Trade Practices Act,  
Ark. Code Ann. § 4-88-101, et seq. (the “ADTPA”))  
(Brought on Behalf of the Arkansas Sub-Class)**

74. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

75. Defendants and Plaintiff are each “persons” under Ark. Code Ann. § 4-88-102(5).

76. As detailed throughout this Complaint, Defendants committed deceptive and unfair acts in the conduct of trade and commerce as prohibited by Ark. Code Ann. § 4-88-107(a). Specifically, Defendants violated Ark. Code Ann. § 4-88-107(a) where

- a. Defendants represented that the Defective Vehicles had approval, characteristics, uses, and benefits that they do not have;
- b. Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other

- information to consumers regarding the safety, performance, reliability, quality, and nature of the Defective Vehicles;
- c. Defendants represented that the Defective Vehicles were of a particular standard, quality, or grade, when they were of another;
  - d. Defendants engaged in unconscionable commercial practices in failing to reveal material facts and information about the Defective Vehicles, which did and tended to, mislead Plaintiffs and the Class about facts that could not reasonably be known by the consumer until the 2014 recalls;
  - e. Defendants failed to reveal facts concerning the faulty ignition switch in the Defective Vehicles that were material to the transaction in light of representations of fact made in a positive manner;
  - f. Defendants failed to reveal material facts concerning the faulty ignition switch in the Defective Vehicles to Plaintiffs and the Class Members, the omission of which would tend to mislead or deceive consumers, including Plaintiffs and the Class;
  - g. Defendants made material representations and statements of fact to Plaintiffs and the Class that resulted in Plaintiffs and the Class Members reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
  - h. Defendants intended that Plaintiffs and Class Members rely on their misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase or lease the Defective Vehicles.

77. Defendants' fraudulent concealment of material facts, as complained of herein, is also a violation of Ark. Code Ann. § 4-88-108.

78. Plaintiff and the Class have suffered an injury, including the loss of money and property, as a result of Defendants' unfair, unlawful, and deceptive practices. Defendants failed to inform Plaintiff and Class members that its Defective Vehicles had a defective ignition switch that could lead to injury or death. Had Plaintiff and the Class known this, they either would not have purchased their vehicles at all or they would have paid less for them. Plaintiff and the Class have therefore suffered a "loss" because of the violations of the ADTPA complained of herein.

79. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants' business.

80. Plaintiff requests that this Court enjoin GM from continuing its unfair, unlawful, and deceptive practices, and award to Plaintiff and each Class member their actual damages as the result of GM's unfair, unlawful, and deceptive trade practices, reasonable attorneys' fees, and and other appropriate relief pursuant to Ark. Code Ann. § 4-88-113.

**COUNT THREE**  
**(Breach of Implied Warranty)**  
**(Brought on behalf of the Class)**

81. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

82. The Defective Vehicles were defective at the time they left Defendants' control and were not reasonably safe for the reasonably foreseeable uses to which they would be put.

83. Defendants are in the business of manufacturing, designing, distributing, marketing, selling and/or supplying into the stream of commerce the Defective Vehicles.

84. At the time Defendants designed, manufactured, marketed, sold, and/or distributed the Defective Vehicles, Defendants intended and impliedly warranted the Defective Vehicles to be of merchantable quality and safe for such use.

85. Plaintiff and Class members reasonably relied upon the skill and judgment of Defendants as to whether Defective Vehicles were of merchantable quality and safe for their intended use and upon Defendants' implied warranty as to such matters.

86. Defendants breached their implied warranty in the design of Defective Vehicles such that the damages suffered by Plaintiff and Class members were foreseeable by Defendants; the likelihood of the occurrence of the damage suffered by Plaintiff and Class members was foreseeable by Defendants at the time they distributed Defective Vehicles; there was a reasonable alternative design available, and such alternative design was practicable and would have reduced the foreseeable risk of harm posed by Defendants' Defective Vehicles; and Defendants' failure to adopt the available and practicable reasonable alternative design rendered Defendants' Defective Vehicles not reasonably safe for use by a consumer.

87. Defendants breached their implied warranty in the manufacturing of Defective Vehicles such that the Defective Vehicles were unreasonably dangerous, not fit for the ordinary purpose for which they were intended, and not manufactured in such a way as to eliminate unreasonable risks of foreseeable injury. Furthermore, Defendants failed to make reasonable inspections or conduct adequate testing of Defective Vehicles. Despite knowing of the problems associated with the Defective Vehicles, Defendants took no action for approximately thirteen years to cure or disclose the defects.

88. Defendants breached their implied warranty in the labeling of Defective Vehicles such that Defendants knew or should have known that the products were unreasonably dangerous



and created significant risks of serious harm and/or death, yet they failed to provide adequate warnings to consumers of such significant risks of serious harm and/or death.

89. The Defective Vehicles manufactured, designed, sold, distributed, supplied, and/or placed in the stream of commerce by Defendants were defective in their manufacture, construction, design, and labeling as described above at the time they left Defendants' control.

90. As a direct and proximate result of Plaintiff's and Class members' purchase, use and ownership of Defective Vehicles as manufactured, designed, sold, supplied, and introduced into the stream of commerce by Defendants, Plaintiff and Class members have suffered harm, damages, and economic loss, and will continue to suffer such harm, damages, and economic loss in the future.

91. The defects at issue herein were a legal and/or proximate cause of Plaintiff's and Class members' harm, damages, and economic loss.

92. Neither Plaintiff nor Class member knew that the Defective Vehicles were defective and dangerous until after purchase.

93. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class members suffered the injuries and compensable damages in an amount to be determined at trial.

**COUNT FOUR**  
**(Breach of Implied Warranty of Fitness for a Particular Purpose)**  
**(Brought on behalf of the Class)**

94. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

95. Defendants knew at the time they sold vehicles to Plaintiff and Class members that such vehicles would be used for the specific purpose of, among other things, providing safe transportation.

96. Defendants knew at the time they manufactured and sold vehicles to Plaintiff and Class members that those individuals chose to buy their vehicles from Defendants at least in part because of the reputation of Defendants' cars and trucks as safe vehicles with high resale value.

97. Defendants knew that Plaintiff and Class members were relying on Defendants' skill and judgment in manufacturing vehicles that were purportedly suitable for providing safe transportation and that enjoyed high resale value.

98. Defendants breached the implied warranty of fitness for a particular purpose because the Defective Vehicles contained an unreasonably dangerous condition and were not suitable for providing safe transportation. Likewise, the unreasonably dangerous condition of the Defective Vehicles has resulted in a substantial diminishment in their resale value.

99. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members suffered injuries and compensable damages in an amount to be determined at trial.

**COUNT FIVE**  
**(Unjust Enrichment)**  
**(Brought on behalf of the Class)**

100. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

101. As a result of Defendants' wrongful conduct as described herein, Defendants were enriched at the expense of Plaintiffs and the Class, through the receipt of money from the purchase, sale and/or lease of the Defective Vehicles as described herein.

102. Under these circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten monies that it received from Plaintiff and the Class. Because the Defective Vehicles were not safe and reliable as represented by Defendants, it would be unjust and inequitable for GM to retain the benefit of enrichment through the sale of a

known Defective Vehicle. Plaintiff and the Class seek restitution for the monies received by Defendants for the sale or lease of the Defective Vehicles.

**COUNT SIX**  
**(Fraudulent Concealment)**  
**(Brought on behalf of the Class)**

103. Plaintiff adopts and incorporates each and every allegation of this complaint as if stated fully herein.

104. Defendants concealed and suppressed material facts concerning the ignition switch in the Defective Vehicles.

105. GM has successor liability for the acts of concealment and suppression of material facts of Old GM as set forth in paragraphs 13-17, *supra*.

106. Defendants had a duty to disclose the ignition switch defects in the Defective Vehicles. Defendant knew that such knowledge was not known or reasonably discoverable by Plaintiff and the Class.

107. Defendants' omissions were material because they directly implicate the safety of the Defective Vehicles. Whether a vehicle has an increased risk of losing power to the motor and/or major electrical systems in the course of driving is a material safety concern.

108. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits and avoid a costly recall, and they did so at the expense of Plaintiff and the Class.

109. On information and belief, Defendants have still not made full and adequate disclosure with regard to the full extent of affected Defective Vehicles.

110. Plaintiff and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiff's and the Class's actions were justified.

111. Because of the concealment and/or suppression of material facts, Plaintiff and the Class sustained damage because, *inter alia*, they purchased and retained vehicles that are now diminished in value from what they would have been had Defendants timely disclosed the ignition switch defects.

112. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, in reckless disregard of the rights and well-being of Plaintiff and the Class, and for the sole purpose of enriching Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, in an amount to be determined according to proof at trial.

### **JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff, individually and on behalf of the Class he seeks to represent, demands a jury on any issue so triable of right by a jury.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all Class Members, requests judgment be entered against Defendant and that the Court grant the following:

1. An order determining that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class representative, that Plaintiff's attorneys be appointed Class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, and that Class notice be promptly issued;
2. Judgment against Defendant for Plaintiff's and Class Members' asserted causes of action;
3. Appropriate declaratory relief against Defendant;

4. Preliminary and permanent injunctive relief against Defendant;
5. Equitable relief in the form of restitution and disgorgement of revenues wrongfully obtained as a result of Defendant's wrongful conduct;
6. An award of actual damages and compensatory damages in an amount to be determined;
7. An award of punitive damages;
8. An award of reasonable attorney's fees and other litigation costs reasonably incurred; and
9. Any and all relief to which Plaintiff and the Class may be entitled.

DATED: May 20, 2014

Respectfully submitted,

BY: 

Hank Bates, ABN 98063  
Randall K. Pulliam, ABN 98105  
Allen Carney, ABN 94122  
David F. Slade, ABN 2013143  
CARNEY BATES & PULLIAM, PLLC  
11311 Arcade Drive, Suite 200  
Little Rock, AR 72212  
Telephone: 501.312.8500  
Facsimile: 501.312.8505  
[hbates@cbplaw.com](mailto:hbates@cbplaw.com)  
[rpulliam@cbplaw.com](mailto:rpulliam@cbplaw.com)  
[acarney@cbplaw.com](mailto:acarney@cbplaw.com)  
[dslade@cbplaw.com](mailto:dslade@cbplaw.com)

*Attorney for Nettleton Auto Sales, Inc.*

# **Exhibit E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

CYNTHIA EDWARDS,  
MADELINE THOMAS,  
JAY PRASSEL,  
HOPE MADEWELL, and  
JEANNE JONES BALL, individually  
and on behalf of all others similarly  
situated,

**CLASS ACTION  
JURY TRIAL DEMANDED**

Plaintiffs,

vs.

GENERAL MOTORS LLC,  
DELPHI AUTOMOTIVE PLC, and  
DELPHI AUTOMOTIVE SYSTEMS, LLC,

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiffs Cynthia Edwards, Madeline Thomas, Jay Prassel, Hope Madewell, and Jeanne Jones Ball (“Plaintiffs”), individually and on behalf of all similarly situated persons, bring this action against Defendant General Motors, LLC (“GM”), Defendant Delphi Automotive PLC, and Defendant Delphi Automotive Systems, LLC (both Delphi Defendants collectively “Delphi”) (“GM” and “Delphi” Defendants collectively “Defendants”), for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c), (“RICO”), assert additional statutory and common law claims, and allege as follows:

**NATURE OF THE CASE**

1. This case arises from New GM’s recent string of recalls (collectively “the Recall”), the culmination of GM and Delphi’s scheme to defraud GM consumers through their unconscionable failure to disclose, and active concealment, of a defect in certain GM vehicles

that renders them unsafe to drive and has killed at least 13 innocent victims and possibly hundreds more.<sup>1</sup> The Department of Transportation announced on May 16, 2014 that GM will pay a \$35 million penalty for delays in reporting the defect — “the single highest civil penalty amount ever paid as a result of a [National Highway Traffic Safety Administration] investigation of violations stemming from a recall.” U.S. Secretary of Transportation Anthony Foxx stated that “GM did not act and did not alert us in a timely manner. What GM did was break the law. They failed to make their public safety obligations . . . .” The NHTSA has stated that their review of GM found “systemic” issues regarding how information was shared and the Recall unfolded, and that it was “hard to point to one single fault.” Apart from the penalty, GM will be now be subject to “unprecedented oversight” as a result of the NHTSA’s investigation of the Recall.

2. The defect involves the vehicles’ ignition switch system, which is dangerously susceptible to failure during normal and foreseeable driving conditions (the “Ignition Switch Defect”). When the system fails, the switch turns from the “Run” (or “On”) position to either the “Off” or the “accessory” position, which then results in a loss of power, speed control, and braking, as well as a disabling of the vehicle’s airbags.

3. Delphi manufactured and supplied the defective ignition switches.

4. Delphi knew its ignition switches were defective yet it continued to manufacture and sell the defective ignition switch systems knowing they would be used in the vehicles of Plaintiffs and the Class. Congress has initiated an investigation into Delphi’s role in the enterprise with both Old and New GM.

5. The vehicles that have this defect (“Defective Vehicles”) are:

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<sup>1</sup> Both GM and Delphi were involved in bankruptcy proceedings that are set forth in more detail below. For purposes of clarity, Plaintiffs will refer to the pre-bankruptcy Defendant entities as “Old GM” and “Old Delphi” when the distinction is appropriate. Similarly, Plaintiffs will refer to the post-bankruptcy Defendant entities as “New GM” and “New Delphi.”



- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2010 Pontiac G5
- 2006-2010 Pontiac Solstice
- 2005-2010 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR

6. So far, there are approximately 2.6 million Defective Vehicles.

7. New GM, acknowledging that “[s]omething went wrong with our process in this instance and terrible things happened,” has recalled the Defective Vehicles to replace their ignition switch systems. But merely replacing the ignition switch systems will not completely solve the problem, make the Defective Vehicles safe, or restore the Defective Vehicles’ value because the design defect pervades the entire structure of the ignition switch and has destroyed the reputation of the Defective Vehicles. Specifically, the design defect also includes the location of the ignition switch, a lack of adequate protection of the ignition switch from forces of inadvertent driver contact, and the type of key that is used.

8. Plaintiffs bring this action on behalf of a Class of all persons in the United States who currently own or lease one or more Defective Vehicles.

9. In light of the recent Recall, Defendants’ scheme to defraud and gross misconduct have harmed Plaintiffs and Class Members and caused them actual damages. Plaintiffs and Class Members did not receive the benefit of their bargains as purchasers and lessees as they received vehicles that were less safe, less useful, of lower quality, and, most significantly, are now less valuable in light of the Recall. Plaintiffs and Class Members contracted to purchase or lease vehicles that do not unexpectedly turn off and become uncontrollable without airbag protection, but because of the Ignition Switch Defect, received defective vehicles that unexpectedly turn off and become uncontrollable without airbag protection. As a result of publicity regarding the

Ignition Switch Defect and both Old and New GM's misconduct, punctuated by the Recall, the value of the Defective Vehicles has diminished and Plaintiffs and Class Members have lost the opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct. New GM's offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs' and Class Members' vehicles or the loss of Plaintiffs' and Class Members' opportunity to sell or even simply to enjoy their vehicles unhampered by Defendants' fraudulent conduct.

### **JURISDICTION AND VENUE**

10. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and more than two-thirds of the Class is diverse from Defendants. This Court also has original federal question jurisdiction because Plaintiffs' first claim arises under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO"), and Plaintiffs' fourth claim arises under the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* ("Magnuson-Moss"). The Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over Defendants because Defendants conduct substantial business in this District, and some of the actions giving rise to the complaint took place in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Defendants have caused harm to Class Members residing in this District, including, but not limited to, Plaintiffs.

## **PARTIES**

13. Plaintiff Cynthia Edwards is a citizen of Kansas City, Missouri. Plaintiff owns a 2004 Chevrolet Malibu, which she bought used on June 29, 2011 for \$6,000.00. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Chevrolet, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

14. Plaintiff Madeline Thomas is a citizen of Faunsdale, Alabama. Plaintiff Thomas owned a 2006 Pontiac G6, which she bought used on March 12, 2011 for \$14,999.00. In November 2011, Plaintiff Thomas tried to steer her vehicle, which locked up, causing her to roll over. The vehicle was totaled. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Pontiac, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

15. Plaintiff Jay Prassel is a citizen of North Port, Florida. Plaintiff Prassel owns a 2003 Saturn Ion, which he bought used on June 1, 2013. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left him without knowledge of the conditions or the lack of value in a

vehicle containing such unremedied defects. Plaintiff would not have purchased his Saturn, or would have paid less than he did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of his right to sell or enjoy his vehicle unhampered by Defendants' scheme.

16. Plaintiff Hope Madewell is a citizen of Independence, Missouri. Plaintiff Madewell owns a 2006 Pontiac G6, which she bought used on April 30, 2011 for \$13,000.00. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Pontiac, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

17. Plaintiff Jeanne Jones Ball is a citizen of Birmingham, Alabama. Plaintiff Ball owns a 2004 Saturn Ion, which she bought new in 2003 for \$17,500.00. Plaintiff Ball has had to replace the ignition switch in her vehicle and is still having issues with the vehicle and switch. Plaintiff's purchase was induced by Defendants' fraudulent concealment and misrepresentations about the existence of the ignition switch defect, which left her without knowledge of the conditions or the lack of value in a vehicle containing such unremedied defects. Plaintiff would not have purchased her Saturn, or would have paid less than she did, and would not have retained the vehicle only to suffer the diminished value brought on by the Recall and the deprivation of her right to sell or enjoy her vehicle unhampered by Defendants' scheme.

18. Defendant GM is a limited liability company formed under the laws of Delaware with its principal place of business in Michigan. New GM was incorporated in 2009, and on July

10, 2009, acquired substantially all the assets and assumed certain liabilities of General Motors Corporation (“Old GM”) through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code, pursuant to a Master Sales and Purchase Agreement (“Agreement”).

19. Under the Agreement, New GM expressly assumed the following obligation:

From and after the Closing, Purchaser [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code, and similar laws, in each case, to the extent applicable in respect of vehicles and vehicles parts manufactured or distributed by [Old GM].

20. New GM also expressly assumed:

All Liabilities arising under express written warranties of [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws.

21. Based on the express language of the Agreement, New GM assumed liability for the claims at issue in this lawsuit.

22. New GM is also liable through successor liability for the deceptive and unfair acts and omissions of Old GM, as alleged in this Complaint, because New GM acquired and operated Old GM and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, New GM was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New GM and Old GM concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

23. Defendant Delphi Automotive PLC is a foreign corporation based in the United Kingdom.

24. Defendant Delphi Automotive Systems, LLC is a foreign corporation organized and formed under the laws of the State of Delaware with its principal place of business in Michigan.

25. Once a subsidiary of Old GM, Old Delphi spun-off in 1999 and became an independent publicly held corporation. Both Old and New Delphi, through their various entities, have designed, manufactured, and supplied GM with motor vehicle components, including the defective ignition switches at issue here.

26. Notwithstanding Old Delphi's 2005 bankruptcy, New Delphi is also liable through successor liability for the deceptive and unfair acts and omissions of Old Delphi, as alleged in this Complaint, because New Delphi acquired and operated Old Delphi and ran it as a continuing business enterprise, utilizing substantially the same brand names, logos, plants, offices, leadership, personnel, engineers, and employees, New Delphi was aware from its inception of the Ignition Switch Defect in the Defective Vehicles, and New Delphi and Old Delphi concealed the Ignition Switch Defect from the public, regulators, and the bankruptcy court.

## **FACTUAL ALLEGATIONS**

### **A. Defendants' Decade of Concealment**

27. In documents filed with the federal government, New GM has admitted that Old GM learned of the Ignition Switch Defect in 2001, during the pre-preproduction development of the Saturn Ion. At that time, an internal report indicated that the car was stalling due to problems with the ignition switch, which included "low detent plunger force" in the ignition switch. The report stated that "an ignition switch design change" solved the problem, but it obviously did not.

28. Old GM nonetheless began manufacturing and selling the Ion in 2002 (for the 2003 model year) with the defective ignition switch systems, which were manufactured by Delphi.

29. In 2003, an internal Old GM inquiry documented that a service technician observed the Saturn Ion stall after the ignition had switched off while driving. The technician noticed that “[t]he owner had several keys on the key ring,” and the report stated that “[t]he additional weight of the keys had worn out the ignition switch.” The technician replaced the ignition switch, and the inquiry was closed without further action.

30. In 2004, three Old GM employees driving production Ions reported that their cars had stalled from a loose ignition switch. “The switch should be raised at least one inch toward the wiper stalk . . . . This is a basic design flaw and should be corrected if we want repeat sales,” one engineer reported.

31. Despite these reports, after considering “lead time required, cost, and effectiveness,” Old GM decided to do nothing.

32. Even worse, when Old GM began manufacturing and selling the Chevrolet Cobalt in 2004 (for the 2005 model year), which was essentially the same car as the Saturn Ion, it installed the same ignition switch system as it installed in the Ion.

33. Soon after the Cobalt entered the market, Old GM began receiving complaints about incidents of vehicles losing engine power, including instances in which the key moved out of the “run” position when a driver inadvertently contacted the key or steering column. Engineering inquiries, known within Old GM as Problem Resolution Tracking System (“PRTS”) reports, were opened to assess the issue.

34. In February 2005, Old GM engineers concluded that the problem had two causes: “a lower torque detent in the ignition switch . . . [and the] low position of the lock module on the [steering] column.” Again, however, Old GM decided not to take action.

35. On February 28, 2005, Old GM issued a Service Bulletin to its dealers addressing “the potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effect” in 2005 Cobalts and 2005 Pontiac Pursuits, which Old GM stated was “more likely to occur if the driver is short and has a large heavy key chain.” Notably, Old GM did not disseminate this information to Plaintiffs and the Class members.

36. The February 28, 2005 Service Bulletin directed the dealers to advise customers that “removing unessential items from their key chains” would prevent the ignition from being turned off inadvertently.

37. But Old GM knew at that time that the problem was a result of design defects in the key and ignition system, and not short drivers using heavy key chains. Moreover, Old GM knew that the “fix” which it directed dealers to offer customers was insufficient to prevent the problem with the ignition.

38. Old GM transmitted the February 28, 2005 Service Bulletin to its dealers through the mail or wires.

39. During the course of a PRTS opened in May 2005, an engineer proposed that Old GM redesign the key head from a “slotted” to a “hole” configuration. The slot design allowed the key chain to hang lower on the key, which placed more torque on the ignition switch when the chain was contacted or moved. The proposal was initially approved, but later cancelled.

40. In June 2005, the *New York Times* reported that Chevrolet dealers were telling customers to lighten their key rings to prevent intermittent stalling and the loss of electrical



power in their cars. The article included a statement from Alan Adler, Old GM's Manager for Safety Communications, in which he reassured the public that the problem only occurred in "rare cases when a combination of factors is present," that customers "can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings," and that "when [the stalling] happens, the Cobalt is still controllable" and the "engine can be restarted after shifting to neutral." Old GM intended Adler's statement to be disseminated to the public through the mail or wires.

41. These statements were false because Old GM's internal documents showed that these incidents occurred when drivers were using keys with the standard key fob, and that removing non-essential items from the key ring would not "virtually eliminate" the risk of an incident.

42. In July 2005, Amber Marie Rose, who was 16-years old, was killed when she drove her 2005 Cobalt off the road and struck a tree. Her driver's side airbag did not deploy, even though it should have given the circumstances of the head-on crash, and the car's ignition switch was in the "accessory/off" position at the time of the crash. Old GM learned of these facts in 2005 and documented them in an internal investigation file.

43. Instead of fixing the defect, in December 2005, Old GM issued a service bulletin to its dealers that reiterated much of the same deceptive message Adler delivered earlier in the year. It indicated that the possibility of the driver inadvertently turning off the ignition was more likely to occur if the driver is short and has a large or heavy key chain, and recommended that drivers remove unessential items from key chains. In addition, it informed dealers that it had developed an insert for the key ring to prevent it from moving up and down in the slot, and that the key ring had been replaced with a smaller design that would not hang as low as in the past.

The service bulletin applied to 2003-06 Saturn Ions, 2005-06 Chevrolet Cobalts, the 2006 Chevrolet HHR, and the 2006 Pontiac Solstice, all of which were equipped with the same defective ignition switch system. Old GM issued the December 2005 Service Bulletin to its dealers through the mail or wires.

44. In October 2006, Old GM updated its December 2005 Service bulletin to include the 2007 Saturn Ion, the 2007 Saturn Sky, the 2007 Chevrolet Cobalt, the 2007 Chevrolet HHR, the 2007 Pontiac G5, and the 2007 Pontiac Solstice. Old GM issued this update to its dealers through the mail or wires.

45. In 2006, at least two fatal accidents involving Cobalts occurred in which the cars' data recorders indicated that the ignition switches were in the "accessory" position and the front airbags failed to deploy. Old GM learned of this information in 2006.

46. In 2007 and 2008, Old GM became aware of at least four more such fatal accidents.

47. NHTSA's Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in 2005-07 Cobalts and 2003-07 Ions where the airbag failed to deploy in non-rear impact crashes.

48. Old GM finally made some changes to the design of the ignition switch system in 2006 to include a new detent plunger and spring. The new switch, however, did not receive a new part number, which is considered a "cardinal sin" in the engineering community, and further concealed the defect in the switch that was installed in the Defective Vehicles.

49. In May 2012, New GM engineers studied 44 vehicles across a range of make and model years, and results revealed that vehicles tested from model years 2003 through 2007 exhibited torque performance below the original specifications established by GM. Rather than

immediately notify NHTSA of the results of this study or conduct a recall, New GM continued to conceal the nature of the Ignition Switch Defect.

50. In September 2012, New GM assigned a special engineer to examine the changes between the 2007 and 2008 Chevrolet Cobalt models following reported crashes where the airbags failed to deploy and the ignition switch was found in the “off” or “accessory” position.

51. In October 2012, GM Engineer Ray DeGiorgio sent an email to Brian Stouffer of GM regarding the “2005-7 Cobalt and Ignition Switch Effort,” stating, “If we replaced switches on ALL the model years, i.e., 2005, 2006, 2007 the piece price would be about \$10.00 per switch. This cost is based on volume of 1.5 units total.” This email makes clear that New GM considered implementing a recall to fix the Defective Ignition Switches, but decided against it to save money.

52. In April 2013, New GM hired an outside engineering consulting firm to investigate the ignition switch system. The external report concluded that ignition switches installed in early model Cobalt and Ion vehicles did not meet GM’s torque specification. Rather than immediately notify NHTSA of the results of this report, New GM continued to conceal the nature of the Ignition Switch Defect. In fact, in April and May of 2013, two New GM employees — Brian Stouffer and Ray DeGiorgio — have downplayed or outright denied the existence of any Ignition Switch Defect in depositions in the personal injury action of *Melton v. General Motors*.

53. In October 2013, Delphi delivered documentation to New GM confirming that a change to the ignition switch in the Cobalt and other vehicles was made in April 2006.

54. Brian Stouffer, in an email to Delphi regarding the ignition switch in the Chevy Cobalt, acknowledged that the ignition switch in early Cobalt vehicles was different than the

switch in later Cobalt vehicles notwithstanding the fact that both switches had the same part number. Delphi responded that Old GM authorized the change in 2006 but the part number remained the same.

**B. GM Finally Discloses the Ignition Switch Defect**

55. It was not until February of 2014 — almost thirteen years after first recognizing the defect — that New GM finally admitted publicly that the ignition switch system is defective and agreed to recall the Defective Vehicles to replace the old ignition switch with the re-designed version.

56. In a February 14, 2014 letter to the NHTSA regarding the Recall, New GM finally acknowledged — in contrast to its prior representations to the agency — that changes were made to the ignition switches during the 2007 model year. Specifically, New GM stated that on “April 26, 2006, the GM design engineer responsible for the Cobalt’s ignition switch signed a document approving changes to the ignition switch proposed by the supplier, Delphi Mechatronics.” The GM design engineer referenced was Ray DeGiorgio.

57. On March 17, 2014, New GM’s CEO Mary T. Barra issued an internal video to employees, wherein she admits that “[t]hese are serious developments that shouldn’t surprise anyone. After all, something went wrong with our process in this instance and terrible things happened.”<sup>2</sup>

58. On April 2, 2014, Barra testified under oath before Congress. She has been with GM for thirty-three years as a key executive with both Old and New GM. Before becoming

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<sup>2</sup> The Ignition Switch Defect is not the only example of GM’s misconduct when it comes to concealing defects. Recent reports indicate that GM “waited years to recall nearly 335,000 Saturn Ions for power steering failures despite getting thousands of consumer complaints and more than 30,000 warranty repair claims.” This *other* defect — the power steering defect — can cause the affected vehicle to lose power steering, making turning the vehicle much more difficult. Complaints filed with the NHTSA reveal incidents in which 2004 Saturn Ion steering wheels locked, causing the affected vehicles to crash into a tree or get pulled into oncoming traffic. New GM has admitted that it didn’t do enough to take care of the power steering problem.

CEO, she held numerous high-ranking engineering positions, including Executive Director of Manufacturing Engineering in 2005, Executive Director of Vehicle Manufacturing Engineering from 2005 to 2008, Vice President of Global Manufacturing from 2008 to 2009, and Executive Vice President of Global Product Development up until her appointment as CEO in January 2014.

59. Despite the utter disregard for public safety, both Old and New GM vehicles have been marketed based on safety from 2002 through the present. For example, in 2005, Chevrolet emphasized on its website that “[y]our family’s safety is important to us . . . . That’s why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind.” Likewise, in advertisements for Saturns, GM utilized the slogan, “Saturn. People First,” and stated that, “[i]n cars, it’s about things like reliability, durability, and of course, safety. That’s where we started when developing our new line of cars.”

60. While New GM has publicly stated that the Ignition Switch Defect has been linked to thirty-one frontal crashes and thirteen deaths, others have reported that the actual number of deaths or serious injuries is in the hundreds.

61. Despite having knowledge of the Ignition Switch Defect, both Old and New GM delayed the Recall to maximize profits, placing millions of people in danger.

62. New GM’s Recall is insufficient because it does not address the location of the ignition switch system or how low the key fob hangs on the steering column, all of which create a risk of inadvertent driver contact and an inadvertent turning of the switch. The Recall also fails to account for the permanent loss of value of (and reputation to) the Defective Vehicles.

63. Under the Transportation Recall Enhancement, Accountability and Documentation Act (“TREAD Act”), 49 U.S.C. §§ 30101-30170, and its accompanying

regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defect. If it is determined that the vehicle is defective, the manufacturer must notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. Both Old and New GM repeatedly violated the TREAD Act by actively concealing information about the Ignition Switch Defect for more than a decade.

64. Throughout the relevant period, both Old and New GM possessed vastly superior knowledge and information to that of consumers — if not exclusive information — about the design and function on the ignition switches in the Defective Vehicles and the existence of the defects in those vehicles.

65. The Ignition Switch Defect has caused actual damages to Plaintiffs and the Class.

66. A vehicle purchased, leased, or retained with a known serious safety defect is worth less than the equivalent vehicle leased, purchased or retained without the known defect.

67. A vehicle purchased, leased, or retained under the reasonable assumption that it is safe is worth more than a vehicle known to be subject to the unreasonable risk of catastrophic accident because of the ignition switch defects.

68. As a result of publicity regarding the Ignition Switch Defect and GM's misconduct, punctuated by the Recall, the value of the Defective Vehicles has diminished, and New GM's offer to replace the ignition switch system does not adequately address the diminished value of Plaintiffs' and Class Members' vehicles. Plaintiffs and the Class are stuck with unsafe vehicles that are now worth less than they would have been but for Old and New GM's wrongful conduct.

69. Moreover, Defendants' scheme has deprived Plaintiffs and the Class Members of the right and entitlement to sell or enjoy their property unhampered by fraudulent conduct.

## STATUTES OF LIMITATION

70. There are no applicable statutes of limitations because the claims of Plaintiffs and the Class did not accrue until the Recall, the instant the value of the Defective Vehicles diminished.

71. Alternatively, any applicable statutes of limitation have been tolled by Defendants' knowing and active fraudulent concealment and denial of the Ignition Switch Defect. On information and belief, Defendants have been aware of the Ignition Switch Defect since at least 2001, and have concealed from Plaintiffs, the Class, the public, and the government the complete nature of the Ignition Switch Defect.

72. Even now, after the Defective Vehicles have been recalled, Defendants continue to engage in their scheme to defraud by downplaying the significance, danger, and nature of the Ignition Switch Defect.

73. Plaintiffs and the Class did not discover and could not have discovered with reasonable diligence the facts that would have caused a reasonable person to suspect that the Ignition Switch Defect existed or that Defendants did not report information within their knowledge regarding the existence of a dangerous defect to federal authorities or consumers until shortly before this class action was filed.

74. Defendants actively concealed the true character, quality, and nature of the Defective Vehicles. Plaintiffs and the Class relied on Defendants' active concealment of these facts. Moreover, GM was and remains under a continuing duty to disclose to NHTSA, Plaintiffs, and the Class the true character, quality, and nature of the Defective Vehicles. Defendants are therefore estopped from relying on any statutes of limitation in this action.

### CLASS ALLEGATIONS

75. Under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs brings this action on behalf of herself and a Class initially defined as follows:

All persons in the United States who currently own or lease one or more of the following GM vehicles: 2003-07 Saturn Ion; 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2006-11 Chevrolet HHR; 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the “Defective Vehicles”).

76. Excluded from the Class are GM, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case. Also excluded from the Class are Delphi, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees. Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Defective Vehicles.

77. The Class can be readily identified using registration records, sales records, production records, and other information kept by GM or third parties in the usual course of business and within their control.

78. As there are approximately 2.6 million Defective Vehicles, the number of Class Members is great enough that joinder is impracticable.

79. The claims of Plaintiffs are typical of the claims of the Class, as Plaintiffs and Class Members alike purchased or leased Defective Vehicles and were harmed in the same way by Defendants’ uniform misconduct.



80. Plaintiffs will fairly and adequately protect the interests of the other members of the Class. Plaintiffs' counsel has substantial experience in prosecuting class actions. Plaintiffs and his counsel are committed to vigorously prosecuting this action, have the financial resources to do so, and do not have any interests adverse to the Class.

81. There are numerous questions of law and fact that are common to the Class and predominate over questions affecting only individual members, including the following:

- (a) Whether Defendants, as part of a racketeering scheme to defraud, concealed information about the dangerous and defective condition of the relevant vehicles from Plaintiffs and the Class;
- (b) Whether Defendants, through their RICO Enterprise, as described below, used the mail or wires in furtherance of their scheme to defraud;
- (c) Whether the Defective Vehicles suffer from Ignition Switch Defects;
- (d) Whether Defendants concealed the defects;
- (e) Whether Defendants misrepresented that the Defective Vehicles were safe;
- (f) Whether Defendants owed Plaintiffs and the Class a duty to disclose the Ignition Switch Defect;
- (g) Whether Defendants engaged in fraudulent concealment;
- (h) Whether Defendants engaged in unfair, deceptive, unlawful or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective ignition switches; and
- (i) Whether Defendants' unlawful, unfair or deceptive practices harmed Plaintiffs and the Class.

82. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Likewise, because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult

or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

83. The prosecution of separate actions by the individual Class members would also create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for Defendants. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

### COUNT I

#### **VIOLATION OF RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS ACT (18 U.S.C. § 1962(c)) (Against Defendants)**

84. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth at length herein.

85. This claim is brought on behalf of all Classes.

86. Defendants violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the "RICO Enterprise" through a "pattern of racketeering activity."

87. At all times relevant, Old GM, New GM, Old Delphi, New Delphi, their associates-in-fact, Plaintiffs, and the Class members were and are each a "person," as that term is defined in 18 U.S.C. § 1961(3).

88. At all times relevant, Plaintiffs and each Class member were and are a "person injured in his or her business or property by reason of a violation of RICO within the meaning of 18 U.S.C. § 1964(c).

89. At all times relevant, Defendants were and are a "person" who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While Defendants participated in the RICO Enterprise, they have an existence

separate and distinct from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging.

90. At all times relevant, Defendants were associated with, operated, or controlled the RICO Enterprise, and participated in the operation and management of the affairs of the RICO Enterprise, through a variety of actions described herein. Defendants' participation in the RICO Enterprise was necessary for the successful operation of their scheme to defraud.

### **The RICO Enterprise**

91. Section 1961(4) of RICO defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

92. The following persons, and others presently unknown, have been members of and constitute the "enterprise" within the meaning of RICO, which are referred to herein collectively as the RICO Enterprise:

- a. Defendant General Motors, LLC;
- b. Both Old and New GM's Officers, Executives, and Engineers, who have collaborated and colluded with each other and with other associates-in-fact in the Enterprise to deceive Plaintiffs and other Class members into purchasing dangerous and defective vehicles, and actively concealing the danger and defect from Plaintiffs and the other Class members, including, but not limited to Alan Adler, GM's Manager for Safety Communications who, in June of 2005, issued the deceptive public statement regarding the ignition problem; Ray DeGiorgio, GM's design engineer who signed off on the ignition switch change that was never disclosed; and Mary T. Barra, GM's current CEO;

c. Defendants Delphi Automotive PLC and Delphi Automotive Systems, LLC, who, at all times material, manufactured and supplied the defective ignition switch system for GM, even though they knew that the system did not meet GM's own design specifications. Delphi also manufactured and supplied the ignition switch system after the 2007 change implemented by GM without reflecting a corresponding change in part number;

d. GM's Dealers, who GM instructed to present false and misleading information to Plaintiffs and other members of the Class, through, *inter alia*, multiple Service Bulletins, and who did in fact present such false and misleading information.

93. The RICO Enterprise of Old GM, New GM, GM's officers, executives, and engineers, Old Delphi, New Delphi, and GM's dealers, which engaged in, and whose activities affected interstate and foreign commerce, is an association-in-fact within the meaning of 18 U.S.C. § 1961(4) and consists of "persons" associated together for the common purpose of employing the multiple deceptive, abusive and fraudulent acts described herein. The RICO Enterprise is an ongoing organization with an ascertainable structure, and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern of racketeering activity in which Defendants have engaged and are engaging. The RICO Enterprise was and is used as a tool to effectuate the pattern of racketeering activity.

94. The members of the RICO Enterprise all had a common purpose: to increase and maximize Defendants' revenues by deceiving Plaintiffs and other Class members into purchasing dangerous and defective vehicles, and actively concealing the Ignition Switch Defect from Plaintiffs and the other Class members. The members of the RICO Enterprise shared the bounty of their enterprise, *e.g.*, by sharing the benefit derived from increased sales revenue generated by

the scheme to defraud. Each member of the RICO Enterprise benefited from the common purpose of the scheme to defraud: both Old and New GM sold or leased more vehicles with the Ignition Switch Defect, both Old and New Delphi sold more of the defective ignition switches, and GM's dealers sold and serviced more vehicles with the Ignition Switch Defect.

95. Defendants conducted and participated in the affairs of this RICO Enterprise through a pattern of racketeering activity that lasted more than a decade, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, which prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

96. As part and in furtherance of the scheme to defraud, Defendants' deceptive scheme to increase revenue depended on actionable deceptive conduct. Defendants actively concealed the dangerous and defective condition of GM's vehicles from its customers through deceptive misrepresentations and omitting material information.

**Predicate Acts: Mail and Wire Fraud**

97. Section 1961(1) of RICO provides that "racketeering activity" is, among other things, any act that is indictable under any of the provisions of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

98. As set forth below, to carry out, or attempt to carry out its scheme to defraud, Defendants have engaged in, and continue to engage in, the affairs of the RICO Enterprise through the following pattern of racketeering activity, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):

a. Both Old and New GM, with the assistance and collaboration of the other persons associated in fact with the enterprise devised and employed a scheme or artifice to

defraud by use of the telephone and internet and transmitted, or caused to be transmitted, by means of wire communication travelling in interstate or foreign commerce, writing(s) or signal(s), including GM's website, Service Bulletins to dealers, and communications with other members of the Enterprise, for the purpose of executing such scheme or artifice to defraud, in violation of 18 U.S.C. § 1341 and § 1343.

b. As part of the scheme to defraud, the RICO Enterprise utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the false pretenses and artifice to defraud, as described herein.

c. The concealment of the dangerous and defective condition of the defective GM vehicles is the core purpose of the underlying racketeering offense. The Enterprise had an ascertainable structure by which GM operated and managed the association-in-fact by using its Dealers and Delphi to concoct, obfuscate, carry out, and attempt to justify the fraudulent scheme described herein.

99. Old GM's February 28, 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class. The February 28, 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

100. In 2005, in furtherance of its scheme to defraud, Old GM emphasized on its Chevrolet website that "[y]our family's safety is important to us . . . . That's why every Chevrolet is designed with a comprehensive list of safety and security features to help give you peace of mind." This false statement, maintained on the internet through the wires, constitutes a violation of 18 U.S.C. § 1343.

101. In June of 2005, Old GM issued a public statement through the mail or wires in furtherance of its scheme to defraud. The statement provided the public, including Plaintiffs and the other Class members, with false and misleading information about the dangerous and defective condition of the defective vehicles, and sought to conceal that condition by minimizing the issue and offering an ineffective fix. As such, the statement constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

102. Old GM's December 2005 Service Bulletin was issued in furtherance of its scheme to defraud. It instructed GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class — namely, that the issue could be resolved by removing items from key chains. The December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

103. In October of 2006, Old GM issued an update to its December 2005 Service Bulletin in furtherance of its scheme to defraud. The update repeated the instruction to GM's dealers to disseminate false and misleading information about the dangerous and defective condition of the defective vehicles to customers, including Plaintiffs and other members of the Class. The update to the December 2005 Service Bulletin was sent via the mail or wires and constitutes a violation of 18 U.S.C. §§ 1341 and 1343.

104. In furtherance of the scheme to defraud, GM communicated with Delphi via the mail or wires regarding the manufacture of the defective ignition switch system. Through those communications, GM instructed Delphi to continue manufacturing the defective part even though it did not meet GM's own specifications. Delphi followed these instructions and continued to manufacture the defective parts. Through those communications, GM also

instructed Delphi to make a change to the defective ignition switch system in 2006, and to fraudulently conceal the change by not assigning a new part number. Delphi also followed these instructions, making a change to the defective ignition switch system in 2006 and fraudulently concealing the change by not assigning a new part number. GM's communications with Delphi, and Delphi's responses, constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

105. Defendants' conduct in furtherance of this scheme was intentional. Plaintiffs and the other Class members were harmed in that they relied to their detriment on Defendants' conduct and, as a result, purchased dangerous and defective vehicles that saw their value plummet the moment New GM issued the Recall. Defendants unfairly reaped millions of dollars in excessive sales revenue as a result of this scheme and its conduct in furtherance of this scheme.

106. As described throughout this Complaint, Defendants engaged in a pattern of related and continuous predicate acts for over a decade: the scheme began sometime in or around 2000 and is ongoing.

107. The predicate acts constituted a variety of unlawful activities, each conducted in furtherance of the Enterprise and with the common purpose of defrauding Plaintiffs and other Class members and obtaining significant funds while providing defective vehicles that are now worth significantly less in light of the Recall. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

108. The predicate acts all had the purpose of generating significant revenue and profits for Defendants at the expense of Plaintiffs and the other Class members, who were never informed of the Ignition Switch Defect in their defective vehicles and who have now been



damaged by the diminution in in value caused by the Recall. The predicate acts were committed or caused to be committed by Defendants, through their participation in the RICO Enterprise and in furtherance of their fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and all other Class members' funds.

109. Plaintiffs and Class Members have a protected property interest in current or prospective contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise. This deprivation of Plaintiffs' and Class Members' property interest is distinct from the injury suffered as a result of the diminished value of the vehicles.

110. Defendants' RICO Enterprise deprived Plaintiffs and Class Members of their protected property interest in, and entitlement to, current or prospective business or contractual relations, such as selling or enjoying their cars without being hampered by Defendants' RICO Enterprise

111. Count I seeks relief pursuant to 18 U.S.C. § 1964(c) from Defendants for violation of 18 U.S.C. § 1962(c).

## COUNT II

### **VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT (Michigan Comp. Laws Ann. § 445, *et seq.*) (Against Defendants)**

112. Plaintiffs and the Class incorporate by reference paragraphs 1 through 83 as though fully set forth at length herein.

113. This claim is brought on behalf of all Classes.

114. Plaintiffs and Class Members are all "persons" under the Michigan Consumer Protection Act ("MCPA"), M.C.L.A. § 445.902(1)(d).

115. Defendants were each a "person" engaged in "trade or commerce" under the MCPA, M.C.L.A. § 445.902(1)(d) and (g).

116. The MCPA prohibits any “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” M.C.L.A. § 445.903(1).

117. Defendants’ conduct, as alleged in the preceding paragraphs, constitutes unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. In particular, Defendants violated the MCPA by

a. “[f]ailing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer,” M.C.L.A. § 445.903(s);

b. “[m]aking a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is,” M.C.L.A. § 405.903(bb); and

c. “[f]ailing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner,” M.C.L.A. § 405.903(cc).

118. GM’s practices that violated the MCPA include, without limitation, the following:

a. GM represented that the Defective Vehicles had safety characteristics that they do not have;

b. GM represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. GM knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature, even though GM knew that such information was material to the transaction in light of GM’s prior representations;

d. GM failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend

to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government;

e. GM intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and Class Members would purchase or lease the Defective Vehicles; and

f. GM repeatedly violated the TREAD Act.

119. Delphi's practices that violated the MCPA include, without limitation, the following:

a. Delphi represented that the defective ignition switches had safety characteristics that they do not have;

b. Delphi represented that the Defective Vehicles were of a particular standard, quality, or grade, when they are not;

c. Delphi knew of the Ignition Switch Defect, but failed to disclose its existence or its complete nature;

d. Delphi failed to reveal material facts concerning the Ignition Switch Defect to Plaintiffs, Class Members, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be reasonably known to Plaintiffs, Class Members, the public, and the government; and

e. Delphi intended for Plaintiffs, Class Members, the public, and the government to rely on its misrepresentations and omissions, so that Plaintiffs and the Class would purchase or lease the Defective Vehicles;

120. Defendants' acts and practices were unfair and unconscionable, because their acts and practices offend established public policy, and because the harm Defendants caused

consumers greatly outweighs any benefits associated with its acts and practices. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs and the Class from making fully informed decisions about whether to lease, purchase, or retain Defective Vehicles.

121. Plaintiffs and the Class have suffered an injury, including the loss of money or property, as a result of Defendants' unfair, unlawful, or deceptive practices. Had Plaintiffs and the Class known about the full extent of the Ignition Switch Defect, they would not have purchased their vehicles at all or would have paid less for them, and would not have retained their Defective Vehicles only to suffer the diminution in value caused by the Recall. Plaintiffs and the Class have therefore suffered a "loss" because of the violations of the MCPA complained of here.

122. All of the wrongful conduct alleged here occurred, and continues to occur, in the conduct of Defendants' business.

123. Plaintiffs requests that this Court enjoin Defendants from continuing their unfair, unlawful, or deceptive practices; require Defendants to repair Plaintiffs' and Class Members' vehicles to completely eliminate the Ignition Switch Defect; provide to Plaintiffs and each Class Member either their actual damages as the result of Defendants' unfair, unlawful, and deceptive trade practices, or \$250 per Class member, whichever is higher; award reasonable attorneys' fees; and provide other appropriate relief under the MCPA.

124. Plaintiffs also seek punitive damages against Defendants because they carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others. Defendants intentionally, willfully, and repeatedly misrepresented the reliability and safety of the Defective Vehicles, and continued to conceal material facts that only they knew, even while

numerous innocent victims were being killed as a result of its conduct. Defendants' unlawful conduct constitutes malice, oppression, and fraud justifying punitive damages.

**COUNT III**  
**FRAUD BY CONCEALMENT**  
**(Against Defendants)**

125. Plaintiffs and the Class incorporate by reference paragraphs 1 through 83 as though fully set forth at length herein.

126. This claim is brought on behalf of all Classes.

127. Defendants concealed and suppressed material facts concerning the Ignition Switch Defect.

128. Defendants had a duty to disclose the Ignition Switch Defect because GM consistently represented that its vehicles were reliable and safe and proclaimed that it maintained the highest safety standards, and the defect was known or accessible only to Defendants, who had superior knowledge and access to the facts, and Defendants knew that the facts were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted and concealed facts were material because they directly impact the safety of the Defective Vehicles, and GM's prior representations regarding the safety of its vehicles became materially misleading when Defendants concealed facts regarding the Ignition Switch Defect.

129. Defendants actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class Members to purchase or lease the Defective Vehicles at high prices, and to protect Defendants' profits and avoid a costly recall, and Defendants did so at the expense of Plaintiffs and the Class.

130. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed or suppressed facts. Plaintiffs' and the Class's actions were justified.

131. Because of the concealment or suppression of the facts, Plaintiffs and the Class sustained damages because the value of the Defective Vehicles has been diminished by the Recall, the direct result of Defendants' wrongful conduct.

132. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

**COUNT IV**  
**VIOLATIONS OF MAGNUSON-MOSS CONSUMER PRODUCTS**  
**WARRANTIES ACT ("Magnuson-Moss")**  
**(15 U.S.C. § 2301, et seq.)**  
**(Against GM)**

133. Plaintiffs and the Class incorporate by reference paragraphs 1 through 83 as though fully set forth at length herein.

134. Magnuson-Moss provides a private right of action by purchasers of consumer products against manufacturers or retailers who, among other things, fail to comply with the terms of the written, express, or implied warranties. *See* 15 U.S.C. § 2310(d)(1). As alleged above, GM has failed to comply with the terms of its implied warranties.

135. The Defective Vehicles are "consumer products," as that term is defined in 15 U.S.C. § 2301(1).

136. GM is a "warrantor," as that term is defined in 15 U.S.C. § 2301(5).

137. Plaintiffs and each member of the Classes are “consumers,” as that term is defined in 15 U.S.C. § 2301(3).

138. As a warrantor, GM is obligated to afford the Classes, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity.

139. Magnuson-Moss provides a cause of action for, among other things, breach of warranty. *See* 15 U.S.C. § 2310(d)(1). GM has breached its implied warranties of merchantability, which it cannot disclaim under Magnuson-Moss, *see* 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs and the Classes have suffered damages as a result of GM’s breaches of implied warranties as set forth above. *See* 15 U.S.C. § 2310(d)(1)-(2).

140. GM was on notice of the ignition switch defects as early as 2001, yet did not undertake any opportunity to cure until 2014, nearly thirteen years later, when GM’s knowledge of the ignition switch defects was first made public. Also, once Plaintiffs’ representative capacity is determined, notice and opportunity to cure on behalf of the Classes — through Plaintiffs — can be provided under 15 U.S.C. § 2310(e).

141. Plaintiffs and the Class members have suffered, and are entitled to recover, damages as a result of GM’s breaches of warranty and violations of Magnuson-Moss.

142. Additionally, or in the alternative, Magnuson-Moss provides for “other legal and equitable” relief where there has been a breach of warranty or failure to abide by other obligations imposed by Magnuson-Moss. *See* 15 U.S.C. § 2310(d)(1). Rescission and Revocation of Acceptance are equitable remedies available to Plaintiffs and the Class members under Magnuson-Moss.

143. Plaintiffs also seek an award of costs and expenses, including attorney’s fees, under Magnuson Moss to prevailing consumers in connection with the commencement and

prosecution of this action. *See* 15 U.S.C. § 2310(d)(2). Plaintiffs and the Class intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendants, and grant the following relief:

A. Determine that this action may be maintained as a Class Action and certify it as such under Rule 23(b)(3) and or 23(b)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class Representative and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge, and decree that Defendants violated 18 U.S.C. § 1962(c) by conducting the affairs of the RICO Enterprise through a pattern of racketeering activity;

C. Declare, adjudge, and decree the conduct of Defendants as alleged herein to be unlawful, unfair or deceptive, and enjoin any such future conduct;

D. Declare, adjudge, and decree that the ignition switches in the Defective Vehicles are defective;

E. Declare, adjudge, and decree that Defendants must disgorge, for the benefit of Plaintiffs and Class Members all or part of the ill-gotten gains it received from the sale or lease of the Defective Vehicles;

F. Award Plaintiffs and Class Members actual, compensatory damages, or, in the alternative, statutory damages, as proven at trial;



G. Award Plaintiffs and Class Members treble damages pursuant to 18 U.S.C. § 1964(c).

H. Alternatively, if elected by Plaintiffs and Class Members, require Defendants to repair the defective ignition switches or provide a comparable vehicle that does not have ignition switch defects;

I. Award Plaintiffs and Class Members punitive damages in such amount as proven at trial;

J. Award Plaintiffs and Class Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and

K. Award Plaintiffs and Class Members such other further and different relief as the case may require or as determined to be just, equitable, and proper by this Court.

### **JURY TRIAL DEMAND**

Plaintiffs requests a trial by jury on all the legal claims alleged in this Complaint.

Respectfully submitted,

FUERST ITTLEMAN DAVID & JOSEPH, PL  
*Counsel for Plaintiffs*  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
Telephone: (305) 350-5690  
Facsimile: (786) 364-7995  
[ajoseph@fuerstlaw.com](mailto:ajoseph@fuerstlaw.com)

By: /s/ Allan A. Joseph  
Allan A. Joseph  
Florida Bar Number: 893137

KOZYAK TROPIN, & THROCKMORTON P.A.  
2525 Ponce de Leon Blvd., 9th Floor  
Coral Gables, Florida 33134  
Telephone: (305) 372-1800  
Adam M. Moskowitz

[amm@kttlaw.com](mailto:amm@kttlaw.com)

Harley S. Tropin

[hst@kttlaw.com](mailto:hst@kttlaw.com)

Thomas A. Tucker Ronzetti

[tr@kttlaw.com](mailto:tr@kttlaw.com)

Tal J. Lifshitz

[tjl@kttlaw.com](mailto:tjl@kttlaw.com)

Robert Neary

[rn@kttlaw.com](mailto:rn@kttlaw.com)

Wiggins, Childs, Quinn & Pantazis, LLC

The Kress Building

301 19<sup>th</sup> Street North

Birmingham, Alabama 35203

Telephone: 205-314-0500

Gregory O. Wiggins (*pro hac vice* to be filed)

[gwiggins@wcqp.com](mailto:gwiggins@wcqp.com)

Kevin W. Jent (*pro hac vice* to be filed)

[kjent@wcqp.com](mailto:kjent@wcqp.com)

# **Exhibit F**

1 ROBERT A. BUCCOLA, ESQ. / SBN: 112880  
2 STEVEN M. CAMPORA, ESQ. / SBN: 110909  
3 JASON J. SIGEL, ESQ. / SBN: 235761  
4 **DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**  
5 20 Bicentennial Circle  
6 Sacramento, CA 95826  
7 Telephone: (916) 379-3500  
8 Facsimile: (916) 379-3599

9 Attorneys for Plaintiff

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 RANDI SPANGLER, an individual; and on  
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 GENERAL MOTORS LLC, a corporation,  
18 Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

- 1) **BUS. & PROF. CODE § 17200 et seq.**
- 2) **BUS. & PROF. CODE § 17500 et seq.**
- 3) **CIVIL CODE § 1750 et seq.**
- 4) **BREACH OF IMPLIED WARRANTY**
- 5) **BREACH OF EXPRESS WARRANTY**
- 6) **UNJUST ENRICHMENT**
- 7) **FRAUDULENT CONCEALMENT**
- 8) **NEGLIGENCE**

**JURY TRIAL DEMANDED**

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28 **X. JURY DEMAND** ..... 47

1 Plaintiff Randi Spangler, individually and on behalf of the Class described below, brings  
2 this action for damages and injunctive relief pursuant to California’s Unfair Business Practices  
3 Act, Cal. Bus. & Prof. Code §§ 17200, et seq.; the False Advertising Law, Cal. Bus. & Prof.  
4 Code §§ 17500, et seq.; California’s Legal Remedy Act, Cal. Civil Code §§ 1750, et seq.; and  
5 for violations of California common law against Defendant General Motors LLC (“GM”). Plaintiff  
6 complains and alleges upon information and belief based, inter alia, upon investigation  
7 conducted by Plaintiff and Plaintiff’s counsel, except as to those allegations pertaining to  
8 Plaintiff personally, which are alleged upon personal knowledge:

9 **I. INTRODUCTION**

10 1. In the last fifteen years, GM has designed, manufactured, promoted, marketed,  
11 and sold defective vehicles that pose known and significant dangers to unsuspecting drivers,  
12 passengers, motorists, and pedestrians. GM allowed these dangers to persist without taking  
13 adequate measures to eliminate the dangers or to notify the government or public of the  
14 design defects. By doing so, GM jeopardized public safety and fostered a corporate culture of  
15 complete disregard to the safety concerns of its customers.

16 2. As far back as 2001, GM learned that vehicles designed, manufactured,  
17 promoted, and sold by GM contained defective ignition switches (the “Defective Vehicles”).  
18 However, GM took no action to remedy, mitigate, and/or minimize the danger inherent in this  
19 faulty system to motorists, passengers, or pedestrians. Instead of making an effort to repair  
20 these known defects, GM hid this information. These issues have been known to GM since  
21 2001 and have caused at least thirteen (13) deaths and thirty-one (31) crashes. By ignoring  
22 safety concerns, GM suppressed the dangers of defective ignition switches from the public and  
23 the government and continued to design, manufacture, promote, and sell vehicles with  
24 defective ignition switches.

25 3. The ignition switch in the Defective Vehicles has several common switch points,  
26 including “RUN” or “ON,” “OFF,” and “ACC” or “accessory.” When the ignition switch is in the  
27 “RUN” position, the vehicle’s motor engine is running and the electrical systems have been  
28 activated. When the ignition switch is in the “ACC” position, the motor is turned off but

1 electrical power is activated, generally only supplying electricity to the vehicle's entertainment  
2 system. When the ignition is in the "OFF" position, both the engine and electrical systems are  
3 turned off. In most vehicles, a driver must intentionally turn the key in the ignition switch to  
4 move to each position.

5 4. Because of the defects in the design, manufacture, and/or assembly, the ignition  
6 switches installed in the Defective Vehicles are loose and improperly positioned, making the  
7 switches susceptible to failure during normal and expected conditions. Due to its defective  
8 design and improper position, the ignition switch can unexpectedly and suddenly move from  
9 the "ON" or "RUN" position to the "OFF" or "ACC" position (the "Ignition Switch Defect").  
10 When this ignition switch failure occurs, the motor engine and certain electrical components,  
11 such as power-assisted steering, anti-lock brakes, and airbags, are abruptly turned off.

12 5. The Ignition Switch Defect can occur at any time during normal and proper  
13 operation of the Defective Vehicles, making driving a game of Russian roulette. The ignition  
14 can suddenly switch to "OFF" while the Defective Vehicle is moving at high speeds, such as 65  
15 mph on the freeway, leaving the driver unable to control the vehicle, compromising the safety  
16 airbag system, and endangering the vehicle occupants, other motorists, and pedestrians.

17 6. Although it knew of the Ignition Switch Defect, GM designed, manufactured,  
18 promoted, and sold over 2.6 million Defective Vehicles, including the following models:

- 19 • 2005-2011 Chevrolet Cobalt;
- 20 • 2006-2011 Chevrolet HHR;
- 21 • 2006-2011 Pontiac Solstice;
- 22 • 2003-2007 Saturn Ion;
- 23 • 2007-2011 Saturn Sky; and
- 24 • 2005-2011 Pontiac G5.

25 7. More egregious than the technical failures, however, was the fact that GM senior  
26 management kept those failures secret for years. In 2013, a GM Senior Manager identified  
27 eighty (80) customer complaints that Chevrolet Cobalts had unexpectedly stopped or stalled  
28 since 2005. Despite numerous customer complaints, GM disregarded, ignored, hid, and



1 disparaged the safety risks that the Defective Vehicles presented to the unsuspecting public.  
2 As a result of GM's actions, millions of lives were put at risk.

3 8. On April 1, 2014, GM Chief Executive Officer Mary Barra testified before the  
4 House Oversight and Investigations Subcommittee and called GM's slow response to at least  
5 13 deaths linked to faulty ignition switches "unacceptable." However, Ms. Barra was unable to  
6 give U.S. lawmakers any answers as to why GM continued to sell Defective Vehicles.

7 9. During the April 2014 testimony, GM admitted that the cost to rectify the  
8 Ignition Switch Defect and to eliminate the significant risk created by the defect was a mere  
9 \$0.57 per Defective Vehicle. When questioned why GM did not spend the money to fix the  
10 Ignition Switch Defect, Ms. Barra stated that GM "had more of a cost culture" rather than a  
11 customer safety culture.

12 10. In order to save 57 cents per Defective Vehicle, GM turned a blind eye to the  
13 defects. GM waited nearly a decade to recall 2.6 million of the Defective Vehicles over the  
14 Ignition Switch Defect, knowing full well that a jarring of or too much weight on the ignition  
15 key could cause the switch to move from the "ON" to the "ACC" position, thereby cutting  
16 power to air bags, steering, and brakes.

17 11. GM's disclosures and depositions leading to the recall suggest a cultural  
18 landscape during the prior decade where employees worked in silos, isolated from other  
19 departments and critical information. GM's Chief Executive Officer Mary Barra told Congress  
20 that people in one part of GM "didn't recognize information that would be valuable in another  
21 part of the company."

22 12. GM's misconduct has endangered drivers, passengers, motorists, and  
23 pedestrians. GM claims that "[s]afety will always be a priority at GM. We continue to  
24 emphasize our safety-first culture in our facilities, and as we grow our business in new  
25 markets. Our safety philosophy is at the heart of the development of each vehicle. In addition  
26 to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our  
27 customers." GM violated this principle by jeopardizing the lives and safety of millions of  
28 Americans when it sold defective automobiles to consumers for many years. The extent of the

1 defects is still being discovered.

2 **II. JURISDICTION AND VENUE**

3 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 (d)(2) (the  
4 "Class Action Fairness Act") because the amount in controversy exceeds the sum or value of  
5 \$5,000,000, exclusive of interest and costs, and members of the proposed Class are citizens of  
6 a state different than that of Defendant.

7 14. This Court has personal jurisdiction over Defendant and venue is proper because  
8 a substantial portion of the wrongdoing alleged in this Complaint took place in this State and  
9 Defendant is authorized to do business here and conducts business here. Defendant has  
10 sufficient minimum contacts with this State, because Defendant intentionally availed itself of  
11 markets in this State by promoting, marketing, and selling of its products and services in this  
12 State, including the Defective Vehicles, to render the exercise of jurisdiction by this Court  
13 permissible under traditional notions of fair play and substantial justice.

14 15. In particular, Defendant marketed, advertised, and sold automotive vehicles in  
15 this State. The advertisements and other wrongful business practices at issue in this litigation  
16 were, at least in part, directed at this State, rendering the exercise of jurisdiction by this Court  
17 permissible.

18 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because the  
19 injury was suffered in this District and because a substantial part of the events or omissions  
20 giving rise to Plaintiff's claims occurred in this District.

21 17. This case should be assigned to the Central District of California since there are  
22 more GM dealerships, more Defective Vehicles, more GM owners and lessors, more consumers  
23 harmed, and more recall letters in California than any other state. In addition, GM's  
24 headquarters for its Western Region is in Thousand Oaks, Ventura County, within the Central  
25 District of California. The vast majority of the sales and inventory of GM in the United States  
26 go through the Southern California regional headquarters, which directs wholesale sales,  
27 service, and parts teams working with dealers in Washington, Oregon, California, Arizona, New  
28 Mexico, Nevada, Utah, Colorado, Wyoming, Montana, Idaho, Alaska, and Hawaii. Venue in the

1 Central District of California is therefore the most appropriate venue for this case. This Court  
2 has diversity jurisdiction over this action under 28 U.S.C. §§ 1332(a) and (d) because the  
3 amount in controversy for the Class exceeds \$5,000,000, and Plaintiff and other Class  
4 members are citizens of a different state than Defendant.

5 **III. PARTIES**

6 **A. PLAINTIFF**

7 18. Plaintiff RANDI SPANGLER resides in Citrus Heights, California.

8 19. On or about October 2, 2007, Ms. Spangler purchased a 2007 Chevrolet HHR,  
9 which she still owns. Plaintiff's 2007 Chevrolet HHR is one of the cars recently identified by GM  
10 as a Defective Vehicle. Plaintiff not only overspent on a lower quality product, but also  
11 acquired a vehicle that posed an undisclosed risk to the health and safety of Plaintiff. One of  
12 GM's main selling points has been the efficiency, cost effectiveness, and safety of its vehicles.  
13 Plaintiff's purchase was based, in significant part, on these representations and assertions by  
14 GM. GM failed to disclose that most of its models over the last few years have contained  
15 defective ignition switches that pose a serious risk of injury and death to the driver and  
16 occupants, as well as other motorists and pedestrians on the road. If GM had disclosed the  
17 nature and extent of its problems, Plaintiff would not have purchased a GM vehicle, or would  
18 not have purchased the vehicle for the price paid.

19 **B. DEFENDANT**

20 20. Defendant GENERAL MOTORS LLC ("GM") is a limited liability company formed  
21 under the laws of Delaware with its principal place of business located at 300 Renaissance  
22 Center, Detroit, Michigan. GM was incorporated in 2009. On July 10, 2009, GM acquired  
23 substantially all assets and assumed certain liabilities of General Motors Corporation ("GM  
24 Corporation") through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

25 21. Because GM acquired and operated GM Corporation and ran it as a continuing  
26 business enterprise, and because GM was aware from its inception of the ignition switch  
27 defects in the Defective Vehicles, GM is liable through successor liability for the deceptive and  
28 unfair acts and omissions of GM Corporation, as alleged in this Complaint.

1 **IV. CLASS ACTION ALLEGATIONS**

2 22. This action is brought by Plaintiff, individually and on behalf of all others  
3 similarly situated, pursuant to California’s Unfair Competition Law and False Advertising Law,  
4 Cal. Bus. & Prof. Code §§ 17200, et seq., and 17500, et seq., and for violations of California  
5 common law. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23, on  
6 behalf of Plaintiff and others similarly situated. The Class is defined as followed:

7 **All persons in the United States who currently own or lease one**  
8 **or more of the following GM vehicles: (a) 2005-2011 Chevrolet**  
9 **Cobalt; (b) 2006-2011 Chevrolet HHR; (c) 2006-2011 Pontiac**  
10 **Solstice; (d) 2003-2010 Saturn Ion; (e) 2007-2011 Saturn Sky;**  
11 **or (f) 2005-2011 Pontiac G5. To the extent warranted, this list**  
12 **will be supplemented to include other GM vehicles that have**  
13 **the defective ignition switches. Excluded from the Class are**  
14 **Defendant herein and its legal representatives, parents,**  
15 **affiliates, heirs, successors, assigns, and any other person who**  
16 **engaged in the improper conduct described herein (the**  
17 **“Excluded Persons”).**

18 23. Plaintiff seeks to recover damages for Plaintiff and the Class under the Unfair  
19 Business Practices Act, Business & Professions Code §§ 17200, et seq.; False Advertising Law,  
20 Business & Professions Code §§ 17500, et seq., Civil Code §§ 1750, et seq. and for violations  
21 of California common law. Plaintiff also seeks an injunction prohibiting Defendant from  
22 continuing to engage in the practices described herein.

23 **A. NUMEROSITY OF THE CLASS**

24 24. The Class is so numerous that joinder of all members is impracticable. While the  
25 exact number of Class members is unknown at this time, Plaintiff is informed and believes that  
26 the number of individuals who have purchased Defective Vehicles in the last ten years in the  
27 United States alone is over two million (2,000,000) people.

28 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF LAW AND**  
**FACT**

29 25. Common questions of law and fact exist as to all Class members and  
30 predominate over questions affecting only individual Class members. These common  
31 questions include:

32 ///

- a. Whether GM engaged in a deceptive and unlawful advertising and marketing campaign by concealing serious defects in its vehicles;
- b. Whether and to the extent GM breached its express warranties relating to the safety and quality of its vehicles;
- c. Whether and to the extent GM breached any implied warranties relating to the safety and quality of its vehicles;
- d. Whether and to the extent GM engaged in unfair, false, misleading, or deceptive acts or practices regarding its marketing and sale of its vehicles;
- e. Whether the conduct complained of herein constitutes deceptive and misleading advertising in violation of Business & Professions Code section 17200, et seq.;
- f. Whether the conduct complained of herein constitutes an unfair, illegal, and/or fraudulent business practice, in violation of Business & Professions Code section 17500, et seq.;
- g. Whether GM has been unjustly enriched as a result of the conduct complained of herein;
- h. Whether GM's conduct complained of herein is intentional and knowing; and
- i. Whether Plaintiff and members of the Class are entitled to damages, restitution, disgorgement of profits, declaratory relief, punitive damages, and/or injunctive relief, as a result of GM's conduct complained of herein.

**C. TYPICALITY**

26. Plaintiff's claims are typical of the claims of other members of the Class in that Plaintiff and other Class members received the same standardized misrepresentations, warranties, and nondisclosures about the safety and quality of GM's vehicles. GM's misrepresentations were made pursuant to a standardized policy and procedure implemented by GM. Plaintiff is a member of the Class that Plaintiff seeks to represent and has suffered harm due to the unfair, deceptive, unreasonable, and unlawful practices of GM.

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1           **D.     ADEQUACY OF REPRESENTATION**

2           27.     Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff's  
3 interests are coincident with, and not antagonistic to, those of the Class that Plaintiff seeks to  
4 represent. Plaintiff is represented by experienced and able attorneys, who intend to prosecute  
5 this action vigorously for the benefit of Plaintiff and all Class members. Plaintiff and Plaintiff's  
6 counsel will fairly and adequately protect the interests of the Class members.

7           **E.     PROPER MAINTENANCE OF CLASS**

8           28.     Defendant has acted or refused to act, with respect to some or all issues  
9 presented in this Complaint, on grounds generally applicable to the Class, thereby making it  
10 appropriate to provide relief with respect to the Class as a whole.

11           **F.     SUPERIORITY**

12           29.     A class action is the best available method for the efficient adjudication of this  
13 litigation because individual litigation of Class members' claims would be impracticable and  
14 unduly burdensome to the courts, and have the potential to result in inconsistent or  
15 contradictory judgments. There are no unusual difficulties likely to be encountered in the  
16 management of this litigation as a class action. A class action presents fewer management  
17 problems and provides the benefits of single adjudication, economies of scale, and  
18 comprehensive supervision by a single court.

19           **V.     FACTUAL BASIS FOR THE CLAIMS ASSERTED**

20           30.     Ignoring known defects, GM suppressed the dangers of defective ignition  
21 switches from the public and the government and continued to design, manufacture, promote,  
22 and sell the Defective Vehicles, risking public safety to increase corporate profits.

23           **A.     MODELS RECALLED**

24           31.     The ignition-switch recall covers more than 2.5 million cars. At this time, GM  
25 has issued recalls for the following models:

26           **February 13, 2014 and February 25, 2014:**

- 27           •     2005 – 2007 Chevrolet Cobalt;  
28           •     2005 – 2007 Pontiac G5;

- 2003 – 2007 Saturn Ion;
- 2006 – 2007 Chevrolet HHR;
- 2006 – 2007 Pontiac Soltice; and
- 2007 Saturn Sky.

**March 28, 2014:**

- 2008 - 2011 Pontiac Solstice;
- 2008 - 2011 Pontiac G5;
- 2008 - 2011 Saturn Sky;
- 2008 - 2011 Chevrolet Cobalt; and
- 2008 - 2011 Chevrolet HHR.

**B. GM’S IGNITION SWITCH DEFECT TIMELINE**

32. Since 2001, GM has known that the vehicles it designed, manufactured, promoted, marketed, and sold contained the Ignition Switch Defect. For over thirteen years, GM dismissed, ignored, concealed, and disparaged these defects, selling over 2.6 million Defective Vehicles containing the Ignition Switch Defect.

33. **2001:** GM determined a defect exists on the key system during pre-production testing of the Saturn Ion. A pre-production report for the 2003 Saturn Ion identified “two causes of failure” with the ignition switch: “[I]ow contact force and low detent plunger force.”

34. **2002:** In February 2002, Delphi Automotive Systems, GM’s supplier, informed GM in a Production Part Approval Process document that the ignition switch did not meet GM’s specifications. Despite the warning, GM still approved the ignition switch design.

35. **2003:** A service technician reported to GM that a Saturn Ion stalled while driving, and that the weight of the owner’s keys had worn down the ignition switch.

36. **2004:** During the time of the release of the 2005 Chevrolet Cobalt, GM learned of an incident in which a 2005 Chevrolet Cobalt lost engine power because the key moved out of the “RUN” position when the driver inadvertently contacted the key or steering column.

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1 37. GM employees were able to replicate the issue during test drives. An  
2 engineering inquiry, known within GM as a Problem Resolution Tracking System (PRTS), was  
3 opened to investigate the complaint that the "vehicle can be keyed off with knee while  
4 driving." Engineers believed that the low key cylinder torque effort was an issue and  
5 considered a number of potential solutions. After GM considered the time required, cost, and  
6 effectiveness of each of these solutions, the PRTS was closed with **no action**.

7 38. **2005**: GM engineers met to consider making changes to the ignition switch  
8 after receiving new field reports of Chevrolet Cobalts losing engine power. The proposal was  
9 initially approved but was later cancelled. In dismissing the proposed changes, a GM ignition  
10 switch engineer stated that the switch is "very fragile and doing any further changes will lead  
11 to mechanical and/or electrical problems." The approved proposal was canceled because  
12 "lead-time for all solutions is too long," "tooling cost and piece price are too high," and "[n]one  
13 of the solutions seems to fully countermeasure the possibility of the key being turned (ignition  
14 turned off) during driving."

15 39. After another complaint of the vehicle turning off while driving, a GM engineer  
16 advised the Company to redesign its key head, but the proposal was ultimately rejected. GM  
17 posted a \$1.1 billion first quarter loss, blaming it on union overhead and high gas prices  
18 harming SUV sales.

19 40. In July 29, 2005, Amber Marie Rose, 16, died in a frontal crash in her 2005  
20 Chevrolet Cobalt in Maryland. Contractors hired by the National Highway Traffic Safety  
21 Administration ("NHTSA") found that the Chevrolet Cobalt's ignition had moved out of the  
22 "RUN" position and into the "ACC" position, which cut off power to power steering the air bags.

23 **C. GM'S LEGAL STAFF OPENS A FILE ON THE CRASH**

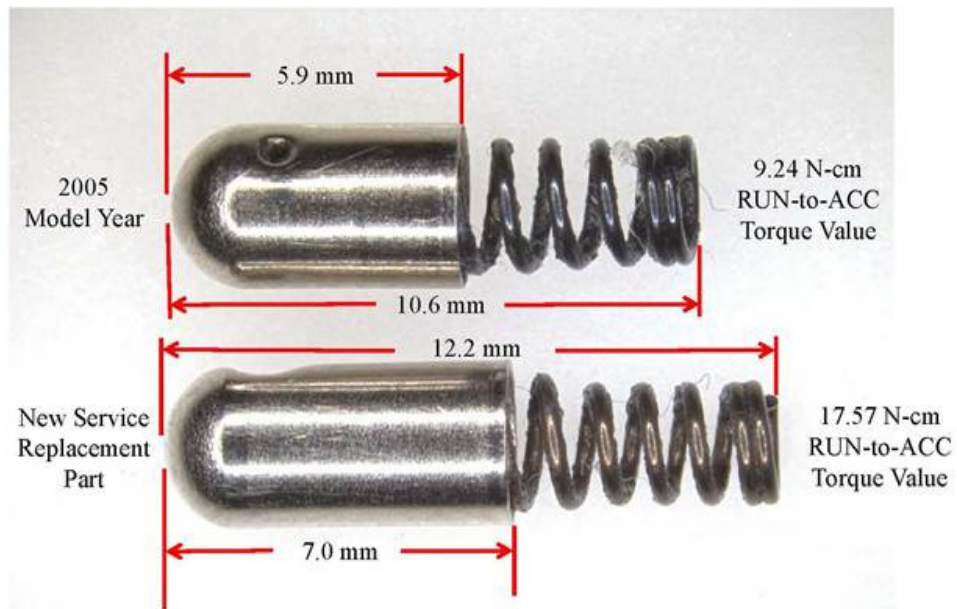
24 41. In December 2005, GM issued an Information Service Bulletin entitled  
25 "Information on Inadvertent Turning of Key Cylinder, Loss of Electrical System and No DTCs,"  
26 which applied to 2005-06 Chevrolet Cobalts, 2006 Chevrolet HHR, 2005-06 Pontiac Pursuits  
27 (Canada only), 2006 Pontiac Solstice, and 2003-06 Saturn Ions which all had the same ignition  
28 switch. The Service Bulletin informed dealers that "there is a potential for the driver to



1 inadvertently turn off the ignition due to low ignition key cylinder torque/effort"; and "the  
2 customer should be advised of this potential and should take steps to prevent it, such as  
3 removing unessential items from their key chain."

4 42. **2006:** On April 26, 2006, the GM design engineer responsible for the Cobalt's  
5 ignition switch signed a document approving changes to the ignition switch proposed by the  
6 supplier, Delphi. The approved changes included, among other things the use of a new detent  
7 plunger and spring that increased torque force in the ignition switch. The new design was  
8 implemented into cars from the 2007 model and later.

9  
10 Exemplar Chevrolet Cobalt Switch Detent Plungers



21 43. On October 24, 2006, seventeen-year-old Wisconsin resident Megan Phillips was  
22 driving her 2005 Chevrolet Cobalt with two passengers, eighteen-year-old Natasha Weigel and  
23 fifteen-year-old Amy Rademaker. According to a police report, the Cobalt left the road and  
24 struck a telephone junction box and two trees while traveling 48 miles per hour. The police  
25 report stated that shortly after the vehicle left the roadway and before the collision, the  
26 ignition switch was turned from the "RUN" position to the "ACC" position. Ms. Phillips and her  
27 two passengers were not wearing seat belts. A subsequent investigation by the Wisconsin  
28 State Police found the air bags did not deploy. As a result of the collision, the two passengers

1 were tragically killed while Ms. Phillips, now twenty-four years old, was critically injured and  
2 suffered permanent and severe brain damage.

3 44. In October 2006, GM updated its December 2005 Service Bulletin to include  
4 additional models and years, including the 2007 Saturn Ion and Sky, 2007 Chevrolet HHR, and  
5 2007 Pontiac Solstice. GM also provided key inserts to approximately 475 customers who  
6 brought their vehicle in to the dealer for service.

7 45. 2007: On March 29, 2007, GM employees met with NHTSA representatives in  
8 Washington, D.C. to discuss occupant restraint systems. During the meeting, NHTSA informed  
9 GM employees of the 2005 fatal crash of Amber Marie Rose. GM investigative engineers began  
10 tracking frontal impact crashes that involved Chevrolet Cobalts and airbags that did not deploy  
11 to identify similar characteristics in the crashes. By the end of 2007, GM found ten (10) such  
12 incidents, sensing and diagnostic module (SDM) data was available for nine (9) of the ten (10)  
13 crashes, and that data showed that the ignition was in the "RUN" position in five (5) of the  
14 crashes and in the "ACC" position in four (4) of the crashes.

15 46. A 2007 report by Indiana University of the October 2005 crash revealed that  
16 contact with the ignition switch could result in "engine shut down and loss of power"

17 47. 2009: In February 2009, another PRTS was opened and resulted in the top of  
18 the key being changed from a "slot" design to "hole" design to reduce downward force. The  
19 new key design was implemented in 2010 Chevrolet Cobalt models - the last year the Cobalt  
20 was sold.



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GM's original key could accommodate multiple rings.



GM's redesigned key could hold just one ring.

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9 48. In April 2009, a 2005 Chevrolet Cobalt crashed in Pennsylvania, killing the  
10 Cobalt driver and front-seat passenger where the airbags failed to deploy. The report from the  
11 investigation stated that the ignition was in the "accessory" position.

12 49. On June 12, 2009, 18-year-old Christopher Hamberg was killed — not quite a  
13 month after the critical May 15 meeting of GM engineers about the ignition data. Driving his  
14 2007 Chevrolet Cobalt home before dawn in Houston, he lost control at 45 miles per hour and  
15 hit a curb, then a tree, according to the police report.

16 50. On Dec. 13, 2009, twenty-year-old Benjamin Hair crashed into a tree in  
17 Charlottesville, Va., while driving home in a Pontiac G5. As of that date, GM records indicate  
18 GM had conducted five (5) internal studies about the ignition problem. Though Mr. Hair used  
19 his seatbelt, he died after the vehicle's air bags failed to deploy. "The police couldn't tell us  
20 what caused the accident," said Brenda Hair, his mother. The Hairs contacted GM, providing  
21 accident reports but no vehicle data, because the car's black box had been destroyed. "They  
22 came back and said they'd presented it to their board of engineers, and they couldn't say it  
23 was related" to a defect, Ms. Hair said.

24 51. 2010: In January 2010, twenty-one-year-old Kelly Erin Ruddy burned to death  
25 in a car crash. Her mother, Mary Ruddy, said Kelly knew something was wrong with her 2005  
26 Chevy Cobalt. Three months after the crash, the car was recalled for a power steering  
27 problem. Mrs. Ruddy said GM "dismissed us."

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1           52.     In February 2010, NHTSA again recommended a probe into problems with air  
2 bags in Chevrolet Cobalts, and the Office of Defects Investigation again decided that there is  
3 no correlation and dropped the matter.

4           53.     In March 2010, Jennifer Brooke Melton of Georgia took her Chevrolet Cobalt in  
5 for service because the engine shut off while she was driving. Four days later, she died in a  
6 collision.

7           54.     During depositions in their suit last year, the Meltons learned from GM engineers  
8 that the Company had been aware of potential problems with its ignition systems before  
9 Brooke purchased her car in 2005. The Meltons' lawyers also found evidence that GM had  
10 altered the design of ignition switches after Brooke purchased her Cobalt, but had done so  
11 without either notifying federal regulators or car owners or changing the part number. The  
12 change, which apparently occurred in 2006, increased the size of the detent plunger and  
13 spring, a pair of parts that hold the ignition key in position – a change that an engineer hired  
14 by the lawyers said seemed intended to increase the "torque force" holding the key in place.

15           55.     When deposed by Melton's attorneys, GM engineer Ray DeGiorgio testified that  
16 he was lead engineer for the ignition switch. When asked if he had signed off on the change in  
17 the part, which was supplied by Delphi Mechatronics, Mr. DeGiorgio said he did not recall  
18 authorizing such a change. Yet according to a document obtained by NBC News, Mr. DeGiorgio  
19 signed off on a change to the ignition switches supplied by Delphi Mechatronics on April 26,  
20 2006. The reason given for the change on the document was "to increase torque force in the  
21 switch."

22           56.     In March 2010, Amy Kosilla died in an accident after the air bags in her  
23 Chevrolet Cobalt failed to deploy. "We sent the paperwork for the car to them and they said  
24 there's nothing to this," said Neil Kosilla. "They said we had nothing."

25           57.     2011: GM launched a new investigation into 2005 – 2007 Chevrolet Cobalts and  
26 the 2007 Pontiac G5 to determine why the air bags did not deploy in crashes. According to  
27 GM, the results of the investigation were inconclusive.

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1 58. In one of those cases, the company settled a lawsuit brought by the family of  
2 twenty-five-year-old Hasaya Chansuthus, who crashed her 2006 Chevrolet Cobalt in  
3 Murfreesboro, Tennessee. After first resisting, the Company negotiated a deal even though  
4 Ms. Chansuthus's blood-alcohol level was more than twice the legal limit. Data from the black  
5 box — which records vehicle systems information — showed that the key was in the accessory  
6 or off position, according to court documents, and the air bags did not deploy.

7 59. 2012: GM began to widen its investigation. However, once again GM closed the  
8 investigation without reaching a conclusion.

9 60. Also in 2012, GM identified four (4) crashes and four (4) corresponding fatalities  
10 (all involving 2004 Saturn Ions) along with six (6) other injuries from four (4) other crashes  
11 attributable to the Ignition Switch Defect.

12 61. 2013: Mary Barra is named as the new CEO of General Motors.

13 62. In June 2013, a deposition by a Chevrolet Cobalt program engineer says the  
14 Company made a "business decision not to fix this problem," raising questions of whether GM  
15 consciously decided to launch the Cobalt despite knowing of the Ignition Switch Defect.

16 63. In the fall of 2013, months after an eighth internal study on the Ignition Switch  
17 Defect had been issued, GM moved to cut off the flow of damaging depositions related to one  
18 accident by settling the Melton wrongful-death suit.

19 64. When Lance Cooper, a lawyer for the Melton family, deposed Victor Hakim, a  
20 senior manager at GM, Mr. Cooper read more than 80 customer complaints into the official  
21 record that were filed with GM beginning in 2005 about Chevrolet Cobalts that had  
22 unexpectedly stopped and stalled. On September 13, 2013, GM settled the case. Under the  
23 terms of the settlement, the details are confidential.

24 65. That same month, lawyers representing GM wrote to the lawyer in another  
25 wrongful-death case demanding that the lawsuit be withdrawn. The family of Allen Ray Floyd  
26 had sued GM after Mr. Floyd lost control of a 2006 Chevrolet Cobalt in daylight near Loris,  
27 South Carolina. Two weeks earlier, his sister had lost control of the same vehicle on the same  
28 road; she had it towed. The Company contended the suit was "frivolous" because the accident

1 occurred in July 3, 2009, a week before the Company's bankruptcy agreement took effect,  
2 which meant GM was not liable for damages.

3 66. 2014: In January 2014, a GM committee approved a recall of some of the  
4 Defective Vehicles.

5 67. On January 31, 2014, Ms. Barra learned of the Ignition Switch Defect, according  
6 to GM.

7 68. On February 6, 2014, GM issued its 10-K to the Securities and Exchange  
8 Commission, which stated in part: "The costs and effect on our reputation of product recalls  
9 could materially adversely affect our business. From time to time we recall our products to  
10 address performance, compliance or safety-related issues. The costs we incur in connection  
11 with these recalls typically include the cost of the part being replaced and labor to remove and  
12 replace the defective part. In addition product recalls can harm our reputation and cause us to  
13 lose customers, particularly if those recalls cause consumers to question the safety or  
14 reliability of our products. Any costs incurred or lost sales caused by future product recalls  
15 could materially adversely affect our business. Conversely not issuing a recall or not issuing a  
16 recall on a timely basis can harm our reputation and cause us to lose customers for the same  
17 reasons as expressed above."

18 69. The February 6, 2014 10-K for GM also included the following statements:

19 a. "In the U.S. if a vehicle or vehicle equipment does not comply with a safety  
20 standard or if a vehicle defect creates an unreasonable safety risk the manufacturer is  
21 required to notify owners and provide a remedy."

22 b. "We are committed to leadership in vehicle design, quality, reliability, telematics  
23 and infotainment and safety..."

24 70. On February 7, 2014, GM notified NHTSA "that it determined that a defect,  
25 which relates to motor vehicle safety, exists in 619,122 cars."

26 71. On February 13, 2014, GM recalled 780,000 compact cars, including Chevrolet  
27 Cobalts, Pontiac G5s, and Pontiac Pursuits (Canada only) from 2005-2007 models.

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1 72. On February 25, 2014, GM expanded its recall to include Saturn Ions and three  
2 other vehicles, totaling 1.6 million vehicles worldwide.

3 73. On March 5, 2014, NHTSA demanded that GM turn over documents that related  
4 to ignition switch problems.

5 74. On March 10, 2014, a House subcommittee announced it will hold a hearing,  
6 eventually set for April 1, 2014. The Justice Department also announced it was conducting a  
7 criminal probe. Also, GM hired two law firms to investigate into the recall, with Anton "Tony"  
8 Valukas, who investigated Lehman Brothers after the firm's 2008 Collapse, leading the internal  
9 probe.

10 75. On March 18, 2014, Ms. Barra issued an apology on behalf of GM and appointed  
11 a new global safety chief.

12 76. On March 28, 2014, GM expanded the small car recall to include 971,000  
13 vehicles from the 2008-2011 model years, which may have had the defective switches installed  
14 as replacement parts. To date, GM has recalled 2.6 million vehicles.

15 77. On April 1-2, 2014, Ms. Barra and NHTSA acting chief David Friedman testified  
16 before the House Energy and Commerce Committee's Subcommittee on Oversight and  
17 Investigations.

18 78. On April 7, 2014, GM expects replacement switches to be available at  
19 dealerships. The Company said the repairs could take until October.

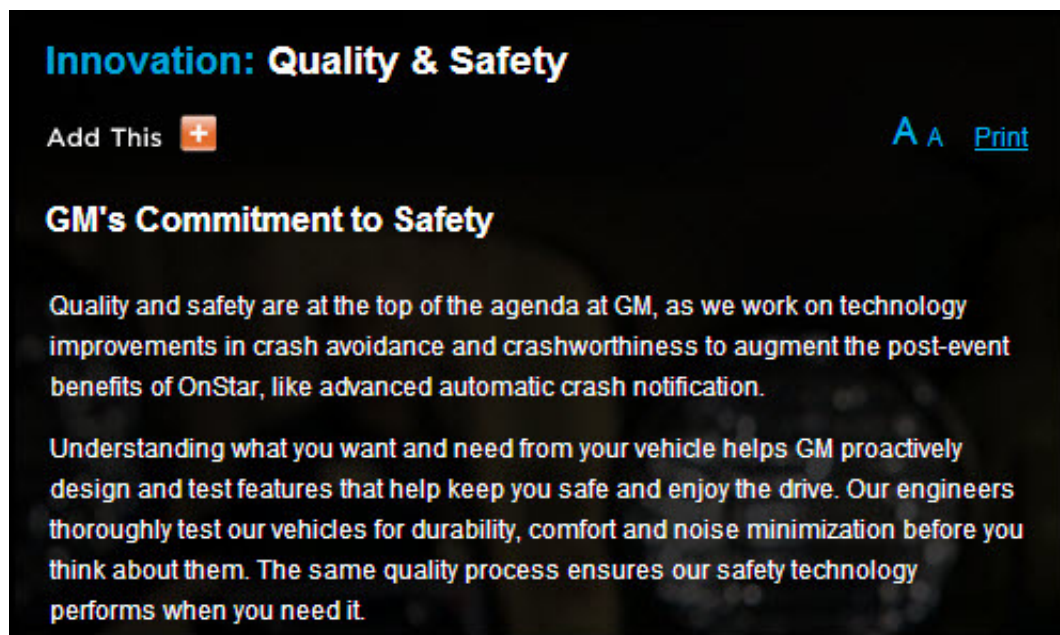
20 **D. GM'S "COMMITMENT TO SAFETY"**

21 79. GM claims that "[s]afety will always be a priority at GM. We continue to  
22 emphasize our safety-first culture in our facilities, and as we grow our business in new  
23 markets. Our safety philosophy is at the heart of the development of each vehicle. In addition  
24 to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our  
25 customers." GM violated this principle by jeopardizing the lives and safety of millions of  
26 Americans when it sold defective automobiles to American consumers for many years.

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1 80. Despite choosing corporate profits over safety, GM repeatedly touted safety as a  
2 huge priority to the Company as stated on their website below:



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14 **E. OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE HEARING ON**  
15 **APRIL 1, 2014**

16 81. General Motors Chief Executive Officer Mary Barra went before the Oversight and  
17 Investigations Subcommittee on April 1, 2014 and called GM's slow response to at least 13  
18 deaths linked to faulty ignition switches "unacceptable," but was unable to give U.S.  
19 lawmakers any answers as to what went wrong based on GM's internal investigation. GM  
20 management was slammed at the hearing when members of Congress claimed that people  
21 died because GM failed to fix what amounted to a 57-cent problem. Rep. Diana DeGette, D-  
22 Colo, said, "We know GM made a series of terrible decisions, and we know that this tragedy  
23 has exposed significant gaps in federal law that allowed them to do so."

24 82. GM first learned of the problem with its ignition switches on Chevrolet Cobalts,  
25 Saturn Ions, and other models in 2001, according to documents, but no action was taken until  
26 February 2014. Lawmakers inquired how GM could have missed or ignored so many red flags  
27 that faulty ignition switches could unexpectedly turn off engines during operation and leave  
28 airbags, power steering, and power brakes inoperable. Ms. Barra could not give a clear and



1 concise answer and could only say that GM was now doing a better job of overseeing the  
2 quality of its products.

3 83. David Friedman on behalf of The National Highway Traffic Safety Administration  
4 ("NHTSA") also went before the House Committee on Energy and Commerce Subcommittee on  
5 Oversight and Investigations. Mr. Friedman said that NHTSA is pursuing an investigation of  
6 whether GM met its timeliness responsibilities to report and address the defect under Federal  
7 law - an investigation that will end with holding GM accountable if it failed in those  
8 responsibilities. According to Mr. Friedman's statement, "NHTSA is working to ensure that GM  
9 has accounted for the full scope of vehicles that may be covered by the recall, is ensuring that  
10 consumers receive the needed remedy as soon as possible, and is providing consumers  
11 information and resources essential to keep them safe until the vehicles can be fixed."

12 84. GM first provided NHTSA with a chronology of events on February 24, 2014. The  
13 information in GM's chronology raised serious questions as to the timeliness of GM's recall. As  
14 a result, NHTSA opened its current investigation into GM's timeliness on February 26, 2014.  
15 On March 4, 2014, NHTSA issued a special order seeking documents and answers, submitted  
16 under oath, to questions relevant about how quickly GM acted on information about the defect.

17 85. GM and NHTSA opted multiple times not to open a formal investigation or  
18 declare a recall to address the faulty ignition switch. Mr. Friedman was asked why NHTSA  
19 officials in 2007 overruled an agency employee who said a formal defect investigation of the  
20 switches should be started. Mr. Friedman responded that air-bag failures discovered after  
21 several fatal accidents involving Chevrolet Cobalts did not necessarily indicate a defect because  
22 the devices were designed not to deploy in certain situations. Mr. Friedman said, "We need a  
23 better understanding between the vehicle's power and air bags going off... This connection is  
24 clearly something that has raised a lot of questions for us."

25 86. Playing the blame game, Mr. Friedman said that NHTSA would have acted  
26 decisively if GM had provided them with some of the facts that are now just coming out. "If  
27 GM did not follow the law in getting information to us quickly, we're going to hold them  
28 accountable," said Mr. Friedman.

1 87. GM had plenty of information to justify notifying the NHTSA earlier. House  
2 investigators said in a memo that consumers complained to GM dealers 133 times about cars  
3 unexpectedly stalling or turning off when they went over bumps or nudged the ignition key.  
4 GM technicians linked many of those customer complaints to faulty ignition switches, at a time  
5 the Company was denying a defect existed, according to the memo, which was based on an  
6 analysis of GM's warranty-claims database. GM still has not reported most of those cases to  
7 regulators.

8 88. GM's Board of Directors failed its essential purpose. The Board has a Public  
9 Policy Committee. The principal purpose of GM's Public Policy Committee is to provide  
10 oversight and guidance to management on, among other things, "business responsibilities of  
11 the Company." The Public Policy Committee's "primary responsibility is to review and provide  
12 counsel on issues that significantly affect the Company's corporate reputation," including  
13 "vehicle safety, manufacturing safety, and corporate social responsibility." By failing to insist  
14 on safety as a priority, GM allowed a culture of cost savings over safety to control the  
15 operations of the Company.

16 **F. GM'S POSITION ON THE DEFECTIVE VEHICLES CHANGES OVER TIME**

17 89. Immediately prior to the April 1, 2014 hearing, House investigators released an  
18 internal GM document (dated April 26, 2006) that showed a GM engineer approved a critical  
19 change to a faulty ignition switch that had been linked to thirteen (13) deaths.

20 90. In April 2013, Ray DeGiorgio, the chief engineer on the Chevrolet Cobalt, was  
21 deposed in a case involving a Georgia woman who was killed in a Chevrolet Cobalt in 2009. Mr.  
22 DeGiorgio was asked about the differences between the original switch and the replacement  
23 switch. Mr. DeGiorgio testified that he saw the differences but could not explain why the part  
24 had been changed. Mr. DeGiorgio also testified he had not approved the part change. But,  
25 according to the April 26, 2006 internal GM document, Mr. DeGiorgio did indeed sign off on the  
26 change. The reason given for the change on the document was "to increase torque force in the  
27 switch."

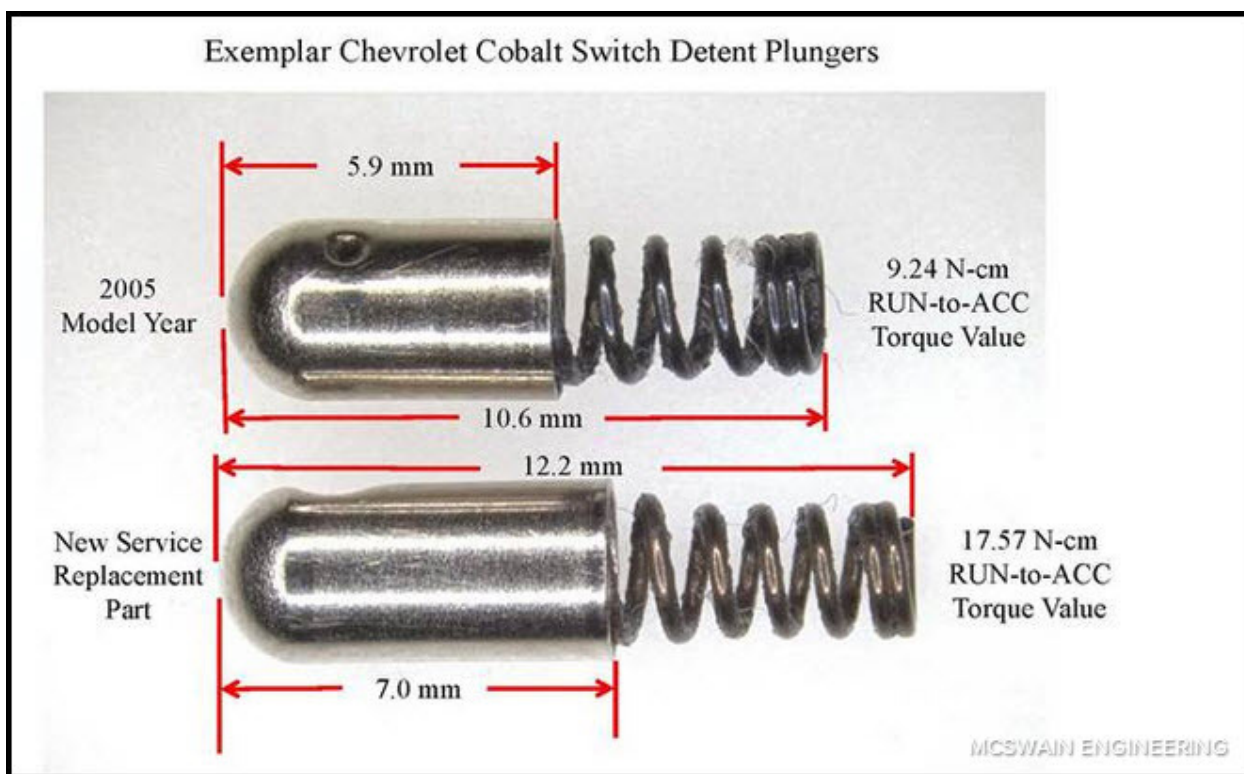
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1 Attorney: "So if such a change was made, it was made without your knowledge and  
2 authorization?"

3 DeGiorgio: "That is correct"

4 Later in the deposition, DeGiorgio said, "I can certainly tell you, I was not aware of this  
5 change."

6 91. According to House investigators, documents show GM altered the design of the  
7 ignition switches, but the alteration was done without either notifying federal regulators or car  
8 owners or changing the part number. The change apparently occurred in 2006 and increased  
9 the size of the detent plunger and spring, a pair of parts that hold the ignition key in position.



92. House committee members said the redesigned switch still did not meet GM's  
minimum specifications, citing testing done at the time by the supplier, Delphi Automotive.  
This means the switches installed in 2008-2011 model year vehicles were still defective which  
contradicted GM's statements that only switches produced before the 2006 redesign were  
faulty and potentially linking the defect to deaths.

1 93. On March 28, 2014, GM recalled the 2008-2011 vehicles, but said the recall was  
2 done only to ensure that defective ignition switches were not installed as replacement parts  
3 during their repair work. GM said that about 5,000 defective switches had been used for  
4 repairs in those vehicles.

5 94. However, on March 27, 2014, members of Congress on the House Energy and  
6 Commerce Committee met with Delphi officials and said there was more to the story than what  
7 GM was disclosing. A March 31, 2014 letter sent to GM signed by Reps. Henry Waxman, Diana  
8 DeGette, and Jan Schakowsky stated: "Delphi confirmed that these testing results mean that  
9 the ignition switches currently in use in 2008-2011 vehicles do not meet GM performance  
10 specifications."

11 95. In February 2014, GM disclosed to federal regulators that it knew of problems  
12 with its ignition switches as early as 2001. GM told NHTSA that a design engineer responsible  
13 for the Cobalt's ignition switch "signed a document approving changes to the ignition switches  
14 proposed by the supplier, Delphi Mechatronics."

15 96. A prepared chronology by GM wrote: "The approved changes included, among  
16 other things, the use of a new detent plunger and spring that increased torque force in the  
17 ignition switch... This change to the ignition switch was not reflected in a corresponding change  
18 in the part number for the ignition switch. GM believes that the supplier began providing the  
19 re-designed ignition switch to GM at some point during the 2007 model year."

20 97. Hours before the April 1, 2014 hearing, Congressman Henry Waxman, D.  
21 California, said his staff had counted 133 cases between June 2003 and June 2012 when  
22 consumers told dealers that their cars were shutting off when they went over bumps or  
23 brushed against the ignition. These 133 cases are:

<u>MODEL</u>	<u>MODEL YEAR</u>	<u>VEHICLE MILES</u>	<u>COMPLAINT DATE</u>
<b>ION</b>	2003	3,474	6/6/2003
<b>ION</b>	2003	9,300	7/1/2003

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<b>MODEL</b>	<b>MODEL YEAR</b>	<b>VEHICLE MILES</b>	<b>COMPLAINT DATE</b>
<b>ION</b>	2003	10,027	7/14/2003
<b>ION</b>	2003	10,639	7/21/2003
<b>ION</b>	2003	10,639	7/21/2003
<b>ION</b>	2003	7,807	3/15/2004
<b>ION</b>	2003	18,568	3/15/2004
<b>ION</b>	2003	16,108	4/8/2004
<b>ION</b>	2003	16,192	4/12/2004
<b>ION</b>	2003	9,554	4/22/2004
<b>ION</b>	2003	15,031	5/1/2004
<b>ION</b>	2003	17,222	6/21/2004
<b>ION</b>	2004	18,209	6/24/2004
<b>ION</b>	2004	138	9/21/2004
<b>ION</b>	2004	6,583	3/1/2005
<b>ION</b>	2004	12,883	3/17/2005
<b>ION</b>	2004	8,182	4/20/2005
<b>ION</b>	2004	10,387	5/7/2005
<b>ION</b>	2004	7,945	6/29/2005
<b>ION</b>	2005	16,767	7/18/2005
<b>ION</b>	2004	19,963	7/22/2005
<b>ION</b>	2004	13,743	8/18/2005
<b>ION</b>	2004	31,456	8/25/2005
<b>ION</b>	2006	2,470	9/19/2005
<b>HHR</b>	2006	445	10/24/2005

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<b>MODEL</b>	<b>MODEL YEAR</b>	<b>VEHICLE MILES</b>	<b>COMPLAINT DATE</b>
<b>ION</b>	2004	17,185	12/5/2005
<b>ION</b>	2004	13,716	12/13/2005
<b>ION</b>	2005	12,420	1/9/2006
<b>ION</b>	2004	32,688	1/10/2006
<b>ION</b>	2006	10,221	1/27/2006
<b>ION</b>	2006	3,468	2/23/2006
<b>ION</b>	2005	7,042	6/14/2006
<b>ION</b>	2005	17,375	7/11/2006
<b>ION</b>	2005	17,375	7/11/2006
<b>ION</b>	2006	9,057	7/25/2006
<b>ION</b>	2003	53,753	7/26/2006
<b>ION</b>	2005	13,929	7/29/2006
<b>HHR</b>	2006	13,464	8/3/2006
<b>ION</b>	2006	9,112	8/7/2006
<b>ION</b>	2004	36,911	10/16/2006
<b>ION</b>	2005	25,505	11/2/2006
<b>ION</b>	2004	12,850	11/29/2006
<b>ION</b>	2004	12,850	11/29/2006
<b>ION</b>	2006	30,439	1/16/2007
<b>Cobalt</b>	2005	15,123	3/5/2007
<b>ION</b>	2004	34,084	4/9/2007
<b>HHR</b>	2007	2,143	4/30/2007
<b>Cobalt</b>	2005	32,096	5/2/2007

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<b>MODEL</b>	<b>MODEL YEAR</b>	<b>VEHICLE MILES</b>	<b>COMPLAINT DATE</b>
<b>Cobalt</b>	2006	17,214	5/7/2007
<b>ION</b>	2006	26,819	5/19/2007
<b>ION</b>	2006	22,937	5/21/2007
<b>ION</b>	2006	15,791	5/30/2007
<b>ION</b>	2006	17,025	6/7/2007
<b>Solstice</b>	2006	9,749	6/20/2007
<b>ION</b>	2006	31,500	7/2/2007
<b>HHR</b>	2006	25,940	7/19/2007
<b>ION</b>	2005	17,303	8/2/2007
<b>ION</b>	2006	24,741	8/2/2007
<b>ION</b>	2006	24,741	8/2/2007
<b>Cobalt</b>	2005	29,551	8/6/2007
<b>ION</b>	2006	11,161	8/6/2007
<b>HHR</b>	2006	35,804	8/7/2007
<b>ION</b>	2006	25,486	8/10/2007
<b>ION</b>	2005	28,000	8/11/2007
<b>ION</b>	2004	21,814	8/16/2007
<b>ION</b>	2004	21,814	8/16/2007
<b>ION</b>	2006	8,638	8/21/2007
<b>HHR</b>	2007	13,982	8/28/2007
<b>ION</b>	2006	30,221	8/29/2007
<b>ION</b>	2007	12,257	9/10/2007
<b>Cobalt</b>	2006	18,460	9/12/2007

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<b>MODEL</b>	<b>MODEL YEAR</b>	<b>VEHICLE MILES</b>	<b>COMPLAINT DATE</b>
<b>ION</b>	2006	12,421	9/20/2007
<b>HHR</b>	2006	23,241	10/9/2007
<b>ION</b>	2007	7,884	10/12/2007
<b>ION</b>	2006	33,477	10/15/2007
<b>HHR</b>	2006	29,383	10/23/2007
<b>HHR</b>	2006	40,859	10/24/2007
<b>HHR</b>	2006	49,914	10/30/2007
<b>ION</b>	2004	57,642	10/30/2007
<b>ION</b>	2005	31,006	11/7/2007
<b>HHR</b>	2006	29,358	12/12/2007
<b>Cobalt</b>	2006	23,058	1/3/2008
<b>ION</b>	2006	23,883	1/17/2008
<b>HHR</b>	2006	30,808	1/31/2008
<b>ION</b>	2006	29,725	2/8/2008
<b>ION</b>	2007	15,247	2/13/2008
<b>ION</b>	2007	15,247	2/13/2008
<b>ION</b>	2006	20,513	2/25/2008
<b>HHR</b>	2006	24,811	2/28/2008
<b>ION</b>	2007	26,043	3/6/2008
<b>ION</b>	2007	7,538	3/10/2008
<b>HHR</b>	2006	24,955	3/14/2008
<b>ION</b>	2006	28,568	3/14/2008
<b>ION</b>	2007	11,594	3/17/2008



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<b>MODEL</b>	<b>MODEL YEAR</b>	<b>VEHICLE MILES</b>	<b>COMPLAINT DATE</b>
<b>ION</b>	2005	21,919	3/24/2008
<b>ION</b>	2006	21,942	5/21/2008
<b>ION</b>	2006	21,942	5/21/2008
<b>ION</b>	2006	21,942	5/21/2008
<b>HHR</b>	2006	27,363	6/19/2008
<b>ION</b>	2006	29,177	6/25/2008
<b>Cobalt</b>	2006	32,014	6/28/2008
<b>ION</b>	2006	23,889	7/9/2008
<b>Cobalt</b>	2005	62,512	7/22/2008
<b>Cobalt</b>	2006	49,509	8/22/2008
<b>Cobalt</b>	2006	49,509	8/26/2008
<b>Cobalt</b>	2007	24,357	9/2/2008
<b>ION</b>	2006	32,805	11/29/2008
<b>ION</b>	2007	13,696	12/2/2008
<b>ION</b>	2007	28,760	12/5/2008
<b>ION</b>	2007	35,611	12/5/2008
<b>Cobalt</b>	2006	21,310	12/18/2008
<b>ION</b>	2007	19,342	12/29/2008
<b>G5</b>	2007	27,270	1/5/2009
<b>Cobalt</b>	2006	35,514	6/1/2009
<b>ION</b>	2006	49,934	7/21/2009
<b>HHR</b>	2007	23,203	8/24/2009
<b>ION</b>	2003	36,770	8/24/2009

<u>MODEL</u>	<u>MODEL YEAR</u>	<u>VEHICLE MILES</u>	<u>COMPLAINT DATE</u>
<b>Cobalt</b>	2006	26,040	8/28/2009
<b>Cobalt</b>	2007	31,328	12/18/2009
<b>HHR</b>	2007	32,629	2/15/2010
<b>G5</b>	2007	36,226	7/28/2010
<b>Cobalt</b>	2006	49,186	8/5/2010
<b>HHR</b>	2006	54,499	8/6/2010
<b>HHR</b>	2006	35,939	9/2/2010
<b>Cobalt</b>	2006	47,432	9/8/2010
<b>Cobalt</b>	2007	24,443	9/29/2010
<b>ION</b>	2006	40,820	11/4/2010
<b>Cobalt</b>	2005	70,380	6/15/2011
<b>HHR</b>	2006	51,404	9/12/2011
<b>Cobalt</b>	2007	58,321	9/13/2011
<b>HHR</b>	2006	39,692	9/28/2011
<b>Cobalt</b>	2006	48,568	6/25/2012

98. This data was obtained from the General Motors' warranty database which is not reported to NHTSA. As pointed out by the House Committee staff during the April 1, 2014 hearing, the warranty database "can provide an early warning of vehicle defects." The staff went through 150,000 records to find the claims relating to the ignition switch. The staff quoted from the report's comments that read: "When bumping ignition switch area vehicle will shut off"; and "vehicle stalls out when hitting bump/pothole in road, noticed at 50 MPH."

**G. GM IN 2002 APPROVED AN IGNITION SWITCH KNOWING IT DID NOT MEET COMPANY SPECIFICATIONS**

99. On March 27, 2014, the House Committee staff had a two-and-a-half-hour briefing on issues related to the faulty ignition switch from Delphi Automotive key staff

1 members. Delphi officials informed the Committee of important new information regarding the  
2 process by which production of the switch was approved and accepted by GM. Delphi  
3 explained the general process, known as the Production Part Approval Process (PPAP), used  
4 when the supplier works with large customers like GM. GM would provide a design and set of  
5 specifications and Delphi would then build the product and test it against specifications and  
6 present the results of the testing to GM for final production approval.

7 100. Delphi representatives told the Committee that the ignition switch was designed,  
8 built, and then approved in February 2002 by GM via the PPAP process. Delphi was unable to  
9 provide full documentation associated with the PPAP process but did have documentation  
10 regarding the torque performance testing results conducted as part of the PPAP. Delphi  
11 officials stated that it was "well documented" in 2002 that the ignition switch did not meet the  
12 required minimum torque specifications. The testing results were far below GM's  
13 specifications. There were 12 torque performance tests conducted on the ignition switch at the  
14 time, and most tests showed a torque of between 4 and 10 N-cm, and that only two of the 12  
15 tests showed the ignition switch surpassing 10 N-cm. GM's specifications called for torque  
16 levels between 15 and 25 N-cm, significantly above the results of the performance tests.  
17 Delphi said that despite these results, GM officials still approved the ignitions switch for  
18 production and that this ignition switch was used in the recalled vehicles in model years 2003-  
19 2007.

20 **H. THE MODIFIED SWITCHES USED IN 2007-2011 VEHICLES WERE ALSO**  
21 **APPROVED BY GM DESPITE NOT MEETING COMPANY SPECIFICATIONS**

22 101. Delphi representatives also told Committee members about the redesign of the  
23 ignition switch that was produced beginning in April 2006. According to Delphi officials, GM  
24 began discussions with Delphi about needing to modify and re-test the ignition switch in mid-  
25 2005. Delphi agreed to modify the design of the ignition switch and when presented to GM,  
26 got approval on a design with a longer spring, and had Delphi produce prototypes and conduct  
27 testing as part of a new PPAP that was approved by GM on April 26, 2006. This document was  
28 signed by lead design engineer for GM, Ray DeGiorgio. Delphi again could not provide

1 complete documentation for the 2006 PPAP process but did having testing results available.  
2 According to Delphi, most torque test results for the 2006 ignition switches were in the 10 to  
3 15 N-cm range, higher than the older models, but still not meeting GM's documented  
4 specifications. These results meant that the ignition switches used in 2008-2011 vehicles do  
5 not meet GM's performance specifications.

6 102. In response to this revelation, GM countered that it was "unaware of any reports  
7 of fatalities with this group of vehicles where a frontal impact occurred, the front air bags did  
8 not deploy, and the ignition is in the 'accessory' or 'off' position." An analysis of NHTSA's Early  
9 Warning Report data shows that there were fourteen (14) fatal crashes in the recalled 2008-  
10 2011 vehicles involving a potential problem with an airbag, steering, electrical, or unknown  
11 component. The Center for Auto Safety also identified a similar set of crashes in earlier GM  
12 vehicles as those that "could indicated the ignition airbag defect."

13 103. GM and GM engineers have reportedly stressed the importance of meeting the  
14 torque specifications on 15-25 N-cm. In a deposition for a Georgia case involving a defective  
15 ignition switch in a 2005 Chevrolet Cobalt, Gary Altman, the GM program engineer for the  
16 Chevrolet Cobalt, was asked:

17 Q: *"And the vehicle never should have been sold if it didn't meet GM's minimum*  
18 *torque performance requirements, should it? ..."*

19 Altman: *"That's correct."*

20 Q; *"And the reason is because that could be dangerous under certain situations*  
21 *because the key can move from run to accessory? ..."*

22 Altman: *"Yes."*

23 In the same case, GM engineer Ray DeGiorgio was asked,

24 Q: *"Why do you have a minimum torque requirement from run to accessory?"*

25 DeGiorgio: *"It's a design feature that is required. You don't want anything flopping*  
26 *around."*

27 Q: *"...the intent was also to make sure that when people were using the vehicle*  
28 *under ordinary driving conditions, that if the key was in the run position, it*

1                   *wouldn't just move to the accessory position?"*

2           DeGiorgio:   *"That is correct."*

3           104. Brian Stouffer, another GM engineer also indicated in a deposition that the  
4 torque values of the ignition switches on the later model vehicles were not significantly  
5 different from the torque values on the older models. Stouffer testified: "The values are not  
6 substantially higher on the '08s and '09s... there's a slight trend upwards, but '08s and '09s are  
7 not drastically different. The highest was only – we were never higher than 20 newton  
8 centimeters. We never had one exceed that... there is a slight trend upward [in torque values]  
9 from '07, but there's definitely not separation. They overlap. The ranges [of ignition torque in  
10 pre-2007 and post 2007 vehicles] overlap." If what Mr. Stouffer said is true, there could be  
11 significant risk from the ignition switches in the 2008-2011 vehicles.

12           105. Documents provided to the Congressional Committee confirm that top GM  
13 officials knew of the out-of-spec ignition switches for 2008-2011 vehicles for at least several  
14 months before announcing the recall. A presentation for GM's December 17, 2013 high-level  
15 Executive Field Action Decision Committee meeting showed that torque performance  
16 measurements for five of twelve 2008-2010 model year vehicles ignition switches were below  
17 the minimum GM required specifications. GM again acknowledged the importance of this  
18 specification in the March 28, 2014 recall notice, which read:

19                   *"If the torque performance is not to specification, and the key ring is carrying*  
20                   *added weight of the vehicle goes off road or experiences some other jarring*  
21                   *event, the ignition switch may inadvertently be moved out of the 'run'*  
22                   *position."*

23           **I. GM VIOLATED THE TREAD ACT BY FAILING TO NOTIFY THE NATIONAL**  
24           **HIGHWAY TRAFFIC SAFETY ADMINISTRATION OF THE KNOWN DEFECTS**

25           106. Under the Motor Vehicle Safety Act (the "Safety Act"), 49 U.S.C. §§ 30101, et  
26 seq., and the Transportation Recall Enhancement, Accountability, and Documentation Act (the  
27 "Tread Act"), 49 U.S.C. § 30170, GM is required to recall and repair motor vehicle defects  
28 related to safety.

1 107. If a manufacturer learns that a vehicle contains a defect and that defect is  
2 related to motor vehicle safety, the manufacturer must inform the Secretary of Transportation.  
3 49 U.S.C. § 30118(c)(1) & (2).

4 108. The Safety Act requires that manufacturers inform NHTSA within five (5)  
5 working days of discovering "a defect in a vehicle or item of equipment has been determined to  
6 be safety related, or a noncompliance with a motor vehicle safety standard has been  
7 determined to exist." The report to NHTSA must immediately include the following information:

- 8 a. The manufacturer's name;
- 9 b. The identification of the vehicles or equipment containing the defect, including:
- 10 • The make, line, model year, and years of manufacturing;
  - 11 • A description of the basis for the determination of the recall population;
  - 12 • How those vehicles differ from similar vehicles that the manufacturer  
13 excluded from the recall; and
  - 14 • A description of the defect.

15 109. The manufacturer must also inform NHTSA, as soon as possible, regarding:

- 16 a. The total number of vehicles or equipment potentially containing the defect;
- 17 b. The percentage of vehicles estimated to contain the defect;
- 18 c. A chronology of all principal events that were the basis for the determination  
19 that the defect related to motor vehicle safety, including a summary of all warranty claims,  
20 field or service reports, and other information, with their dates of receipt; and
- 21 d. A description of the plan to remedy the defect.

22 110. If the Secretary of Transportation determines that the vehicle is defective, it will  
23 require the manufacturer to notify the owners, purchasers, and dealers of the defect and  
24 require it to remedy the defect or noncompliance. 49 U.S.C. § 30118(b)(2)(A) & (B).

25 111. Under the Tread Act, any manufacturer who violates 29 U.S.C. § 30166 must  
26 pay a civil penalty to the U.S. Government at \$7,000 per violation per day with a maximum  
27 penalty "for a related series of daily violations [of] \$17,350,000." 49 C.F.R. § 578.6(c).

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1 112. As described in detail above, since at least 2001, GM has known about the  
2 defective ignition switches in its vehicles. Despite being aware of the ignition switch defects,  
3 GM waited until February 7, 2014 before finally notifying NHTSA that it manufactured and sold  
4 vehicles with ignition switch defects that could disengage the vehicle's power and airbags.

5 113. Notwithstanding its duty to do so, Defendant has known for many years, but has  
6 not disclosed to NHTSA or the public, how to fix the defects. GM failed to inform NHTSA about  
7 known defects in the Defective Vehicles. As a result, the public, including Plaintiff and the  
8 Class, received no notice of the ignition switch defects until February 2014.

9 **VI. SUCCESSOR LIABILITY**

10 114. From the date of its formation, GM expressly assumed certain obligations,  
11 including those obligations under the Tread Act, and is liable for its nondisclosure and  
12 concealment of the Ignition Switch Defect from the date of its formation to the present.

13 115. GM also has successor liability for GM Corporation's acts and omissions in the  
14 marketing and sale of the Defective Vehicles because it has continued the business enterprise  
15 of GM Corporation.

16 116. A significant number of GM Corporation employees remained employed at GM,  
17 including managers, directors, and/or members of the Board, demonstrating a continuity of  
18 knowledge. For example, GM's current CEO, Mary Barra, was employed by GM Corporation in  
19 1980. In February 2008, Ms. Barra was appointed Vice President of Global Manufacturing  
20 Engineering - a position in which she knew or should have known of the Ignition Switch  
21 Defect. Victor Hakim, GM's Rule 30(b)(6) deponent concerning the Ignition Switch Defect,  
22 began at GM Corporation in 1971. Mr. Hakim is now a Senior Manager/Consultant in GM's  
23 Field Performance Assessment Department.

24 117. GM has continued to design, manufacture, promote, market, and sell the same  
25 products as GM Corporation, including the Defective Vehicles.

26 118. GM acquired real property, contracts, books, records, goodwill, and other  
27 intangible personal property of GM Corporation.

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1 **VII. TOLLING OF THE STATUTE OF LIMITATIONS**

2 119. GM is estopped from relying on any statutes of limitation because of its  
3 fraudulent concealment and misrepresentations of the true facts concerning the Ignition Switch  
4 Defect in the Defective Vehicles. GM was, at all relevant times, aware of the nature and  
5 existence of the defects in the subject vehicles, but at all times continued to design,  
6 manufacture, certify, market, advertise, distribute, and sell the Defective Vehicles without  
7 revealing the true facts concerning the defects, in order to sell cars, to avoid bad publicity, and  
8 to avoid the expense of recalls. The true facts about the Defective Vehicles continue to be  
9 concealed from the public, including Plaintiff.

10 120. All applicable statutes of limitation have been tolled by GM's knowing and active  
11 fraudulent concealment and denial of the facts alleged herein. Plaintiff had no knowledge of,  
12 nor any reason to suspect, GM's concealment of the Ignition Switch Defect in the Defective  
13 Vehicles. Plaintiff had no knowledge of facts sufficient to place Plaintiff on inquiry notice of the  
14 claims set forth in this Complaint, until shortly before this Complaint was filed.

15 121. Nor could Plaintiff and the members of the Class have discovered the violations  
16 through the exercise of reasonable diligence earlier than that time because Defendant  
17 concealed the nature of its unlawful conduct and acts and fraudulently concealed its activities  
18 through various other means and methods designed to avoid detection.

19 122. Under the Tread Act, GM is required to inform NHTSA within five (5) working  
20 days of discovering "a defect in a vehicle or item of equipment has been determined to be  
21 safety related, or a noncompliance with a motor vehicle safety standard has been determined  
22 to exist." In addition, GM is required to recall and repair motor vehicle defects related to  
23 safety.

24 123. As described in detail above, since at least 2001, GM has known about the  
25 defective ignition switches in its vehicles. Despite being aware of the Ignition Switch Defect,  
26 GM waited until February 7, 2014 before finally notifying NHTSA that it manufactured and sold  
27 vehicles with ignition switch defects that could disengage the vehicle's power and airbags.

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1 customer;

2 e. Failing to timely inform NHTSA and vehicle owners, purchasers, and dealers of  
3 the ignition switch defects and to timely recall the Defective Vehicles; and

4 f. Violating the other statutes and common law causes of action as alleged in this  
5 Complaint.

6 129. The business acts and practices of Defendant, as hereinabove described,  
7 constitute an unlawful business practice in violation of the Unfair Competition Law for the  
8 reasons set forth below, without limitation:

9 a. The acts and practices violate California Civil Code §§ 1709 and 1710 and are  
10 therefore unlawful;

11 b. The acts and practices violate California Civil Code § 1750, et seq., and are  
12 therefore unlawful; and

13 c. The acts and practices violate the Tread Act, 49 U.S.C. § 30101, et seq., and are  
14 therefore unlawful.

15 130. The business acts and practices of Defendant as herein described also constitute  
16 an unfair business practice in violation of the Unfair Competition Law in that such acts and  
17 practices are substantially injurious to consumers and offensive to established California public  
18 policy.

19 131. The business acts and practices of Defendant as herein described constitute a  
20 fraudulent business practice in violation of the Unfair Competition Law in that such acts and  
21 practices are likely to deceive California consumers as to their legal rights and obligations.

22 132. Defendant's conduct has further injured Plaintiff and the Class by impairing  
23 competition within the automotive vehicle markets, failing to disclose the defect to the NHTSA,  
24 and preventing Plaintiff and the Class from discovering that their vehicles were unsafe and  
25 unreliable and making fully informed decisions about whether or not to lease, purchase, and/or  
26 retain the Defective Vehicles and/or the price to be paid to lease and/or purchase the Defective  
27 Vehicles.

28 ///

1 133. Plaintiff and the Class have suffered harm as a proximate result of the wrongful  
2 conduct of Defendant alleged herein, and therefore bring this claim for restitution and  
3 disgorgement. Plaintiff and the Class have suffered injury in fact and have suffered an  
4 economic loss by, inter alia, (a) leasing and/or purchasing an inferior product whose nature  
5 and characteristics render it of a lesser value than represented, (b) incurring costs for  
6 diminished resale value of the products purchased, (c) leasing and/or purchasing a product  
7 that poses a danger to the health and safety of not only the purchaser but also other  
8 motorists, passengers, and pedestrians, (d) incurring increased costs to repair the products  
9 purchased, and (e) incurring costs for loss of use. Plaintiff has suffered injuries in fact and has  
10 lost money as a result of such unfair competition.

11 134. In leasing and/or purchasing the vehicles from Defendant, Plaintiff and the Class  
12 reasonably believed and/or depended on the material false and/or misleading information  
13 provided by Defendant with respect to the safety and quality of the vehicles manufactured and  
14 sold by Defendant. In other words, Defendant induced Plaintiff and the Class to purchase the  
15 Defective Vehicles through the acts and omissions alleged herein.

16 135. Unless restrained and enjoined, Defendant will continue in the acts and practices  
17 alleged above. Accordingly, the Court must issue an injunction restraining and enjoining  
18 Defendant from advertising, selling, or otherwise disseminating false and misleading  
19 information about its products or failing to disclose relevant information. Plaintiff and the Class  
20 further request an order restoring any money or property, real or personal, which may have  
21 been lost by means of Defendant's unfair and deceptive business practices.

22 136. In addition, pursuant to California Code of Civil Procedure Section 1021.5,  
23 Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees, costs, and expenses  
24 incurred in bringing this action.

25 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

26 **SECOND CAUSE OF ACTION**

27 **(False Advertising Act: Bus. & Prof. Code § 17500 et seq.)**

28 137. Plaintiff hereby incorporates by reference the above paragraphs, as though those

1 allegations were fully set out herein.

2 138. California Business and Professions Code § 17500, et seq., the False Advertising  
3 Act, prohibits any person, firm, corporation, or association, or any employee thereof, with the  
4 intent to dispose of real or personal property, from performing services or inducing the public  
5 to enter into any obligation relating to property or services, disseminating an untrue or  
6 misleading statement concerning such property or services which the defendant knew, or in  
7 the exercise of reasonable care should have known, was untrue or misleading. A court may  
8 order injunctive relief and restitution to affected members as remedies for any violations of  
9 California Business and Professions Code Section 17500 as part of the Unfair Competition Law.

10 139. At all times herein, Defendant has engaged in disseminating false and  
11 misleading communications which misrepresent the characteristics, nature, quality, and safety  
12 of the Defective Vehicles and have failed to disclose the true quality and defects of these  
13 products. Defendant's business practices include, without limitation:

14 a. Selling to Plaintiff and the Class vehicles which contain defects or design flaws  
15 which make them inherently more dangerous than other similar vehicles;

16 b. Failing to disclose to Plaintiff and the Class that the vehicles sold to such  
17 consumers contain a defect or design flaw which makes them inherently more dangerous than  
18 other similar vehicles;

19 c. Failing to remedy the defects or design flaws which made Defendant's vehicles  
20 inherently more dangerous than other similar vehicles;

21 d. Failing to design, manufacture, distribute, and sell a product which would  
22 perform in a safe manner when used in a reasonably foreseeable manner by a reasonable  
23 customer;

24 e. Failing to timely inform NHTSA and vehicle owners, purchasers, and dealers of  
25 the ignition switch defects and to timely recall the Defective Vehicles; and

26 f. Violating the other statutes and common law causes of action as alleged in this  
27 complaint.

28 ///

1           140. Defendant engaged in the advertising and the failure to disclose the defects and  
2 design flaws in its products herein alleged with the intent to induce Plaintiff and the Class to  
3 purchase Defendant's products.

4           141. Defendant caused to be made or disseminated throughout California and the  
5 United States, through advertising, marketing, and other publications, statements that are  
6 untrue or misleading, and which were known, or which by the exercise of reasonable care  
7 should have been known to Defendant, to be untrue or misleading to consumers and Plaintiff.  
8 Defendant's advertising was untrue or misleading and likely to deceive the public in that the  
9 true characteristics and nature of the vehicles sold by GM were not as advertised.

10           142. In purchasing the vehicles from Defendant, Plaintiff and the Class reasonably  
11 believed and/or depended on the material false and/or misleading information provided by  
12 Defendant with respect to the quality and safety of the vehicles being sold. In other words,  
13 Defendant induced Plaintiff and the Class to purchase GM automotive products through the  
14 acts and omissions alleged herein.

15           143. In making and disseminating the statements herein alleged, Defendant knew, or  
16 by the exercise of reasonable care should have known, that the statements were and are  
17 untrue or misleading and so acted in violation of California Business and Professions Code  
18 Section 17500. Moreover, Plaintiff and the Class were exposed to Defendant's advertising and  
19 its false and misleading statements and were affected by the advertising in that Plaintiff and  
20 the Class believed it to be true and/or relied on it when making purchasing decisions.

21           144. The business acts and practices of Defendant herein described also constitute an  
22 unfair business practice in violation of the Unfair Competition Law in that such acts and  
23 practices are substantially injurious to consumers and offensive to established California public  
24 policy.

25           145. In addition, the business acts and practices of Defendant as herein described  
26 constitute a fraudulent business practice in violation of the Unfair Competition Law in that such  
27 acts and practices are likely to deceive consumers as to their legal rights and obligations with  
28 respect to the purchase of vehicles from GM.

1 146. Plaintiff and the Class have suffered injury in fact and have suffered an economic  
2 loss by, inter alia, (a) leasing and/or purchasing an inferior product whose nature and  
3 characteristics render it of a lesser value than represented, (b) incurring costs for diminished  
4 resale value of the products purchased, (c) leasing and/or purchasing a product that poses a  
5 danger to the health and safety of not only the purchaser but also other motorists, passengers,  
6 and pedestrians, (d) incurring increased costs to repair the products purchased, and (e)  
7 incurring costs for loss of use. Accordingly, the Court must issue an injunction restraining and  
8 enjoining Defendant from sending or transmitting false and misleading advertising to  
9 individuals or entities concerning the purported safety and quality of vehicles from Defendant.  
10 Plaintiff and the Class further request an order restoring any money or property, real or  
11 personal, which may have been lost by means of Defendant's false advertising.

12 147. In addition, pursuant to California Code of Civil Procedure Section 1021.5,  
13 Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees, costs and expenses incurred  
14 in bringing this action.

15 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

16 **THIRD CAUSE OF ACTION**

17 **(Consumer Legal Remedy Act: Civil Code § 1750, et seq.)**

18 148. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
19 allegations were fully set out herein.

20 149. The Consumer Legal Remedies Act, California Civil Code § 1750, et seq.  
21 (hereinafter "CLRA"), was designed to protect consumers from unfair and deceptive business  
22 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices that  
23 are specifically prohibited in any transaction intended to result in the sale or lease of goods or  
24 services to a consumer.

25 150. Defendant is a "person" within the meaning of Civil Code §§ 1761(c) and 1770,  
26 and sells "goods" within the meaning of Civil Code §§ 1761(b) and 1770.

27 151. Plaintiff is a consumer within the meaning of Civil Code § 1761(d).

28 152. The subject vehicles constitute "goods" under California Civil Code § 1761(a).

1           153. The lease and/or purchase of vehicles by Plaintiff and the Class from Defendant  
2 constitutes a transaction within the meaning of Civil Code §§ 1761(e) and 1770.

3           154. California Civil Code § 1770(a) provides that “[t]he following unfair methods of  
4 competition and unfair or deceptive acts or practices undertaken by any person in a  
5 transaction intended to result or which results in the sale or lease of goods or services to any  
6 consumer are unlawful,” including:

7           a. In violation of § 1770(a)(2) of the CLRA, GM “misrepresent[ed] the source,  
8 sponsorship, approval, or certification of goods.”

9           b. In violation of § 1770(a)(5) of the CLRA, GM “represent[ed] that goods . . . have  
10 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do  
11 not have.”

12           c. In violation of § 1770(a)(7) of the CLRA, GM represented that goods are of a  
13 particular standard, quality, or grade when they are of another.

14           d. In violation of § 1770(a)(9) of the CLRA, GM advertised goods with the intent  
15 not to sell them as advertised.

16           e. In violation of § 1770(a)(14) of the CLRA, GM represented that the transaction  
17 was supplied in accordance with a previous representation when it was not.

18           155. By reason of the acts and practices alleged herein, Defendant has engaged in  
19 unfair methods of competition and unfair or deceptive acts or practices in a transaction  
20 intended to results or which results in the sale of goods to any consumer, in violation of, inter  
21 alia, Civil Code §§ 1770(a)(2), (5), (7), (9), and (14).

22           156. Defendant engaged in these unfair and/or deceptive acts and practices with the  
23 intent that they result, and which did result, in the sale and/or lease of the Defective Vehicles  
24 to Plaintiff and members of the Class.

25           157. In purchasing the vehicles from Defendant, Plaintiff and the Class reasonably  
26 believed and/or depended on the material false and/or misleading information provided by  
27 Defendant with respect to the safety and quality of the GM vehicles. In other words,  
28 Defendant induced Plaintiff and the Class to lease and/or purchase the vehicles through the

1 acts and omissions alleged herein.

2 158. In engaging in unfair or deceptive conduct in violation of the CLRA, Defendant  
3 actively concealed and failed to disclose material facts about the true characteristics and  
4 nature of the Defective Vehicles purchased by Plaintiff and the Class.

5 159. As a result of the unfair and deceptive acts and practices of Defendant herein  
6 described, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

7 160. Pursuant to California Civil Code §§ 1780 and 1781, Plaintiff and the Class  
8 hereby request certification of the Class, damages, injunctive relief, restitution, attorneys' fees,  
9 costs, and expenses pursuant to California Civil Code § 1780(d) and California Code of Civil  
10 Procedure § 1021.5.

11 161. As a direct and proximate result of Defendant's violations of law, Plaintiff and the  
12 Class have been injured. Pursuant to the provisions of California Civil Code § 1782, Plaintiff  
13 demands that within thirty (30) days from service of this Complaint, Defendant correct the  
14 deceptive practices described in this Complaint, pursuant to California Civil Code § 1770. This  
15 includes providing notice and full compensation to consumers who have purchased the affected  
16 vehicles from GM. If Defendant fails to do so, Plaintiff will amend this Complaint to seek  
17 damages pursuant to Civil Code § 1782.

18 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of Implied Warranty)**

21 162. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
22 allegations were fully set out herein.

23 163. Defendant impliedly warranted to persons purchasing its products that the  
24 products were what they were represented to be.

25 164. These implied warranties induced the community in general and Plaintiff and  
26 other Class members in particular to purchase the products from Defendant. These implied  
27 warranties were both directly and indirectly believed and relied upon by Plaintiff and Class  
28 members and induced them to choose Defendant's product. This reliance was justified by



1 Defendant's skill, expertise, and judgment in the design, manufacturing, testing, labeling,  
2 distribution, or sale of such products.

3 165. At the time of the sale, Defendant had knowledge of the purpose for which its  
4 products were purchased and impliedly warranted the same to be, in all respects, fit and  
5 proper for this purpose.

6 166. Defendant breached its aforesaid warranties in that the products were not fit for  
7 the purpose for which they were intended and used; rather Defendant sold to Plaintiff a  
8 product which was not fit for use. The defect in the products existed prior to the delivery of  
9 the products to Plaintiff and the Class.

10 167. Plaintiff and the Class have suffered injury in fact and have suffered an economic  
11 loss by, inter alia, (a) leasing and/or purchasing an inferior product whose nature and  
12 characteristics render it of a lesser value than represented, (b) incurring costs for diminished  
13 resale value of the products purchased, (c) leasing and/or purchasing a product that poses a  
14 danger to the health and safety of not only the purchaser but also other motorists, passengers,  
15 and pedestrians, (d) incurring increased costs to repair the products purchased, and (e)  
16 incurring costs for loss of use. Accordingly, the Court must issue an injunction restraining and  
17 enjoining Defendant from sending or transmitting false and misleading advertising to  
18 individuals or entities concerning the purported safety and quality of vehicles from Defendant.

19 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

20 **FIFTH CAUSE OF ACTION**

21 **(Breach of Express Warranty)**

22 168. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
23 allegations were fully set out herein.

24 169. Defendant expressly warranted to persons purchasing its products that they  
25 were what they were represented to be.

26 170. These express warranties induced the community, in general, and Plaintiff and  
27 members of the Class, in particular, to use and purchase Defendant's products. These express  
28 warranties were both directly and indirectly believed and relied upon by Plaintiff and the Class

1 and induced Plaintiff and the Class to choose Defendant's product.

2 171. Defendant breached its aforesaid warranties in that its products were not fit for  
3 the use and purpose expressly warranted by Defendant.

4 172. Plaintiff and the Class have suffered injury in fact and have suffered an economic  
5 loss by, inter alia, (a) leasing and/or purchasing an inferior product whose nature and  
6 characteristics render it of a lesser value than represented, (b) incurring costs for diminished  
7 resale value of the products purchased, (c) leasing and/or purchasing a product that poses a  
8 danger to the health and safety of not only the purchaser but also other motorists, passengers,  
9 and pedestrians, (d) incurring increased costs to repair the products purchased, and (e)  
10 incurring costs for loss of use. Accordingly, the Court must issue an injunction restraining and  
11 enjoining Defendant from sending or transmitting false and misleading advertising to  
12 individuals or entities concerning the purported safety and quality of vehicles from Defendant.

13 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

14 **SIXTH CAUSE OF ACTION**

15 **(Unjust Enrichment)**

16 173. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
17 allegations were fully set out herein.

18 174. As a result of its continuous and systematic misrepresentations and failure to  
19 disclose that the vehicles it had manufactured contained serious defects that affected the  
20 ignition switch of its vehicles, Defendant was able to charge a higher price for its vehicles,  
21 which did not match the item's value. Based on these practices, Defendant was unjustly  
22 enriched.

23 175. Defendant knew, or should have known, of the benefit it was receiving due to its  
24 misrepresentations and failure to disclose, and enjoyed the benefit of increased financial gains,  
25 to the detriment of Plaintiff and other Class members, who paid a higher price for a product  
26 with a lower value. It would be inequitable and unjust for Defendant to retain these unlawfully  
27 obtained profits.

28 ///

1 176. Plaintiff seeks an order establishing Defendant as constructive trustee of the  
2 profits unjustly obtained, plus interest.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

4 **SEVENTH CAUSE OF ACTION**

5 **(Fraudulent Concealment)**

6 177. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
7 allegations were fully set out herein.

8 178. Throughout the relevant time period, Defendant knew that the Defective  
9 Vehicles contained defective ignition switches, presenting an unreasonably dangerous  
10 propensity to suddenly switch off and thereby injure drivers, passengers, motorists, and  
11 pedestrians.

12 179. Defendant fraudulently concealed from and/or failed to disclose to Plaintiff and  
13 the Class the true defective nature of the subject vehicle.

14 180. Defendant was under a duty to Plaintiff and the Class to disclose and warn of the  
15 defective nature of the subject vehicle because: (a) Defendant was in a superior position to  
16 know the true state of the facts about the hidden defects in the subject vehicles, and those  
17 defects were latent; (b) Defendant made partial disclosures about the safety and quality of the  
18 subject vehicles while not revealing their true defective nature; and (c) Defendant fraudulently  
19 and affirmatively concealed the defective nature of the subject vehicles from Plaintiff.

20 181. The facts concealed and/or not disclosed by Defendant to Plaintiff and the Class  
21 were material facts that a reasonable person would have considered to be important in  
22 deciding whether or not to purchase and/or operate the subject vehicles.

23 182. Defendant intentionally concealed and/or failed to disclose the true nature of the  
24 problems with the Defective Vehicles for the purpose of inducing Plaintiff and the Class to act  
25 thereon, and Plaintiff and the Class justifiably acted or relied upon, to the detriment of Plaintiff  
26 and the Class, the concealed and/or non-disclosed facts, as evidenced by the purchase and  
27 operation of the Defective Vehicles by Plaintiff and the Class.

28 ///

1 183. As a direct and proximate cause of Defendant's misconduct, Plaintiff and the  
2 Class have suffered actual damages as hereinabove alleged.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

4 **EIGHTH CAUSE OF ACTION**

5 **(Negligence)**

6 184. Plaintiff hereby incorporates by reference the above paragraphs, as though those  
7 allegations were fully set out herein.

8 185. As the manufacturer and seller of automotive vehicles, Defendant had a duty to  
9 Plaintiff and the Class to not sell products that were defective and could result in serious  
10 injuries to either Plaintiff, the Class, or even innocent third parties. Defendant breached that  
11 duty by designing, manufacturing, and selling products to Plaintiff and the Class that had a  
12 serious ignition switch defect without disclosing these facts to Plaintiff and the Class. That  
13 breach caused the economic harm, injury, and/or damage to Plaintiff and the Class that are  
14 hereinabove set forth.

15 186. As a direct and legal result of this wrongful conduct, Plaintiff and the Class have  
16 been damaged as hereinabove alleged, in an amount to be ascertained at the time of trial.

17 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

18 **IX. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays:

- 20 1. That this Court certify this case as a class action;
- 21 2. That this Court find and declare Defendant's acts and practices as described  
22 herein to be unlawful, unfair, and fraudulent;
- 23 3. That Plaintiff be awarded compensatory and general damages according to  
24 proof;
- 25 4. That Plaintiff be awarded past and future medical and incidental expenses  
26 according to proof;
- 27 5. That Plaintiff be awarded past and future loss of earnings and earning capacity  
28 according to proof;

1           6.     That Plaintiff be awarded loss of personal property and personal effects  
2 according to proof;

3           7.     That Plaintiff be awarded punitive damages according to proof;

4           8.     That Defendant be preliminarily and permanently enjoined from engaging in the  
5 unlawful, unfair, and fraudulent acts and practices alleged herein;

6           9.     That Defendant be ordered to make restitution to Plaintiff;

7           10.    That Plaintiff be awarded attorneys' fees and expenses pursuant to California  
8 Code of Civil Procedure § 1021.5, California Civil Code § 1780, and any other statute which  
9 provides for award of such fees and expenses;

10          11.    That Plaintiff be awarded prejudgment interest on all sums collected;

11          12.    For costs of suit herein incurred; and

12          13.    Any other and further relief the Court may deem proper.

13 DATED: May 27, 2014

**DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**

14  
15 By:           /s/ Steven M. Campora            
16 STEVEN M. CAMPORA

17  
18 **X.     JURY DEMAND**

19 Plaintiff demands trial by jury on all issues so triable.

20  
21 DATED: May 27, 2014

**DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**

22  
23 By:           /s/ Steven M. Campora            
24 STEVEN M. CAMPORA

1 ROBERT A. BUCCOLA, ESQ. / SBN: 112880  
STEVEN M. CAMPORA, ESQ. / SBN: 110909  
2 JASON J. SIGEL, ESQ. / SBN: 235761  
**DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**  
3 20 Bicentennial Circle  
Sacramento, CA 95826  
4 Telephone: (916) 379-3500  
Facsimile: (916) 379-3599  
5

6 Attorneys for Plaintiff  
7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 RANDI SPANGLER,

Case No.:

12 Plaintiff,

**DECLARATION**

13 v.

14 GENERAL MOTORS LLC, a corporation,,

15 Defendants.  
16

17 I, RANDI SPANGLER hereby declare and state as follows:

18 1. I have personal knowledge of the facts stated herein and, if necessary, could  
19 competently testify thereto.

20 2. I am a Plaintiff in the above-entitled action.

21 3. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the  
22 Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a).

23 4. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a  
24 county that is a proper place for trial of this action because Defendants do business in this  
25 District (the Central District of California) and throughout the State of California.

26 5. The Complaint filed in this matter contains a cause of action for violations of the  
27 Consumers Legal Remedies Act against General Motors, LLC ("GM"), a Delaware limited liability  
28 company doing business nationwide, including California.

