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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
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		

**NOTICE OF FILING OF SIXTH 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 August 7, 2014, General Motors LLC filed the attached *Sixth 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
August 7, 2014

Respectfully submitted,

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SIXTH SUPPLEMENT¹ TO SCHEDULE “1”
CHART OF ADDITIONAL IGNITION SWITCH ACTIONS
COMMENCED AGAINST NEW GM NOT LISTED IN THE
FIFTH 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	The People of the State of California ²	N/A	N/A	Superior Court of the State of California (County of Orange) 30-2014-00731038 ³	6/27/14
2	Kosovec ⁴ (Class Action)	Various models from 1997 to 2014	2008 Chevy Cobalt	Northern District of Florida 3:14-cv-00354	7/28/14
3	Rukeyser ⁵ (Class Action)	Various models from 2003 to 2011	2008 Chevy Cobalt	Southern District of New York 1:14-cv-05715	7/29/14
4	Sesay ⁶ (Class Action)	Various models from 2003 to 2011	2007 Chevy Impala 2010 Chevy Cobalt	Southern District of New York 1:14-cv-06018	8/1/14

¹ This schedule supplements the Fifth Supplement to Schedule “1” [Dkt. No. 12780] filed with the Bankruptcy Court on July 21, 2014, the Fourth Supplement to Schedule “1” [Dkt. No. 12722] filed with the Bankruptcy Court on June 13, 2014, the Third Supplement to Schedule “1” [Dkt. No. 12719] filed with the Bankruptcy Court on June 2, 2014, 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].

² A copy of the complaint filed in The People of the State of California Action is attached hereto as Exhibit “A.”

³ The People of the State of California Action was removed by New GM to the United States District Court for the Central District of California (No. 8:14-cv-01238 (C.D.Cal.)) on August 5, 2014.

⁴ A copy of the complaint filed in the Kosovec Action is attached hereto as Exhibit “B.”

⁵ A copy of the complaint filed in the Rukeyser Action is attached hereto as Exhibit “C.”

⁶ A copy of the complaint filed in the Sesay Action is attached hereto as Exhibit “D.”

Exhibit A

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IN AND FOR THE COUNTY OF ORANGE – COMPLEX LITIGATION DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through Orange
County District Attorney Tony Rackauckas,

Plaintiff,

v.

GENERAL MOTORS LLC

Defendant.

Case No. 30-2014-00731038-CU-BT-CXC
Judge Kim G. Dunning

**COMPLAINT FOR VIOLATIONS OF
CALIFORNIA UNFAIR COMPETITION
LAW AND FALSE ADVERTISING LAW**

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PRAYER FOR RELIEF 56

1 Plaintiff, the People of the State of California (“Plaintiff” or “the People”), by and through
2 Tony Rackauckas, District Attorney for the County of Orange (“District Attorney”), alleges the
3 following, on information and belief:

4 **I. INTRODUCTION**

5 1. This is an action for unfair, unlawful, and fraudulent business practices and false
6 advertising in violation of California Business and Professions Code sections 17200 *et seq.*, the
7 Unfair Competition Law (“UCL”), and 17500 *et seq.*, the False Advertising Law (“FAL”),
8 involving sales, leases, or other wrongful conduct or injuries occurring in California. The
9 defendant is General Motors LLC (“Defendant” or “GM”), which is based in Detroit, Michigan.

10 2. This case arises from GM’s egregious failure to disclose, and the affirmative
11 concealment of, at least 35 separate known defects in vehicles sold by GM, and by its predecessor,
12 “Old GM” (collectively, “GM-branded vehicles”). By concealing the existence of the many known
13 defects plaguing many models and years of GM-branded vehicles and the fact that GM values cost-
14 cutting over safety, and concurrently marketing the GM brand as “safe” and “reliable,” GM enticed
15 vehicle purchasers to buy GM vehicles under false pretenses.

16 3. This action seeks to hold GM liable only for its *own* acts and omissions *after* the
17 July 10, 2009 effective date of the Sale Order and Purchase Agreement through which GM
18 acquired virtually all of the assets and certain liabilities of Old GM.

19 4. A vehicle made by a reputable manufacturer of safe and reliable vehicles is worth
20 more than an otherwise similar vehicle made by a disreputable manufacturer that is known to
21 devalue safety and to conceal serious defects from consumers and regulators. GM Vehicle Safety
22 Chief Jeff Boyer has recently stated that: “Nothing is more important than the safety of our
23 customers in the vehicles they drive.” Yet GM failed to live up to this commitment, instead
24 choosing to conceal at least 35 serious defects in over 17 million GM-branded vehicles sold in the
25 United States (collectively, the “Defective Vehicles”).

26 5. The systematic concealment of known defects was deliberate, as GM followed a
27 consistent pattern of endless “investigation” and delay each time it became aware of a given defect.
28 In fact, recently revealed documents show that GM valued cost-cutting over safety, trained its

1 personnel to *never* use the words “defect,” “stall,” or other words suggesting that any GM-branded
2 vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and
3 discouraged employees from acting to address safety issues.

4 6. Under the Transportation Recall Enhancement, Accountability and Documentation
5 Act (“TREAD Act”)¹ and its accompanying regulations, when a manufacturer learns that a vehicle
6 contains a safety defect, the manufacturer must promptly disclose the defect.² If it is determined
7 that the vehicle is defective, the manufacturer may be required to notify vehicle owners,
8 purchasers, and dealers of the defect, and may be required to remedy the defect.³

9 7. GM *explicitly assumed* the responsibilities to report safety defects with respect to
10 all GM-branded vehicles as required by the TREAD Act. GM also had the same duty under
11 California law.

12 8. When a manufacturer with TREAD Act responsibilities is aware of myriad safety
13 defects and fails to disclose them as GM has done, that manufacturer’s vehicles are not safe. And
14 when that manufacturer markets and sells its new vehicles by touting that its vehicles are “safe,” as
15 GM has also done, that manufacturer is engaging in deception.

16 9. GM has recently been forced to disclose that it had been concealing a large number
17 of known safety defects in GM-branded vehicles ever since its inception in 2009, and that other
18 defects arose on its watch due in large measure to GM’s focus on cost-cutting over safety, its
19 discouragement of raising safety issues and its training of employees to avoid using language such
20 as “stalls,” “defect” or “safety issue” in order to avoid attracting the attention of regulators. As a
21 result, GM has been forced to recall over 17 million vehicles in some 40 recalls covering 35
22 separate defects during the first five and a half months of this year –20 times more than during the
23 same period in 2013. The cumulative negative effect on the value of the vehicles sold by GM has
24 been both foreseeable and significant.

25
26
27 ¹ 49 U.S.C. §§ 30101-30170.

² 49 U.S.C. § 30118(c)(1) & (2).

28 ³ 49 U.S.C. § 30118(b)(2)(A) & (B).

1 10. The highest-profile defect concealed by GM concerns the ignition switches in more
2 than 1.5 million vehicles sold by GM’s predecessor (the “ignition switch defect”). The ignition
3 switch defect can cause the affected vehicles’ ignition switches to inadvertently move from the
4 “run” position to the “accessory” or “off” position during ordinary driving conditions, resulting in a
5 loss of power, vehicle speed control, and braking, as well as a failure of the vehicle’s airbags to
6 deploy. GM continued to use defective ignition switches in “repairs” of vehicles it sold after July
7 10, 2009.

8 11. For the past five years, GM received reports of crashes and injuries that put GM on
9 notice of the serious safety issues presented by its ignition switch system. GM was aware of the
10 ignition switch defects (and many other serious defects in numerous models of GM-branded
11 vehicles) *from the very date of its inception on July 10, 2009.*

12 12. Yet, despite the dangerous nature of the ignition switch defects and the effects on
13 critical safety systems, GM concealed the existence of the defects and failed to remedy the problem
14 from the date of its inception until February of 2014. In February and March of 2014, GM issued
15 three recalls for a combined total of 2.19 million vehicles with the ignition switch defects.

16 13. On May 16, 2014, GM entered a Consent Order with NHTSA in which it admitted
17 that it violated the TREAD Act by not disclosing the ignition switch defect, and agreed to pay the
18 maximum available civil penalties for its violations.

19 14. Unfortunately for all owners of vehicles sold by GM, the ignition switch defect was
20 only one of a seemingly never-ending parade of recalls in the first half of 2014 – many concerning
21 safety defects that had been long known to GM.

22 15. Between 2003 and 2010, over 1.3 million GM-branded vehicles in the United States
23 were sold with a safety defect that causes the vehicle’s electric power steering (“EPS”) to suddenly
24 fail during ordinary driving conditions and revert back to manual steering, requiring greater effort
25 by the driver to steer the vehicle and increasing the risk of collisions and injuries (the “power
26 steering defect”).

27 16. As with the ignition switch defect, GM was aware of the power steering defect from
28 the date of its inception, and concealed the defect for years.

1 17. From 2007 until at least 2013, nearly 1.2 million GM-branded vehicles were sold in
2 the United States with defective wiring harnesses. Increased resistance in the wiring harnesses of
3 driver and passenger seat-mounted, side-impact air bag (“SIAB”) in the affected vehicles may
4 cause the SIABs, front center airbags, and seat belt pretensioners to not deploy in a crash (the
5 “airbag defect”). The vehicles’ failure to deploy airbags and pretensioners in a crash increases the
6 risk of injury and death to the drivers and front-seat passengers.

7 18. Once again, GM knew of the dangerous airbag defect from the date of its inception
8 on July 10, 2009, but chose instead to conceal the defect, and marketed its vehicles as “safe” and
9 “reliable.”

10 19. To take just one more example, between 2003 and 2012, 2.4 million GM-branded
11 vehicles in the United States were sold with a wiring harness defect that could cause brake lamps to
12 fail to illuminate when the brakes are applied or cause them to illuminate when the brakes are not
13 engaged (the “brake light defect”). The same defect could also disable traction control, electronic
14 stability control, and panic braking assist operations. Though GM received hundreds of complaints
15 and was aware of at least 13 crashes caused by this defect, it waited until May of 2014 before
16 finally ordering a full recall.

17 20. As further detailed in this Complaint, the ignition switch, power steering, airbag,
18 and brake light defects are just 4 of the 35 separate defects that resulted in 40 recalls of GM-
19 branded vehicles in the first five and a half months of 2014, affecting over 17 million vehicles.
20 Most or all of these recalls are for safety defects, and many of the defects were apparently known
21 to GM, but concealed for years.

22 21. This case arises from GM’s breach of its obligations and duties, including but not
23 limited to: (i) its concealment of, and failure to disclose that, as a result of a spate of safety defects,
24 over 17 million Defective Vehicles were on the road nationwide – and many hundreds of thousands
25 in California; (ii) its failure to disclose the defects despite its TREAD Act obligations; (iii) its
26 failure to disclose that it devalued safety and systemically encouraged the concealment of known
27 defects; (iv) its continued use of defective ignition switches as replacement parts; (v) its sale of
28 used “GM certified” vehicles that were actually plagued with a variety of known safety defects;

1 and (vi) its repeated and false statements that its vehicles were safe and reliable, and that it stood
2 behind its vehicles after they were purchased.

3 22. From its inception in 2009, GM has known that many defects exist in millions of
4 GM-branded vehicles sold in the United States. But, to protect its profits and to avoid remediation
5 costs and a public relations nightmare, GM concealed the defects and their sometimes tragic
6 consequences.

7 23. GM violated the TREAD Act by failing to timely inform NHTSA of the myriad
8 safety defects plaguing GM-branded vehicles and allowed the Defective Vehicles to remain on the
9 road. In addition to violating the TREAD Act, GM fraudulently concealed the defects from owners
10 and from purchasers of new and used vehicles sold after July 10, 2009, and even used defective
11 ignition switches as replacement parts. These same acts and omissions also violated California law
12 as detailed below.

13 24. GM's failure to disclose the many defects, as well as advertising and promotion
14 concerning GM's record of building "safe" cars of high quality, violated California law.

15 **II. PLAINTIFF'S AUTHORITY**

16 25. Tony Rackauckas, District Attorney of the County of Orange, acting to protect the
17 public as consumers from unlawful, unfair, and fraudulent business practices, brings this action in
18 the public interest in the name of the People of the State of California for violations of the Unfair
19 Competition Law pursuant to California Business and Professions Code Sections 17200, 17204 and
20 17206, and for violations of the False Advertising Law pursuant to California Business and
21 Professions Code Sections 17500, 17535 and 17536. Plaintiff, by this action, seeks to enjoin GM
22 from engaging in the unlawful, unfair, and fraudulent business practices alleged herein, and seeks
23 civil penalties for GM's violations of the above statutes.

24 **III. DEFENDANT**

25 26. Defendant General Motors LLC ("GM") is a foreign limited liability company
26 formed under the laws of Delaware with its principal place of business located at 300 Renaissance
27 Center, Detroit, Michigan. GM was incorporated in 2009.

1 27. GM has significant contacts with Orange County, California, and the activities
2 complained of herein occurred, in whole or in part, in Orange County, California.

3 28. At all times mentioned GM was engaged in the business of designing,
4 manufacturing, distributing, marketing, selling, leasing, certifying, and warranting the GM cars
5 that are the subject of this Complaint, throughout the State of California, including in Orange
6 County, California.

7 IV. JURISDICTION AND VENUE

8 29. This Court has jurisdiction over this matter pursuant to the California Constitution,
9 Article XI, section 10 and California Code of Civil Procedure (“CCP”) section 410.10 because GM
10 transacted business and committed the acts complained of herein in California, specifically in the
11 County of Orange. The violations of law alleged herein were committed in Orange County and
12 elsewhere within the State of California.

13 30. Venue is proper in Orange County, California, pursuant to CCP section 395 and
14 because many of the acts complained about occurred in Orange County.

15 V. FACTUAL BACKGROUND

16 A. **There Are Serious Safety Defects in Millions of GM Vehicles Across Many Models 17 and Years, and, Until Recently, GM Concealed them from Consumers.**

18 31. In the first five and a half months of 2014, GM announced some 40 recalls affecting
19 over 17 million GM-branded vehicles from model years 2003-2014. The recalls concern 35
20 separate defects. The numbers of recalls and serious safety defects are unprecedented, and can
21 only lead to one conclusion: GM and its predecessor sold a large number of unsafe vehicle models
22 with myriad defects during a long period of time.

23 32. Even more disturbingly, the available evidence shows a common pattern: From its
24 inception in 2009, GM knew about an ever-growing list of serious safety defects in millions of
25 GM-branded vehicles, but concealed them from consumers and regulators in order to boost sales
26 and avoid the cost and publicity of recalls.

27 33. GM inherited from Old GM a company that valued cost-cutting over safety, actively
28 discouraged its personnel from taking a “hard line” on safety issues, avoided using “hot” words

1 like “stall” that might attract the attention of NHTSA and suggest that a recall was required, and
2 trained its employees to avoid the use of words such as “defect” that might flag the existence of a
3 safety issue. GM did nothing to change these practices.

4 34. The Center for Auto Safety recently stated that it has identified 2,004 death and
5 injury reports filed by GM with federal regulators in connection with vehicles that have recently
6 been recalled.⁴ Many of these deaths and injuries would have been avoided had GM complied with
7 its TREAD Act obligations over the past five years.

8 35. The many defects concealed by GM affected key safety systems in GM vehicles,
9 including the ignition, power steering, airbags, brake lights, gear shift systems, and seatbelts.

10 36. The available evidence shows a consistent pattern: GM learned about a particular
11 defect and, often at the prodding of regulatory authorities, “investigated” the defect and decided
12 upon a “root cause.” GM then took minimal action – such as issuing a carefully-worded
13 “Technical Service Bulletin” to its dealers, or even recalling a very small number of affected
14 vehicles. All the while, the true nature and scope of the defects were kept under wraps, vehicles
15 affected by the defects remained on the road, and GM enticed consumers to purchase its vehicles
16 by touting the safety, quality, and reliability of its vehicles, and presenting itself as a manufacturer
17 that stands behind its products.

18 37. The nine defects affecting the greatest number of vehicles are discussed in some
19 detail below, and the remainder are summarized thereafter.

20 **1. The ignition switch defects.**

21 38. The ignition switch defects can cause the vehicle’s engine and electrical systems to
22 shut off, disabling the power steering and power brakes and causing non-deployment of the
23 vehicle’s airbag and the failure of the vehicle’s seatbelt pretensioners in the event of a crash.

24 39. The ignition switch systems at issue are defective in at least three major respects.
25 The first is that the switches are simply weak; because of a faulty “detent plunger,” the switch can
26 inadvertently move from the “run” to the “accessory” or “off” position.

27
28 ⁴ See *Thousands of Accident Reports Filed Involving Recalled GM Cars: Report*, Irvin Jackson
(June 3, 2014).

1 40. The second defect is that, due to the low position of the ignition switch, the driver's
2 knee can easily bump the key (or the hanging fob below the key), and cause the switch to
3 inadvertently move from the "run" to the "accessory" or "off" position.

4 41. The third defect is that the airbags immediately become inoperable whenever the
5 ignition switch moves from the "run" to the "accessory" position. As NHTSA's Acting
6 Administrator, David Friedman, recently testified before Congress, NHTSA is not convinced that
7 the non-deployment of the airbags in the recalled vehicles is solely attributable to a mechanical
8 defect involving the ignition switch:

9 And it may be even more complicated than that, actually. And that's
10 one of the questions that we actually have in our timeliness query to
11 General Motors. It is possible that it's not simply that the – the
12 power was off, but a much more complicated situation where the
13 very specific action of moving from on to the accessory mode is what
14 didn't turn off the power, but may have disabled the algorithm.

15 That, to me, frankly, doesn't make sense. From my perspective, if a
16 vehicle – certainly if a vehicle is moving, the airbag's algorithm
17 should require those airbags to deploy. Even if the – even if the
18 vehicle is stopped and you turn from 'on' to 'accessory,' I believe
19 that the airbags should be able to deploy.

20 So this is exactly why we're asking General Motors this question, to
21 understand is it truly a power issue or is there something embedded
22 in their [software] algorithm that is causing this, something that
23 should have been there in their algorithm.⁵

24 42. Vehicles with defective ignition switches are, therefore, unreasonably prone to be
25 involved in accidents, and those accidents are unreasonably likely to result in serious bodily harm
26 or death to the drivers and passengers of the vehicles.

27 43. Alarming, GM knew of the deadly ignition switch defects and at least some of
28 their dangerous consequences from the date of its inception on July 10, 2009, but concealed its
knowledge from consumers and regulators.

 44. In part, GM's knowledge of the ignition switch defects arises from the fact that key
personnel with knowledge of the defects remained in their same positions once GM took over from
Old GM.

⁵ Congressional Transcript, Testimony of David Friedman, Acting Administrator of NHTSA
(Apr. 2, 2014), at 19.

1 45. For example, the Old GM Design Research Engineer who was responsible for the
2 rollout of the defective ignition switch in 2003 was Ray DeGiorgio. Mr. DeGiorgio continued to
3 serve as an engineer at GM until April 2014 when he was suspended as a result of his involvement in
4 the defective ignition switch problem. Later in 2014, in the wake of the GM Report,⁶ Mr. DeGiorgio
5 was fired.

6 46. In 2001, two years *before* vehicles with the defective ignition switches were ever
7 available to consumers, Old GM privately acknowledged in an internal pre-production report for
8 the model/year (“MY”) 2003 Saturn Ion that there were problems with the ignition switch.⁷ Old
9 GM’s own engineers had personally experienced problems with the ignition switch. In a section of
10 the internal report titled “Root Cause Summary,” Old GM engineers identified “two causes of
11 failure,” namely: “[l]ow contact force and low detent plunger force.”⁸ The report also stated that
12 the GM person responsible for the issue was Ray DeGiorgio.⁹

13 47. Mr. DeGiorgio actively concealed the defect, both while working for Old GM *and*
14 while working for GM.

15 48. Similarly, Gary Altman was Old GM’s program-engineering manager for the
16 Cobalt, which is one of the models with the defective ignition switches and hit the market in MY
17 2005. He remained as an engineer at GM until he was suspended on April 10, 2014, by GM for his
18 role in the ignition switch problem and then fired in the wake of the GM Report.

19 49. On October 29, 2004, Mr. Altman test-drove a Cobalt. While he was driving, his
20 knee bumped the key and the vehicle shut down.

21 50. In response to the Altman incident, Old GM opened an engineering inquiry, known
22 as a “Problem Resolution Tracking System inquiry” (“PRTS”), to investigate the issue. According
23 to the chronology provided to NHTSA by GM in March 2014, engineers pinpointed the problem
24 and were “able to replicate this phenomenon during test drives.”

25
26 ⁶ References to the “GM Report” are to the “*Report to Board of Directors of General Motors
Company Regarding Ignition Switch Recalls*,” Anton R. Valukas, Jenner & Block (May 29, 2014).

27 ⁷ GM Report/Complaint re “Electrical Concern” opened July 31, 2001, GMHEC000001980-90.

28 ⁸ *Id.* at GMHEC000001986.

⁹ *Id.* at GMHEC000001981, 1986.

1 51. The PRTS concluded in 2005 that:

2 There are two main reasons that we believe can cause a lower effort
3 in turning the key:

- 4 1. A low torque detent in the ignition switch and
5 2. A low position of the lock module in the column.¹⁰

6 52. The 2005 PRTS further demonstrates the knowledge of Ray DeGiorgio (who, like
7 Mr. Altman, worked for Old GM and continued until very recently working for GM), as the
8 PRTS's author states that "[a]fter talking to Ray DeGiorgio, I found out that it is close to
9 impossible to modify the present ignition switch. The switch itself is very fragile and doing any
10 further changes will lead to mechanical and/or electrical problems."¹¹

11 53. Gary Altman, program engineering manager for the 2005 Cobalt, recently admitted
12 that Old GM engineering managers (including himself and Mr. DeGiorgio) knew about ignition
13 switch problems in the vehicle that could disable power steering, power brakes, and airbags, but
14 launched the vehicle anyway because they believed that the vehicles could be safely coasted off the
15 road after a stall. Mr. Altman insisted that "the [Cobalt] was maneuverable and controllable" with
16 the power steering and power brakes inoperable.

17 54. Incredibly, GM now claims that it and Old GM did not view vehicle stalling and the
18 loss of power steering as a "safety issue," but only as a "customer convenience" issue.¹² GM bases
19 this claim on the equally incredible assertion that, at least for some period of time, it was not aware
20 that when the ignition switch moves to the "accessory" position, the airbags become inoperable –
21 even though Old GM itself designed the airbags to not deploy under that circumstance.¹³

22 55. Even crediting GM's claim that some at the Company were unaware of the rather
23 obvious connection between the defective ignition switches and airbag non-deployment, a stall and
24 loss of power steering and power brakes is a serious safety issue under any objective view. GM

25
26 ¹⁰ Feb. 1, 2005 PRTS at GMHEC000001733.

27 ¹¹ *Id.*

28 ¹² GM Report at 2.

¹³ *Id.*

1 *itself* recognized in 2010 that a loss of power steering *standing alone* was grounds for a safety
2 recall, as it did a recall on such grounds.

3 56. In fact, as multiple GM employees confirm, GM *intentionally* avoids using the
4 word “stall” “because such language might draw the attention of NHTSA” and “may raise a
5 concern about safety, which suggests GM should recall the vehicle....”¹⁴

6 57. Rather than publicly admitting the dangerous safety defects in the vehicles with the
7 defective ignition switches, GM attempted to attribute these and other incidents to “driver error.”
8 GM continued to receive reports of deaths in Cobalts involving steering and/or airbag failures from
9 its inception up through at least 2012.

10 58. In April 2006, the GM design engineer who was responsible for the ignition switch
11 in the recalled vehicles, Design Research Engineer Ray DeGiorgio, authorized part supplier Delphi
12 to implement changes to fix the ignition switch defect.¹⁵ The design change “was implemented to
13 increase torque performance in the switch.”¹⁶ However, testing showed that, even with the
14 proposed change, the performance of the ignition switch was *still* below original specifications.¹⁷

15 59. Modified ignition switches – with greater torque – started to be installed in 2007
16 model/year vehicles.¹⁸ In what a high-level engineer at Old GM now calls a “cardinal sin” and “an
17 extraordinary violation of internal processes,” Old GM changed the part design *but kept the old*
18 *part number*.¹⁹ That makes it impossible to determine from the part number alone which GM
19 vehicles produced after 2007 contain the defective ignition switches.

20 60. At a May 15, 2009 meeting, Old GM engineers (soon to be GM engineers) learned
21 that data in the black boxes of Chevrolet Cobalts showed that the dangerous ignition switch defects
22

23
24 ¹⁴ GM Report at 92-93.

25 ¹⁵ General Motors Commodity Validation Sign-Off (Apr. 26, 2006), GMHEC000003201. *See also* GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 2.

26 ¹⁶ *Id.*

27 ¹⁷ Delphi Briefing, Mar. 27, 2014.

28 ¹⁸ GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 2.

¹⁹ “‘Cardinal sin’: Former GM engineers say quiet ‘06 redesign of faulty ignition switch was a major violation of protocol.’” *Automotive News* (Mar. 26, 2014).

1 existed in hundreds of thousands of Defective Vehicles. But still GM did not reveal the defect to
2 NHTSA, Plaintiff, or consumers.

3 61. After the May 15, 2009 meeting, GM continued to get complaints of unintended
4 shut down and continued to investigate frontal crashes in which the airbags did not deploy.

5 62. After the May 15, 2009 meeting, GM told the families of accident victims related to
6 the ignition switch defects that it did not have sufficient evidence to conclude that there was any
7 defect. In one case involving the ignition switch defects, GM threatened to sue the family of an
8 accident victim for reimbursement of its legal fees if the family did not dismiss its lawsuit. In
9 another, GM sent the victim's family a terse letter, saying there was no basis for any claims against
10 GM. These statements were part of GM's campaign of deception.

11 63. In July 2011, GM legal staff and engineers met regarding an investigation of crashes
12 in which the air bags did not deploy. The next month, in August 2011, GM initiated a Field
13 Performance Evaluation ("FPE") to analyze multiple frontal impact crashes involving MY 2005-
14 2007 Chevrolet Cobalt vehicles and 2007 Pontiac G5 vehicles, as well as a review of information
15 related to the Ion, HHR, and Solstice vehicles, and airbag non-deployment.²⁰

16 64. GM continued to conceal and deny what it privately knew – that the ignition
17 switches were defective. For example, in May 2012, GM engineers tested the torque of the
18 ignition switches in numerous Old GM vehicles.²¹ The results from the GM testing showed that
19 the majority of the vehicles tested from the 2003 to 2007 model/years had torque performance at or
20 below 10 Newton centimeters ("Ncm"), which was below the original design specifications
21 required by GM.²² Around the same time, high ranking GM personnel continued to internally
22 review the history of the ignition switch issue.²³

23 65. In September 2012, GM had a GM Red X Team Engineer (a special engineer
24 assigned to find the root cause of an engineering design defect) examine the changes between the
25

26 ²⁰ GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 2.

27 ²¹ GMHEC000221427; *see also* Mar. 11, 2014 Ltr. to NHTSA, attached chronology.

28 ²² *Id.*

²³ GMHEC000221438.

1 2007 and 2008 Chevrolet Cobalt models following reported crashes where the airbags failed to
2 deploy and the ignition switch was found in the “off” or “accessory” position.²⁴

3 66. The next month, in October of 2012, Design Research Engineer Ray DeGiorgio (the
4 lead engineer on the defective ignition switch) sent an email to Brian Stouffer of GM regarding the
5 “2005-7 Cobalt and Ignition Switch Effort,” stating: “If we replaced switches on ALL the model
6 years, i.e., 2005, 2006, 2007 the piece price would be about \$10.00 per switch.”²⁵

7 67. The October 2012 email makes clear that GM considered implementing a recall to
8 fix the defective ignition switches in the Chevy Cobalt vehicles, but declined to do so in order to
9 save money.

10 68. In April 2013, GM again *internally* acknowledged that it understood that there was
11 a difference in the torque performance between the ignition switch parts in later model Chevrolet
12 Cobalt vehicles compared with the 2003-2007 model/year vehicles.²⁶

13 69. Notwithstanding what GM actually knew and privately acknowledged,²⁷ its public
14 statements and position in litigation was radically different. For example, in May 2013, Brian
15 Stouffer testified in deposition in a personal injury action (*Melton v. General Motors*) that the Ncm
16 performance (a measurement of the strength of the ignition switch) was *not* substantially different
17 as between the early (*e.g.*, 2005) and later model year (*e.g.*, 2008) Chevrolet Cobalt vehicles.²⁸

18 70. Similarly, a month before Mr. Stouffer’s testimony, in April 2013, GM engineer
19 Ray DeGiorgio denied the existence of any type of ignition switch defect:

20 Q: Did you look at, as a potential failure mode for this switch, the
21 ease of which the key could be moved from run to accessory?

22 . . .

23
24 ²⁴ Email from GM Field Performance Assessment Engineer to GM Red X Team Engineer
(Sept. 6, 2012, 1:29:14 p.m., GMHEC000136204).

25 ²⁵ GMHEC000221539.

26 ²⁶ GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 4.

27 ²⁷ See GMHEC000221427.

28 ²⁸ GMHEC000146933. That said, “[t]he modified switches used in 2007-2011 vehicles were
also approved by GM despite not meeting company specifications.” Mar. 31, 2014 Ltr. to Mary
Barra from H. Waxman, D. DeGette, and J. Schankowsky.

1 THE WITNESS: No, because in our minds, moving the key from, I
2 want to say, *run to accessory is not a failure mode, it is an expected*
3 *condition*. It is important for the customer to be able to rotate the
4 key fore and aft, so as long as we meet those requirements, *it's not*
5 *deemed as a risk*.

6 Q: Well, it's not expected to move from run to accessory when
7 you're driving down the road at 55 miles an hour, is it?

8 . . .

9 THE WITNESS: *It is expected for the key to be easily and*
10 *smoothly transitioned from one state to the other* without binding
11 and without harsh actuations.

12 Q: And why do you have a minimum torque requirement from run to
13 accessory?

14 . . .

15 THE WITNESS: It's a design feature that is required. You don't
16 want anything flopping around. You want to be able to control the
17 dimensions and basically provide – one of the requirements in this
18 document talks about having a smooth transition from detent to
19 detent. One of the criticisms – I shouldn't say criticisms. One of the
20 customer complaints we have had in the – and previous to this was
21 he had cheap feeling switches, they were cheap feeling, they were
22 higher effort, and the intent of this design was to provide a smooth
23 actuation, provide a high feeling of a robust design. That was the
24 intent.

25 Q: I assume the intent was also to make sure that when people were
26 using the vehicle under ordinary driving conditions, that if the key
27 was in the run position, it wouldn't just move to the accessory
28 position, correct?

29 . . .

30 A: That is correct, but also – it was not intended – *the intent was to*
31 *make the transition to go from run to off with relative ease.*²⁹

32 71. Brian Stouffer, in an email to Delphi regarding the ignition switch in the Chevy
33 Cobalt, acknowledged that the ignition switch in early Cobalt vehicles – although bearing the same
34 part number – was different than the ignition switch in later Cobalt vehicles.³⁰ Mr. Stouffer
35 claimed that “[t]he discovery of the plunger and spring change was made aware to GM during a
36

37 _____
38 ²⁹ GMHEC000138906 (emphasis added).

³⁰ GMHEC000003197.

1 [sic] course of a lawsuit (*Melton v. GM*).”³¹ Delphi personnel responded that GM had authorized
2 the change back in 2006 but the part number had remained the same.³²

3 72. Eventually, the defect could no longer be ignored or swept under the rug.

4 73. After analysis by GM’s Field Performance Review Committee and the Executive
5 Field Action Decision Committee (“EFADC”), the EFADC finally ordered a recall of *some* of the
6 vehicles with defective ignition switches on January 31, 2014.

7 74. Initially, the EFADC ordered a recall of only the Chevrolet Cobalt and Pontiac G5
8 for model years 2005-2007.

9 75. After additional analysis, the EFADC expanded the recall on February 24, 2014, to
10 include the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, the Saturn Ion for
11 model years 2003-2007, and the Saturn Sky for model year 2007.

12 76. Most recently, on March 28, 2014, GM expanded the recall a third time, to include
13 Chevrolet Cobalts, Pontiac G5s and Solstices, Saturn Ions and Skys from the 2008 through 2010
14 model years, and Chevrolet HHRs from the 2008 through 2011 model years.

15 77. All told, GM has recalled some 2.19 million vehicles in connection with the ignition
16 switch defect.

17 78. In a video message addressed to GM employees on March 17, 2014, CEO Mary
18 Barra admitted that the Company had made mistakes and needed to change its processes.

19 79. According to Ms. Barra, “[s]omething went terribly wrong in our processes in this
20 instance, and terrible things happened.” Barra went on to promise, “[w]e will be better because of
21 this tragic situation if we seize this opportunity.”³³

22 80. Based on its egregious conduct in concealing the ignition switch defect, GM
23 recently agreed to pay the maximum possible civil penalty in a Consent Order with the National
24 Highway Traffic Safety Administration (“NHTSA”) and admitted that it had violated its legal
25 obligations to promptly disclose the existence of known safety defects.

26
27 ³¹ *Id.* See also GMHEC000003156-3180.

³² See GMHEC000003192-93.

28 ³³ “*Something Went ‘Very Wrong’ at G.M., Chief Says.*” N.Y. TIMES (Mar. 18, 2014).

1 **2. The power steering defect.**

2 81. Between 2003 and 2010, over 1.3 million GM-branded vehicles in the United States
3 were sold with a safety defect that causes the vehicle’s electric power steering (“EPS”) to suddenly
4 fail during ordinary driving conditions and revert back to manual steering, requiring greater effort
5 by the driver to steer the vehicle and increasing the risk of collisions and injuries.

6 82. As with the ignition switch defects, GM was aware of the power steering defect
7 long before it took anything approaching full remedial action.

8 83. When the power steering fails, a message appears on the vehicle’s dashboard, and a
9 chime sounds to inform the driver. Although steering control can be maintained through manual
10 steering, greater driver effort is required, and the risk of an accident is increased.

11 84. In 2010, GM first recalled Chevy Cobalt and Pontiac G5 models for these power
12 steering issues, yet it did *not* recall the many other vehicles that had the very same power steering
13 defect.

14 85. Documents released by NHTSA show that GM waited years to recall nearly
15 335,000 Saturn Ions for power steering failure – despite receiving nearly 4,800 consumer
16 complaints and more than 30,000 claims for warranty repairs. That translates to a complaint rate of
17 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent. By way of
18 comparison, NHTSA has described as “high” a complaint rate of 250 complaints per 100,000
19 vehicles.³⁴ Here, the rate translates to 1430 complaints per 100,000 vehicles.

20 86. In response to the consumer complaints, in September 2011 NHTSA opened an
21 investigation into the power steering defect in Saturn Ions.

22 87. NHTSA database records show complaints from Ion owners as early as June 2004,
23 with the first injury reported in May 2007.

24 88. NHTSA linked approximately 12 crashes and two injuries to the power steering
25 defect in the Ions.

26
27
28 ³⁴ See http://www-odi.nhtsa.dot.gov/cars/problems/defect/-results.cfm?action_number=EA06002&SearchType=QuickSearch&summary=true.

1 89. In 2011, GM missed yet another opportunity to recall the additional vehicles with
2 faulty power steering when CEO Mary Barra – then head of product development – was advised by
3 engineer Terry Woychowski that there was a serious power steering issue in Saturn Ions.
4 Ms. Barra was also informed of the ongoing NHTSA investigation. At the time, NHTSA
5 reportedly came close to concluding that Saturn Ions should have been included in GM’s 2005
6 steering recall of Cobalt and G5 vehicles.

7 90. Yet GM took no action for four years. It wasn’t until March 31, 2014, that GM
8 finally recalled the approximately 1.3 million vehicles in the United States affected by the power
9 steering defect.

10 91. After announcing the March 31, 2014 recall, Jeff Boyer, GM’s Vice President of
11 Global Vehicle Safety, acknowledged that GM recalled some of these same vehicle models
12 previously for the *same issue*, but that GM “did not do enough.”

13 **3. Airbag defect.³⁵**

14 92. From 2007 until at least 2013, nearly 1.2 million GM-branded vehicles in the United
15 States were sold with defective wiring harnesses. Increased resistance in the wiring harnesses of
16 driver and passenger seat-mounted, side-impact air bag (“SIAB”) in the affected vehicles may
17 cause the SIABs, front center airbags, and seat belt pretensioners to not deploy in a crash. The
18 vehicles’ failure to deploy airbags and pretensioners in a crash increases the risk of injury and
19 death to the drivers and front-seat passengers.

20 93. Once again, GM knew of the dangerous airbag defect long before it took anything
21 approaching the requisite remedial action.

22 94. As the wiring harness connectors in the SIABs corrode or loosen over time,
23 resistance will increase. The airbag sensing system will interpret this increase in resistance as a
24 fault, which then triggers illumination of the “SERVICE AIR BAG” message on the vehicle’s
25 dashboard. This message may be intermittent at first and the airbags and pretensioners will still
26

27
28 ³⁵ This defect is distinct from the airbag component of the ignition switch defect discussed
above and from other airbag defects affecting a smaller number of vehicles, discussed below.

1 deploy. But over time, the resistance can build to the point where the SIABs, pretensioners, and
2 front center airbags will not deploy in the event of a collision.³⁶

3 95. The problem apparently arose when GM made the switch from using gold-plated
4 terminals to connect its wire harnesses to cheaper tin terminals in 2007.

5 96. In June 2008, Old GM noticed increased warranty claims for airbag service on
6 certain of its vehicles and determined it was due to increased resistance in airbag wiring. After
7 analysis of the tin connectors in September 2008, Old GM determined that corrosion and wear to
8 the connectors was causing the increased resistance in the airbag wiring. It released a technical
9 service bulletin on November 25, 2008, for 2008-2009 Buick Enclaves, 2009 Chevy Traverse,
10 2008-2009 GMC Acadia, and 2008-2009 Saturn Outlook models, instructing dealers to repair the
11 defect by using Nyogel grease, securing the connectors, and adding slack to the line. Old GM also
12 began the transition back to gold-plated terminals in certain vehicles. At that point, Old GM
13 suspended all investigation into the defective airbag wiring and took no further action.³⁷

14 97. In November 2009, GM learned of similar reports of increased airbag service
15 messages in 2010 Chevy Malibu and 2010 Pontiac G6 vehicles. After investigation, GM
16 concluded that corrosion and wear in the same tin connector was the root of the airbag problems in
17 the Malibu and G6 models.³⁸

18 98. In January 2010, after review of the Malibu and G6 airbag connector issues, GM
19 concluded that ignoring the service airbag message could increase the resistance such that an SIAB
20 might not deploy in a side impact collision. On May 11, 2010, GM issued a Customer Satisfaction
21 Bulletin for the Malibu and G6 models and instructed dealers to secure both front seat-mounted,
22 side-impact airbag wire harnesses and, if necessary, reroute the wire harness.³⁹

23 99. From February to May 2010, GM revisited the data on vehicles with faulty harness
24 wiring issues, and noted another spike in the volume of the airbag service warranty claims. This
25

26 ³⁶ See GM Notice to NHTSA dated March 17, 2014, at 1.

27 ³⁷ See GM Notification Campaign No. 14V-118 dated March 31, 2014, at 1-2.

28 ³⁸ See *id.*, at 2.

³⁹ See *id.*

1 led GM to conclude that the November 2008 bulletin was “not entirely effective in correcting the
2 [wiring defect present in the vehicles].” On November 23, 2010, GM issued another Customer
3 Satisfaction Bulletin for certain 2008 Buick Enclave, 2008 Saturn Outlook, and 2008 GMC Acadia
4 models built from October 2007 to March 2008, instructing dealers to secure SIAB harnesses and
5 re-route or replace the SIAB connectors.⁴⁰

6 100. GM issued a revised Customer Service Bulletin on February 3, 2011, requiring
7 replacement of the front seat-mounted side-impact airbag connectors in the same faulty vehicles
8 mentioned in the November 2010 bulletin. In July 2011, GM again replaced its connector, this
9 time with a Tyco-manufactured connector featuring a silver-sealed terminal.⁴¹

10 101. But in 2012, GM noticed another spike in the volume of warranty claims relating to
11 SIAB connectors in vehicles built in the second half of 2011. After further analysis of the Tyco
12 connectors, it discovered that inadequate crimping of the connector terminal was causing increased
13 system resistance. In response, GM issued an internal bulletin for 2011-12 Buick Enclave, Chevy
14 Traverse, and GMC Acadia vehicles, recommending dealers repair affected vehicles by replacing
15 the original connector with a new sealed connector.⁴²

16 102. The defect was still uncured, however, because in 2013 GM again marked an
17 increase in service repairs and buyback activity due to illuminated airbag service lights. On
18 October 4, 2013, GM opened an investigation into airbag connector issues in 2011-2013 Buick
19 Enclave, Chevy Traverse, and GMC Acadia models. The investigation revealed an increase in
20 warranty claims for vehicles built in late 2011 and early 2012.⁴³

21 103. On February 10, 2014, GM concluded that corrosion and crimping issues were again
22 the root cause of the airbag problems.⁴⁴

23 104. GM initially planned to issue a less-urgent Customer Satisfaction Program to
24 address the airbag flaw in the 2010-2013 vehicles. But it wasn't until a call with NHTSA on

25 ⁴⁰ *See id.*, at 3.

26 ⁴¹ *See id.*

27 ⁴² *See id.*, at 4.

28 ⁴³ *See id.*

⁴⁴ *See id.*, at 5.

1 March 14, 2014, that GM finally issued a full-blown safety recall on the vehicles with the faulty
2 harness wiring – years after it first learned of the defective airbag connectors, after four
3 investigations into the defect, and after issuing at least six service bulletins on the topic. The recall
4 as first approved covered only 912,000 vehicles, but on March 16, 2014, it was increased to cover
5 approximately 1.2 million vehicles.⁴⁵

6 105. On March 17, 2014, GM issued a recall for 1,176,407 vehicles potentially afflicted
7 with the defective airbag system. The recall instructs dealers to remove driver and passenger SIAB
8 connectors and splice and solder the wires together.⁴⁶

9 **4. The brake light defect.**

10 106. Between 2004 and 2012, approximately 2.4 million GM-branded vehicles in the
11 United States were sold with a safety defect that can cause brake lamps to fail to illuminate when
12 the brakes are applied or to illuminate when the brakes are not engaged; the same defect can
13 disable cruise control, traction control, electronic stability control, and panic brake assist operation,
14 thereby increasing the risk of collisions and injuries.⁴⁷

15 107. Once again, GM knew of the dangerous brake light defect for years before it took
16 anything approaching the requisite remedial action. In fact, although the brake light defect has
17 caused at least 13 crashes since 2008, GM did not recall all 2.4 million vehicles with the defect
18 until May 2014.

19 108. The vehicles with the brake light defect include the 2004-2012 Chevrolet Malibu,
20 the 2004-2007 Malibu Maxx, the 2005-2010 Pontiac G6, and the 2007-2010 Saturn Aura.⁴⁸

21 109. According to GM, the brake defect originates in the Body Control Module (BCM)
22 connection system. “Increased resistance can develop in the [BCM] connection system and result
23 in voltage fluctuations or intermittency in the Brake Apply Sensor (BAS) circuit that can cause
24

25
26 ⁴⁵ *See id.*

27 ⁴⁶ *See id.*

28 ⁴⁷ *See* GM Notification Campaign No. 14V-252 dated May 28, 2014, at 1.

⁴⁸ *Id.*

1 service brakes lamp malfunction.”⁴⁹ The result is brake lamps that may illuminate when the brakes
2 are not being applied and may not illuminate when the brakes are being applied. ⁵⁰

3 110. The same defect can also cause the vehicle to get stuck in cruise control if it is
4 engaged, or cause cruise control to not engage, and may also disable the traction control, electronic
5 stability control, and panic-braking assist features.⁵¹

6 111. GM now acknowledges that the brake light defect “may increase the risk of a
7 crash.”⁵²

8 112. As early as September 2008, NHTSA opened an investigation for model year 2005-
9 2007 Pontiac G6 vehicles involving allegations that the brake lights may turn on when the driver
10 had not depressed the brake pedal and may turn on when the brake pedal was depressed.⁵³

11 113. During its investigation of the brake light defect in 2008, Old GM found elevated
12 warranty claims for the brake light defect for MY 2005 and 2006 vehicles built in January 2005,
13 and found “fretting corrosion in the BCM C2 connector was the root cause” of the problem.⁵⁴ Old
14 GM and its part supplier Delphi decided that applying dielectric grease to the BCM C2 connector
15 would be “an effective countermeasure to the fretting corrosion.”⁵⁵ Beginning in November of
16 2008, the company began applying dielectric grease in its vehicle assembly plants.⁵⁶

17 114. On December 4, 2008, Old GM issued a TSB recommending the application of
18 dielectric grease to the BCM C2 connector for the MY 2005-2009, Pontiac G6, 2004-2007
19 Chevrolet Malibu/Malibu Maxx and 2008 Malibu Classic and 2007-2009 Saturn Aura vehicles.⁵⁷
20 One month later, in January 2009, Old GM recalled only a small subset of the vehicles with the
21

22 ⁴⁹ *Id.*

23 ⁵⁰ *Id.*

24 ⁵¹ *Id.*

25 ⁵² *Id.*

26 ⁵³ *Id.* at 2.

27 ⁵⁴ *Id.*

28 ⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 2.

1 brake light defect – 8,000 MY 2005-2006 Pontiac G6 vehicles built during the month of January,
2 2005.⁵⁸

3 115. Not surprisingly, the brake light problem was far from resolved.

4 116. In October 2010, GM released an updated TSB regarding “intermittent brake lamp
5 malfunctions,” and added MY 2008-2009 Chevrolet Malibu/Malibu Maxx vehicles to the list of
6 vehicles for which it recommended the application of dielectric grease to the BCM C2 connector.⁵⁹

7 117. In September of 2011, GM received an information request from Canadian
8 authorities regarding brake light defect complaints in vehicles that had not yet been recalled. Then,
9 in June 2012, NHTSA provided GM with additional complaints “that were outside of the build
10 dates for the brake lamp malfunctions on the Pontiac G6” vehicles that had been recalled.⁶⁰

11 118. In February of 2013, NHTSA opened a “Recall Query” in the face of 324
12 complaints “that the brake lights do not operate properly” in Pontiac G6, Malibu and Aura vehicles
13 that had not yet been recalled.⁶¹

14 119. In response, GM asserts that it “investigated these occurrences looking for root
15 causes that could be additional contributors to the previously identified fretting corrosion,” but that
16 it continued to believe that “fretting corrosion in the BCM C2 connector” was the “root cause” of
17 the brake light defect.⁶²

18 120. In June of 2013, NHTSA upgraded its “Recall Query” concerning brake light
19 problems to an “Engineering Analysis.”⁶³

20 121. In August 2013, GM found an elevated warranty rate for BCM C2 connectors in
21 vehicles built *after* Old GM had begun applying dielectric grease to BCM C2 connectors at its
22
23

24 ⁵⁸ *Id.*

25 ⁵⁹ *Id.*

26 ⁶⁰ *Id.*

27 ⁶¹ *Id.* at 3.

28 ⁶² *Id.*

⁶³ *Id.*

1 assembly plants in November of 2008.⁶⁴ In November of 2013, GM concluded that “the amount of
2 dielectric grease applied in the assembly plant starting November 2008 was insufficient...”⁶⁵

3 122. Finally, in March of 2014, “GM engineering teams began conducting analysis and
4 physical testing to measure the effectiveness of potential countermeasures to address fretting
5 corrosion. As a result, GM determined that additional remedies were needed to address fretting
6 corrosion.”⁶⁶

7 123. On May 7, 2014, GM’s Executive Field Action Decision Committee finally decided
8 to conduct a safety recall.

9 124. According to GM, “Dealers are to attach the wiring harness to the BCM with a
10 spacer, apply dielectric lubricant to both the BCM CR and harness connector, and on the BAS and
11 harness connector, and relearn the brake pedal home position.”⁶⁷

12 125. Once again, GM sat on and concealed its knowledge of the brake light defect, and
13 did not even consider available countermeasures (other than the application of grease that had
14 proven ineffective) until March of this year.

15 **5. Shift cable defect**

16 126. From 2004 through 2010, more than 1.1 million GM-branded vehicles were sold
17 throughout the United States with a dangerously defective transmission shift cable. The shift cable
18 may fracture at any time, preventing the driver from switching gears or placing the transmission in
19 the “park” position. According to GM, “[i]f the driver cannot place the vehicle in park, and exits
20 the vehicle without applying the park brake, the vehicle could roll away and a crash could occur
21 without prior warning.”⁶⁸

22 127. Yet again, GM knew of the shift cable defect long before it issued the recent recall
23 of more than 1.1 million vehicles with the defect.

24
25 _____
⁶⁴ *Id.*

26 ⁶⁵ *Id.*

27 ⁶⁶ *Id.* at 4.

28 ⁶⁷ *Id.*

⁶⁸ See GM letter to NHTSA Re: NHTSA Campaign No. 14V-224 dated May 22, 2014, at 1.

1 128. In May of 2011, NHTSA informed GM that it had opened an investigation into
2 failed transmission cables in 2007 model year Saturn Aura vehicles. In response, GM noted “a
3 cable failure model in which a tear to the conduit jacket could allow moisture to corrode the
4 interior steel wires, resulting in degradation of shift cable performance, and eventually, a possible
5 shift cable failure.”⁶⁹

6 129. Upon reviewing these findings, GM’s Executive Field Action Committee conducted
7 a “special coverage field action for the 2007-2008 MY Saturn Aura vehicles equipped with 4 speed
8 transmissions and built with Leggett & Platt cables.” GM apparently chose that cut-off date
9 because, on November 1, 2007, Kongsberg Automotive replaced Leggett & Platt as the cable
10 provider.⁷⁰

11 130. GM did not recall any of the vehicles with the shift cable defect at this time, and
12 limited its “special coverage field action” to the 2007-2008 Aura vehicles even though “the same
13 or similar Leggett & Platt cables were used on ... Pontiac G6 and Chevrolet Malibu (MMX380)
14 vehicles.”

15 131. In March 2012, NHTSA sent GM an Engineering Assessment request to investigate
16 transmission shift cable failures in 2007-2008 MY Auras, Pontiac G6s, and Chevrolet Malibus.⁷¹

17 132. In responding to the Engineering Assessment request, GM for the first time “noticed
18 elevated warranty rates in vehicles built with Kongsberg shift cables.” Similar to their predecessor
19 vehicles built with Leggett & Platt shift cables, in the vehicles built with Kongsberg shift cables
20 “the tabs on the transmission shift cable end may fracture and separate without warning, resulting
21 in failure of the transmission shift cable and possible unintended vehicle movement.”⁷²

22 133. Finally, on September 13, 2012, the Executive Field Action Decision Committee
23 decided to conduct a safety recall. This initial recall was limited to 2008-2010 MY Saturn Aura,
24 Pontiac G6, and Chevrolet Malibu vehicles with 4-speed transmission built with Kongsberg shifter
25

26 ⁶⁹ *Id.* at 2.

27 ⁷⁰ *Id.*

28 ⁷¹ *Id.*

⁷² *Id.*

1 cables, as well as 2007-2008 MY Saturn Aura and 2005-2007 MY Pontiac G6 vehicles with 4-
2 speed transmissions which may have been serviced with Kongsberg shift cables.⁷³

3 134. But the shift cable problem was far from resolved.

4 135. In March of 2013, NHTSA sent GM a second Engineering Assessment concerning
5 allegations of failure of the transmission shift cables on all 2007-2008 MY Saturn Aura, Chevrolet
6 Malibu, and Pontiac G6 vehicles.⁷⁴

7 136. GM continued its standard process of “investigation” and delay. But by May 9,
8 2014, GM was forced to concede that “the same cable failure mode found with the Saturn Aura 4-
9 speed transmission” was present in a wide population of vehicles.⁷⁵

10 137. Finally, on May 19, 2014, GM’s Executive Field Actions Decision Committee
11 decided to conduct a safety recall of more than 1.1 million vehicles with the defective shift cable
12 issue, including the following models and years (as of May 23, 2014): MY 2007-2008 Chevrolet
13 Saturn; MY 2004-2008 Chevrolet Malibu; MY 2004-2007 Chevrolet Malibu Maxx; and MY 2005-
14 2008 Pontiac G6.

15 **6. Safety belt defect.**

16 138. Between the years 2008-2014, more than 1.4 million GM-branded vehicles were
17 sold with a dangerous safety belt defect. According to GM, “[t]he flexible steel cable that connects
18 the safety belt to the vehicle at the outside of the front outside of the front outboard seating
19 positions can fatigue and separate over time as a result of occupant movement into the seat. In a
20 crash, a separated cable could increase the risk of injury to the occupant.”⁷⁶

21 139. On information and belief, GM knew of the safety belt defect long before it issued
22 the recent recall of more than 1.3 million vehicles with the defect.

23
24
25
26 ⁷³ *Id.*

27 ⁷⁴ *Id.*

28 ⁷⁵ *Id.*

⁷⁶ See GM Notice to NHTSA dated May 19, 2014, at 1.

1 140. While GM has yet to submit its full chronology of events to NHTSA, suffice to say
2 that GM has waited some five years before disclosing this defect. This delay is consistent with
3 GM's long period of concealment of the other defects as set forth above.

4 141. On May 19, 2014, GM's Executive Field Action Decision Committee decided to
5 conduct a recall of the following models and years in connection with the safety belt defect: MY
6 2009-2014 Buick Enclave; MY 2009-2014 Chevrolet Traverse; MY 2009-2014 GMC Acadia; and
7 MY 2009-2010 Saturn Outlook.

8 **7. Ignition lock cylinder defect.**

9 142. On April 9, 2014, GM recalled 2,191,014 GM-branded vehicles to address faulty
10 ignition lock cylinders.⁷⁷ Though the vehicles are the same as those affected by the ignition switch
11 defect,⁷⁸ the lock cylinder defect is distinct.

12 143. In these vehicles, faulty ignition lock cylinders can allow removal of the ignition
13 key while the engine is not in the "Off" position. If the ignition key is removed when the ignition
14 is not in the "Off" position, unintended vehicle motion may occur. That could cause a vehicle
15 crash and injury to the vehicle's occupants or pedestrians. As a result, some of the vehicles with
16 faulty ignition lock cylinders may fail to conform to Federal Motor Vehicle Safety Standard
17 number 114, "*Theft Prevention and Rollaway Prevention*."⁷⁹

18 144. On information and belief, GM was aware of the ignition lock cylinder defect for
19 years before finally acting to remedy it.

20 **8. The Camaro key-design defect.**

21 145. On June 13, 2014, GM recalled more than 500,000 MY 2010-2014 Chevrolet
22 Camaros because a driver's knee can bump the key fob out of the "run" position and cause the
23 vehicle to lose power. This issue that has led to at least three crashes. GM said it learned of the
24 issue which primarily affects drivers who sit close to the steering wheel, during internal testing it

25
26 ⁷⁷ See GM Notice to NHTSA dated April 9, 2014.

27 ⁷⁸ Namely, MY 2005-2010 Chevrolet Cobalts, 2005-2011 Chevrolet HHRs, 2007-2010 Pontiac
28 G5s, 2003-2007 Saturn Ions, and 2007-2010 Saturn Skys.

⁷⁹ GM Notice to NHTSA dated April 9, 2014, at 1.

1 conducted following its massive ignition switch recall earlier this year. GM knows of three crashes
2 that resulted in four minor injuries attributed to this defect.

3 **9. The ignition key defect.**

4 146. On June 16, 2014, GM announced a recall of 3.36 million cars due to a problem
5 with keys that can turn off ignitions and deactivate air bags, a problem similar to the ignition
6 switch defects in the 2.19 million cars recalled earlier in the year.

7 147. The company said that keys laden with extra weight – such as additional keys or
8 objects attached to a key ring – could inadvertently switch the vehicle’s engine off if the car struck
9 a pothole or crossed railroad tracks.

10 148. GM said it was aware of eight accidents and six injuries related to the defect.

11 149. As early as December 2000, drivers of the Chevrolet Impala and the other newly
12 recalled cars began lodging complaints about stalling with the National Highway Traffic Safety
13 Administration. “When foot is taken off accelerator, car will stall without warning,” one driver of
14 a 2000 Cadillac Deville told regulators in December 2000. “Complete electrical system and engine
15 shutdown while driving,” another driver of the same model said in January 2001. “Happened three
16 different times to date. Dealer is unable to determine cause of failure.”

17 150. The vehicles covered include the Buick Lacrosse, model years 2005-09; Chevrolet
18 Impala, 2006-14; Cadillac Deville, 2000-05; Cadillac DTS, 2004-11; Buick Lucerne, 2006-11;
19 Buick Regal LS and RS, 2004-05; and Chevrolet Monte Carlo, 2006-08.

20 **10. At least 26 other defects were revealed by GM in recalls during the first half of**
21 **2014.**

22 151. The nine defects discussed above – and the resultant 12 recalls – are but a subset of
23 the 40 recalls ordered by GM in connection with 35 separate defects during the first five and one-
24 half months of 2014. The additional 26 defects are briefly summarized in the following
25 paragraphs.

26 152. **Transmission oil cooler line defect:** On March 31, 2014, GM recalled 489,936
27 MY 2014 Chevy Silverado, 2014 GMC Sierra, 2014 GMC Yukon, 2014 GMC Yukon XL, 2015
28 Chevy Tahoe, and 2015 Chevy Suburban vehicles. These vehicles may have transmission oil

1 cooler lines that are not securely seated in the fitting. This can cause transmission oil to leak from
2 the fitting, where it can contact a hot surface and cause a vehicle fire.

3 153. **Power management mode software defect:** On January 13, 2014, GM recalled
4 324,970 MY 2014 Chevy Silverado and GMC Sierra Vehicles. When these vehicles are idling in
5 cold temperatures, the exhaust components can overheat, melt nearby plastic parts, and cause an
6 engine fire.

7 154. **Substandard front passenger airbags:** On March 17, 2014, GM recalled 303,013
8 MY 2009-2014 GMC Savana vehicles. In certain frontal impact collisions below the air bag
9 deployment threshold in these vehicles, the panel covering the airbag may not sufficiently absorb
10 the impact of the collision. These vehicles therefore do not meet the requirements of Federal
11 Motor Vehicle Safety Standard number 201, "Occupant Protection in Interior Impact."

12 155. **Light control module defect:** On May 16, 2014, GM recalled 218,214 MY 2004-
13 2008 Chevrolet Aveo (subcompact) and 2004-2008 Chevrolet Optra (subcompact) vehicles. In
14 these vehicles, heat generated within the light control module in the center console in the
15 instrument panel may melt the module and cause a vehicle fire.

16 156. **Front axle shaft defect:** On March 28, 2014, GM recalled 174,046 MY 2013-2014
17 Chevrolet Cruze vehicles. In these vehicles, the right front axle shaft may fracture and separate. If
18 this happens while the vehicle is being driven, the vehicle will lose power and coast to a halt. If a
19 vehicle with a fractured shaft is parked and the parking brake is not applied, the vehicle may move
20 unexpectedly which can lead to accident and injury.

21 157. **Brake boost defect:** On May 13, 2014, GM recalled 140,067 MY 2014 Chevrolet
22 Malibu vehicles. The "hydraulic boost assist" in these vehicles may be disabled; when that
23 happens, slowing or stopping the vehicle requires harder brake pedal force, and the vehicle will
24 travel a greater distance before stopping. Therefore, these vehicles do not comply with Federal
25 Motor Vehicle Safety Standard number 135, "Light Vehicle Brake Systems," and are at increased
26 risk of collision.

27 158. **Low beam headlight defect:** On May 14, 2014, GM recalled 103,158 MY 2005-
28 2007 Chevrolet Corvette vehicles. In these vehicles, the underhood bussed electrical center

1 (UBEC) housing can expand and cause the headlamp low beam relay control circuit wire to bend.
2 When the wire is repeatedly bent, it can fracture and cause a loss of low beam headlamp
3 illumination. The loss of illumination decreases the driver's visibility and the vehicle's conspicuity
4 to other motorists, increasing the risk of a crash.

5 159. **Vacuum line brake booster defect:** On March 17, 2014, GM recalled 63,903 MY
6 2013-2014 Cadillac XTS vehicles. In these vehicles, a cavity plug on the brake boost pump
7 connector may dislodge and allow corrosion of the brake booster pump relay connector. This can
8 have an adverse impact on the vehicle's brakes.

9 160. **Fuel gauge defect:** On April 29, 2014, GM recalled 51,460 MY 2014 Chevrolet
10 Traverse, GMC Acadia and Buick Enclave vehicles. In these vehicles, the engine control module
11 (ECM) software may cause inaccurate fuel gauge readings. An inaccurate fuel gauge may result in
12 the vehicle unexpectedly running out of fuel and stalling, and thereby increases the risk of accident.

13 161. **Acceleration defect:** On April 24, 2014, GM recalled 50,571 MY 2013 Cadillac
14 SRX vehicles. In these vehicles, there may be a three- to four-second lag in acceleration due to
15 faulty transmission control module programming. That lag may increase the risk of a crash.

16 162. **Flexible flat cable airbag defect:** On April 9, 2014, GM recalled 23,247 MY
17 2009-2010 Pontiac Vibe vehicles. These vehicles are susceptible to a failure in the Flexible Flat
18 Cable ("FFC") in the spiral cable assemble connecting the driver's airbag module. When the FFC
19 fails, connectivity to the driver's airbag module is lost and the airbag is deactivated. The resultant
20 failure of the driver's airbag to deploy increases the risk of injury to the driver in the event of a
21 crash.

22 163. **Windshield wiper defect:** On May 14, 2014, GM recalled 19,225 MY 2014
23 Cadillac CTS vehicles. A defect leaves the windshield wipers in these vehicles prone to failure.
24 Inoperative windshield wipers can decrease the driver's visibility and increase the risk of a crash.

25 164. **Brake rotor defect:** On May 7, 2014, GM recalled 8,208 MY 2014 Chevrolet
26 Malibu and Buick LaCrosse vehicles. In these vehicles, GM may have accidentally installed rear
27 brake rotors on the front brakes. The rear rotors are thinner than the front rotors, and the use of
28 rear rotors in the front of the vehicle may result in a front brake pad detaching from the caliper.

1 The detachment of a break pad from the caliper can cause a sudden reduction in braking which
2 lengthens the distance required to stop the vehicle and increases the risk of a crash.

3 165. **Passenger-side airbag defect:** On May 16, 2014, GM recalled 1,402 MY 2015
4 Cadillac Escalade vehicles. In these vehicles, the airbag module is secured to a chute adhered to
5 the backside of the instrument panel with an insufficiently heated infrared weld. As a result, the
6 front passenger-side airbag may only partially deploy in the event of crash, and this will increase
7 the risk of occupant injury. These vehicles do not conform to Federal Motor Vehicle Safety
8 Standard number 208, "Occupant Crash Protection."

9 166. **Electronic stability control defect:** On March 26, 2014, GM recalled 656 MY
10 2014 Cadillac ELR vehicles. In these vehicles, the electronic stability control (ESC) system
11 software may inhibit certain ESC diagnostics and fail to alert the driver that the ESC system is
12 partially or fully disabled. Therefore, these vehicles fail to conform to Federal Motor Vehicle
13 Safety Standard number 126, "Electronic Stability Control Systems." A driver who is not alerted
14 to an ESC system malfunction may continue driving with a disabled ESC system. That may result
15 in the loss of directional control, greatly increasing the risk of a crash.

16 167. **Steering tie-rod defect:** On May 13, 2014, GM recalled 477 MY 2014 Chevrolet
17 Silverado, 2014 GMC Sierra and 2015 Chevrolet Tahoe vehicles. In these vehicles, the tie-rod
18 threaded attachment may not be properly tightened to the steering gear rack. An improperly
19 tightened tie-rod attachment may allow the tie-rod to separate from the steering rack and result in a
20 loss of steering that greatly increases the risk of a vehicle crash.

21 168. **Automatic transmission shift cable adjuster:** On February 20, 2014, GM recalled
22 352 MY 2014 Buick Enclave, Buick LaCrosse, Buick Regal, Verano, Chevrolet Cruze, Chevrolet
23 Impala, Chevrolet Malibu, Chevrolet Traverse, and GMC Acadia vehicles. In these vehicles, the
24 transmission shift cable adjuster may disengage from the transmission shift lever. When that
25 happens, the driver may be unable to shift gears, and the indicated gear position may not be
26 accurate. If the adjuster is disengaged when the driver attempts to stop and park the vehicle, the
27 driver may be able to shift the lever to the "PARK" position but the vehicle transmission may not
28

1 be in the "PARK" gear position. That creates the risk that the vehicle will roll away as the driver
2 and other occupants exit the vehicle, or anytime thereafter.

3 169. **Fuse block defect:** On May 19, 2014, GM recalled 58 MY 2015 Chevrolet
4 Silverado HD and GMC Sierra HD vehicles. In these vehicles, the retention clips that attach the
5 fuse block to the vehicle body can become loose allowing the fuse block to move out of position.
6 When this occurs, exposed conductors in the fuse block may contact the mounting studs or other
7 metallic components, which in turn causes a "short to ground" event. That can result in an
8 arcing condition, igniting nearby combustible materials and starting an engine compartment fire.

9 170. **Diesel transfer pump defect:** On April 24, 2014, GM recalled 51 MY 2014 GMC
10 Sierra HD and 2015 Chevrolet Silverado HD vehicles. In these vehicles, the fuel pump
11 connections on both sides of the diesel fuel transfer pump may not be properly torqued. That can
12 result in a diesel fuel leak, which can cause a vehicle fire.

13 171. **Base radio defect:** On June 5, 2014, GM recalled 57,512 MY 2014 Chevrolet
14 Silverado LD, 2014 GMC Sierra LD and model year 2015 Silverado HD, Tahoe and Suburban and
15 2015 GMC Sierra HD and Yukon and Yukon XL vehicles because the base radio may not work.
16 The faulty base radio prevents audible warnings if the key is in the ignition when the driver's door
17 is open, and audible chimes when a front seat belt is not buckled. Vehicles with the base radio
18 defect are out of compliance with motor vehicle safety standards covering theft protection,
19 rollaway protection and occupant crash protection.

20 172. **Shorting bar defect:** On June 5, 2014, GM recalled 31,520 MY 2012 Buick
21 Verano and Chevrolet Camaro, Cruze, and Sonic compact cars for a defect in which the shorting
22 bar inside the dual stage driver's air bag may occasionally contact the air bag terminals. If contact
23 occurs, the air bag warning light will illuminate. If the car and terminals are contacting each other
24 in a crash, the air bag will not deploy. GM admits awareness of one crash with an injury where the
25 relevant diagnostic trouble code was found at the time the vehicle was repaired. GM is aware of
26 other crashes where air bags did not deploy but it does not know if they were related to this
27 condition. GM conducted two previous recalls for this condition involving 7,116 of these vehicles
28 with no confirmed crashes in which this issue was involved.

1 173. **Front passenger airbag end cap defect:** On June 5, 2014, GM recalled 61 model
2 year 2013-2014 Chevrolet Spark and 2013 model year Buick Encore vehicles manufactured in
3 Changwon, Korea from December 30, 2012 through May 8, 2013 because the vehicles may have a
4 condition in which the front passenger airbag end cap could separate from the airbag inflator. In a
5 crash, this may prevent the passenger airbag from deploying properly.

6 174. **Sensing and Diagnostic Model (“SDM”) defect:** On June 5, 2014, GM recalled
7 33 model year 2014 Chevrolet Corvettes in the U.S. because an internal short-circuit in the sensing
8 and diagnostic module (SDM) could disable frontal air bags, safety belt pretensioners and the
9 Automatic Occupancy Sensing module.

10 175. **Sonic Turbine Shaft:** On June 11, 2014, GM recalled 21,567 Chevrolet Sonics due
11 to a transmission turbine shaft that can malfunction.

12 176. **Electrical System defect:** On June 11, 2014, GM recalled 14,765 model year 2014
13 Buick LaCrosse sedans because a wiring splice in the driver’s door can corrode and break, cutting
14 power to the windows, sunroof, and door chime under certain circumstances.

15 177. **Seatbelt Tensioning System defect:** On June 11, 2014, GM recalled 8,789 model
16 year 2004-11 Saab 9-3 convertibles because a cable in the driver’s seatbelt tensioning system can
17 break.

18 178. In light of GM’s history of concealing known defects, there is little reason to think
19 that either GM’s recalls have fully addressed the 35 recently revealed defects or that GM has
20 addressed each defect of which it is or should be aware.

21 **B. GM Valued Cost-Cutting Over Safety, and Actively Encouraged Employees to**
22 **Conceal Safety Issues.**

23 179. Recently revealed information presents a disturbing picture of GM’s approach to
24 safety issues – both in the design and manufacture stages, and in discovering and responding to
25 defects in GM-branded vehicles that have already been sold.

26 180. GM made very clear to its personnel that cost-cutting was more important than
27 safety, deprived its personnel of necessary resources for spotting and remedying defects, trained its
28

1 employees not to reveal known defects, and rebuked those who attempted to “push hard” on safety
2 issues.

3 181. One “directive” at GM was “cost is everything.”⁸⁰ The messages from top
4 leadership at GM to employees, as well as their actions, were focused on the need to control cost.⁸¹

5 182. One GM engineer stated that emphasis on cost control at GM “permeates the fabric
6 of the whole culture.”⁸²

7 183. According to Mark Reuss (President of GMNA from 2009-2013 before succeeding
8 Mary Barra as Executive Vice President for Global Product Development, Purchasing and Supply
9 Chain in 2014), cost and time-cutting principles known as the “Big 4” at GM “emphasized timing
10 over quality.”⁸³

11 184. GM’s focus on cost-cutting created major disincentives to personnel who might
12 wish to address safety issues. For example, those responsible for a vehicle were responsible for its
13 costs, but if they wanted to make a change that incurred cost and affected other vehicles, they also
14 became responsible for the costs incurred in the other vehicles.⁸⁴

15 185. As another cost-cutting measure, parts were sourced to the lowest bidder, even if
16 they were not the highest quality parts.⁸⁵

17 186. Because of GM’s focus on cost-cutting, GM Engineers did not believe they had
18 extra funds to spend on product improvements.⁸⁶

19 187. GM’s focus on cost-cutting also made it harder for GM personnel to discover safety
20 defects, as in the case of the “TREAD Reporting team.”

21
22
23
24 ⁸⁰ GM Report at 249.

25 ⁸¹ GM Report at 250.

26 ⁸² GM Report at 250.

27 ⁸³ GM Report at 250.

28 ⁸⁴ GM Report at 250.

⁸⁵ GM Report at 251.

⁸⁶ GM Report at 251.

1 188. GM used its TREAD database (known as “TREAD”) to store the data required to be
2 reported quarterly to NHTSA under the TREAD Act.⁸⁷ From the date of its inception in 2009,
3 TREAD has been the principal database used by GM to track incidents related to its vehicles.⁸⁸

4 189. From 2003-2007 or 2008, the TREAD Reporting team had eight employees, who
5 would conduct monthly searches and prepare scatter graphs to identify spikes in the number of
6 accidents or complaints with respect to various GM-branded vehicles. The TREAD Reporting
7 team reports went to a review panel and sometimes spawned investigations to determine if any
8 safety defect existed.⁸⁹

9 190. In or around 2007-08, Old GM reduced the TREAD Reporting team from eight to
10 three employees, and the monthly data mining process pared down.⁹⁰ In 2010, GM restored two
11 people to the team, but they did not participate in the TREAD database searches.⁹¹ Moreover, until
12 2014, the TREAD Reporting team did not have sufficient resources to obtain any of the advanced
13 data mining software programs available in the industry to better identify and understand potential
14 defects.⁹²

15 191. By starving the TREAD Reporting team of the resources it needed to identify
16 potential safety issues, GM helped to insure that safety issues would not come to light.

17 192. “[T]here was resistance or reluctance to raise issues or concerns in the GM culture.”
18 The culture, atmosphere and supervisor response at GM “discouraged individuals from raising
19 safety concerns.”⁹³

20 193. GM CEO Mary Barra experienced instances where GM engineers were “unwilling
21 to identify issues out of concern that it would delay the launch” of a vehicle.⁹⁴

23 ⁸⁷ GM Report at 306.

24 ⁸⁸ GM Report at 306.

25 ⁸⁹ GM Report at 307.

26 ⁹⁰ GM Report at 307.

27 ⁹¹ GM Report at 307-308.

28 ⁹² GM Report at 208.

⁹³ GM Report at 252.

⁹⁴ GM Report at 252.

1 194. GM supervisors warned employees to “never put anything above the company” and
2 “never put the company at risk.”⁹⁵

3 195. GM “pushed back” on describing matters as safety issues and, as a result, “GM
4 personnel failed to raise significant issues to key decision-makers.”⁹⁶

5 196. So, for example, GM discouraged the use of the word “stall” in Technical Service
6 Bulletins (“TSBs”) it sometimes sent to dealers about issues in GM-branded vehicles. According
7 to Steve Oakley, who drafted a TSB in connection with the ignition switch defects, “the term ‘stall’
8 is a ‘hot’ word that GM generally does not use in bulletins because it may raise a concern about
9 vehicle safety, which suggests GM should recall the vehicle, not issue a bulletin.”⁹⁷ Other GM
10 personnel confirmed Oakley on this point, stating that “there was concern about the use of ‘stall’ in
11 a TSB because such language might draw the attention of NHTSA.”⁹⁸

12 197. Oakley further noted that “he was reluctant to push hard on safety issues because of
13 his perception that his predecessor had been pushed out of the job for doing just that.”⁹⁹

14 198. Many GM employees “did not take notes at all at critical safety meetings because
15 they believed GM lawyers did not want such notes taken.”¹⁰⁰

16 199. A GM training document released by NHTSA as an attachment to its Consent Order
17 sheds further light on the lengths to which GM went to ensure that known defects were concealed.
18 It appears that the defects were concealed pursuant to a company policy GM inherited from Old
19 GM.

20 200. The document consists of slides from a 2008 Technical Learning Symposium for
21 “designing engineers,” “company vehicle drivers,” and other employees at Old GM. On
22 information and belief, the vast majority of employees who participated in this webinar
23 presentation continued on in their same positions at GM after July 10, 2009.

24 ⁹⁵ GM Report at 252-253.

25 ⁹⁶ GM Report at 253.

26 ⁹⁷ GM Report at 92.

27 ⁹⁸ GM Report at 93.

28 ⁹⁹ GM Report at 93.

¹⁰⁰ GM Report at 254.

1 201. The presentation focused on recalls, and the “reasons for recalls.”

2 202. One major component of the presentation was captioned “Documentation
3 Guidelines,” and focused on what employees should (and should not say) when describing
4 problems in vehicles.

5 203. Employees were instructed to “[w]rite smart,” and to “[b]e factual, not fantastic” in
6 their writing.

7 204. Company vehicle drivers were given examples of comments to avoid, including the
8 following: “This is a safety and security issue”; “I believe the wheels are too soft and weak and
9 could cause a serious problem”; and “Dangerous ... almost caused accident.”

10 205. In documents used for reports and presentations, employees were advised to avoid a
11 long list of words, including: “bad,” “dangerous,” “defect,” “defective,” “failed,” “flawed,” “life-
12 threatening,” “problem,” “safety,” “safety-related,” and “serious.”

13 206. In truly Orwellian fashion, the Company advised employees to use the words (1)
14 “Issue, Condition [or] Matter” instead of “Problem”; (2) “Has Potential Safety Implications”
15 instead of “Safety”; (3) “Broke and separated 10 mm” instead of “Failed”; (4)
16 “Above/Below/Exceeds Specification” instead of “Good [or] Bad”; and (5) “Does not perform to
17 design” instead of “Defect/Defective.”

18 207. As NHTSA’s Acting Administrator Friedman noted at the May 16, 2014 press
19 conference announcing the Consent Order concerning the ignition switch defect, it was GM’s
20 company policy to avoid using words that might suggest the existence of a safety defect:

21 GM must rethink the corporate philosophy reflected in the
22 documents we reviewed, including training materials that explicitly
23 discouraged employees from using words like ‘defect,’ ‘dangerous,’
24 ‘safety related,’ and many more essential terms for engineers and
investigators to clearly communicate up the chain when they suspect
a problem.

25 208. GM appears to have trained its employees to conceal the existence of known safety
26 defects from consumers and regulators. Indeed, it is nearly impossible to convey the potential
27 existence of a safety defect without using the words “safety” or “defect” or similarly strong
28 language that was verboten at GM.

1 209. So institutionalized at GM was the “phenomenon of avoiding responsibility” that
2 the practice was given a name: “the ‘GM salute,’” which was “a crossing of the arms and pointing
3 outward towards others, indicating that the responsibility belongs to someone else, not me.”¹⁰¹

4 210. CEO Mary Barra described a related phenomenon , “known as the ‘GM nod,” which
5 was “when everyone nods in agreement to a proposed plan of action, but then leaves the room with
6 no intention to follow through, and the nod is an empty gesture.”¹⁰²

7 211. According to the GM Report prepared by Anton R. Valukas, part of the failure to
8 properly correct the ignition switch defect was due to problems with GM’s organizational
9 structure.¹⁰³ Part of the failure to properly correct the ignition switch defect was due to a corporate
10 culture that did not care enough about safety.¹⁰⁴ Part of the failure to properly correct the ignition
11 switch defect was due to a lack of open and honest communication with NHTSA regarding safety
12 issues.¹⁰⁵ Part of the failure to properly correct the ignition switch defect was due to improper
13 conduct and handling of safety issues by lawyers within GM’s Legal Staff.¹⁰⁶ On information and
14 belief, all of these issues also helped cause the concealment of and failure to remedy the many
15 defects that have led to the spate of recalls in the first half of 2014.

16 **C. The Ignition Switch Defects Have Harmed Consumers in Orange County and the**
17 **State**

18 212. GM’s unprecedented concealment of a large number of serious defects, and its
19 irresponsible approach to safety issues, has caused damage to consumers in Orange County and
20 throughout California.

21 213. A vehicle made by a reputable manufacturer of safe and reliable vehicles who
22 stands behind its vehicles after they are sold is worth more than an otherwise similar vehicle made
23

24
25 ¹⁰¹ GM Report at 255.

26 ¹⁰² GM Report at 256.

27 ¹⁰³ GM Report at 259-260.

28 ¹⁰⁴ GM Report at 260-261.

¹⁰⁵ GM Report at 263.

¹⁰⁶ GM Report at 264.

1 by a disreputable manufacturer known for selling defective vehicles and for concealing and failing
2 to remedy serious defects after the vehicles are sold.

3 214. A vehicle purchased or leased under the reasonable assumption that it is safe and
4 reliable is worth more than a vehicle of questionable safety and reliability due to the
5 manufacturer's recent history of concealing serious defects from consumers and regulators.

6 215. Purchasers and lessees of new and used GM-branded vehicles after the July 10,
7 2009, inception of GM paid more for the vehicles than they would have had GM disclosed the
8 many defects it had a duty to disclose in GM-branded vehicles. Because GM concealed the defects
9 and the fact that it was a disreputable brand that valued cost-cutting over safety, these consumers
10 did not receive the benefit of their bargain. And the value of all their vehicles has diminished as
11 the result of GM's deceptive conduct.

12 216. If GM had timely disclosed the many defects as required by the TREAD Act and
13 California law, California vehicle owners' GM-branded vehicles would be considerably more
14 valuable than they are now. Because of GM's now highly publicized campaign of deception, and
15 its belated, piecemeal and ever-expanding recalls, so much stigma has attached to the GM brand
16 that no rational consumer would pay what otherwise would have been fair market value for GM-
17 branded vehicles.

18 **D. Given GM's Knowledge of the Defects and the Risk to Public Safety, it Was Obligated to**
19 **Promptly Disclose and Remedy the Defects.**

20 217. The National Traffic and Motor Vehicle Safety Act of 1966 (the "Safety Act")
21 requires manufacturers of motor vehicles and motor vehicle equipment to submit certain
22 information to the National Highway Traffic Safety Administration (NHTSA) in order "to reduce
23 traffic accidents and deaths and injuries resulting from traffic accidents." 49 U.S.C. § 30101 *et*
24 *seq.*

25 218. Under the Safety Act, the manufacturer of a vehicle has a duty to notify dealers and
26 purchasers of a safety defect and remedy the defect without charge. 49 U.S.C. § 30118. In
27 November 2000, Congress enacted the Transportation Recall Enhancement, Accountability and
28 Documentation (TREAD) Act, 49 U.S.C. §§ 30101-30170, which amended the Safety Act and

1 directed the Secretary of Transportation to promulgate regulation expanding the scope of the
2 information that manufacturers are required to submit to NHTSA.

3 219. The Safety Act requires manufacturers to inform NHTSA within five days of
4 discovering a defect. 49 CFR § 573.6 provides that a manufacturer “shall furnish a report to the
5 NHTSA for each defect in his vehicles or in his items of original or replacement equipment that he
6 or the Administrator determines to be related to motor vehicle safety, and for each noncompliance
7 with a motor vehicle safety standard in such vehicles or items of equipment which either he or the
8 Administrator determines to exist,” and that such reports must include, among other
9 things: identification of the vehicles or items of motor vehicle equipment potentially containing
10 the defect or noncompliance, including a description of the manufacturer’s basis for its
11 determination of the recall population and a description of how the vehicles or items of equipment
12 to be recalled differ from similar vehicles or items of equipment that the manufacturer has not
13 included in the recall; in the case of passenger cars, the identification shall be by the make, line,
14 model year, the inclusive dates (month and year) of manufacture, and any other information
15 necessary to describe the vehicles; a description of the defect or noncompliance, including both a
16 brief summary and a detailed description, with graphic aids as necessary, of the nature and physical
17 location (if applicable) of the defect or noncompliance; a chronology of all principal events that
18 were the basis for the determination that the defect related to motor vehicle safety, including a
19 summary of all warranty claims, field or service reports, and other information, with their dates of
20 receipt; a description of the manufacturer’s program for remedying the defect or noncompliance;
21 and a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the
22 problem addressed by the recall within a reasonable time in advance of the manufacturer’s
23 notification of owners, purchasers and dealers.

24 220. Manufacturers are also required to submit “early warning reporting” (EWR) data
25 and information that may assist the agency in identifying safety defects in motor vehicles or motor
26 vehicle equipment. *See* 49 U.S.C. § 30166(m)(3)(B). The data submitted to NHTSA under the
27 EWR regulation includes: production numbers (cumulative total of vehicles or items of equipment
28 manufactured in the year); incidents involving death or injury based on claims and notices received

1 by the manufacturer; claims relating to property damage received by the manufacturer; warranty
2 claims paid by the manufacturer (generally for repairs on relatively new products) pursuant to a
3 warranty program (in the tire industry these are warranty adjustment claims); consumer complaints
4 (a communication by a consumer to the manufacturer that expresses dissatisfaction with the
5 manufacturer's product or performance of its product or an alleged defect); and field reports
6 (prepared by the manufacturer's employees or representatives concerning failure, malfunction, lack
7 of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

8 221. Regulations promulgated under the TREAD Act also require manufacturers to
9 inform NHTSA of defects and recalls in motor vehicles in foreign countries. Under 49 CFR §§
10 579.11 and 579.12 a manufacturer must report to NHTSA not later than five working days after a
11 manufacturer determines to conduct a safety recall or other safety campaign in a foreign country
12 covering a motor vehicle sold or offered for sale in the United States. The report must include,
13 among other things: a description of the defect or noncompliance, including both a brief summary
14 and a detailed description, with graphic aids as necessary, of the nature and physical location (if
15 applicable) of the defect or noncompliance; identification of the vehicles or items of motor vehicle
16 equipment potentially containing the defect or noncompliance, including a description of the
17 manufacturer's basis for its determination of the recall population and a description of how the
18 vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment
19 that the manufacturer has not included in the recall; the manufacturer's program for remedying the
20 defect or noncompliance, the date of the determination and the date the recall or other campaign
21 was commenced or will commence in each foreign country; and identify all motor vehicles that the
22 manufacturer sold or offered for sale in the United States that are identical or substantially similar
23 to the motor vehicles covered by the foreign recall or campaign.

24 222. 49 CFR § 579.21 requires manufacturers to provide NHTSA quarterly field reports
25 related to the current and nine preceding model years regarding various systems, including, but not
26 limited to, vehicle speed control. The field reports must contain, among other things: a report on
27 each incident involving one or more deaths or injuries occurring in the United States that is
28 identified in a claim against and received by the manufacturer or in a notice received by the

1 manufacturer which notice alleges or proves that the death or injury was caused by a possible
2 defect in the manufacturer's vehicle, together with each incident involving one or more deaths
3 occurring in a foreign country that is identified in a claim against and received by the manufacturer
4 involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle
5 that the manufacturer has offered for sale in the United States, and any assessment of an alleged
6 failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of
7 motor vehicle equipment (including any part thereof) that is originated by an employee or
8 representative of the manufacturer and that the manufacturer received during a reporting period.

9 223. GM has known throughout the liability period that many GM-branded vehicles sold
10 or leased in the State of California were defective – and, in many cases, dangerously so.

11 224. Since the date of GM's inception, many people have been injured or died in
12 accidents relating to the ignition switch defects alone. While the exact injury and death toll is
13 unknown, as a result of GM's campaign of concealment and suppression of the large number of
14 defects plaguing over 17 million GM-branded vehicles, numerous other drivers and passengers of
15 the Defective Vehicles have died or suffered serious injuries and property damage. All owners and
16 lessees of GM-branded vehicles have suffered economic damage to their property due to the
17 disturbingly large number of recently revealed defects that were concealed by GM. Many are
18 unable to sell or trade their cars, and many are afraid to drive their cars.

19 **E. GM's Misrepresentations and Deceptive, False, Untrue and Misleading Advertising,**
20 **Marketing and Public Statements**

21 225. Despite its knowledge of the many serious defects in millions of GM-branded
22 vehicles, GM continued to (1) sell new Defective Vehicles; (2) sell used Defective Vehicles as
23 "GM certified"; and (3) use defective ignition switches to repair GM vehicles, all without
24 disclosing or remedying the defects. As a result, the injury and death toll associated with the
25 Defective Vehicles has continued to increase and, to this day, GM continues to conceal and
26 suppress this information.

27 226. During this time period, GM falsely assured California consumers in various written
28 and broadcast statements that its cars were safe and reliable, and concealed and suppressed the true

1 facts concerning the many defects in millions of GM-branded vehicles, and GM's policies that led
2 to both the manufacture of an inordinate number of vehicles with safety defects and the subsequent
3 concealment of those defects once the vehicles are on the road. To this day, GM continues to
4 conceal and suppress information about the safety and reliability of its vehicles.

5 227. Against this backdrop of fraud and concealment, GM touted its reputation for safety
6 and reliability, and knew that people bought and retained its vehicles because of that reputation,
7 and yet purposefully chose to conceal and suppress the existence and nature of the many safety
8 defects. Instead of disclosing the truth about the dangerous propensity of the Defective Vehicles
9 and GM's disdain for safety, California consumers were given assurances that their vehicles were
10 safe and defect free, and that the Company stands behind its vehicles after they are on the road.

11 228. GM has consistently marketed its vehicles as "safe" and proclaimed that safety is
12 one of its highest priorities.

13 229. It told consumers that it built the world's best vehicles:

14 We truly are building a new GM, from the inside out. Our vision is
15 clear: to design, build and sell the world's best vehicles, and we have
16 a new business model to bring that vision to life. We have a lower
17 cost structure, a stronger balance sheet and a dramatically lower risk
18 profile. We have a new leadership team – a strong mix of executive
19 talent from outside the industry and automotive veterans – and a
20 passionate, rejuvenated workforce.

21 "Our plan is to steadily invest in creating world-class vehicles, which
22 will continuously drive our cycle of great design, high quality and
23 higher profitability."

24 230. It represented that it was building vehicles with design excellence, quality and
25 performance:

26 And across the globe, other GM vehicles are gaining similar acclaim
27 for design excellence, quality and performance, including the Holden
28 Commodore in Australia. Chevrolet Agile in Brazil, Buick LaCrosse
in China and many others.

The company's progress is early evidence of a new business model
that begins and ends with great vehicles. We are leveraging our
global resources and scale to maintain stringent cost management
while taking advantage of growth and revenue opportunities around
the world, to ultimately deliver sustainable results for all of our
shareholders.

1 231. The theme below was repeated in advertisements, company literature, and material
2 at dealerships as the core message about GM’s Brand:



A New Vision, a New Business Model

Our vision is simple, straightforward and clear; to design, build and sell the world’s best vehicles. That doesn’t mean just making our vehicles better than the ones they replace. We have set a higher standard for the new GM—and that means building the best.

Our vision comes to life in a continuous cycle that starts, ends and begins again with great vehicle designs. To accelerate the momentum we’ve already created, we reduced our North American portfolio from eight brands to four: Chevrolet, Buick, Cadillac and GMC. Worldwide, we’re aggressively developing and leveraging global vehicle architectures to maximize our talent and resources and achieve optimum economies of scale.

Across our manufacturing operations, we have largely eliminated overcapacity in North America while making progress in Europe, and we’re committed to managing inventory with a new level of discipline. By using our manufacturing capacity more efficiently

and maintaining leaner vehicle inventories, we are reducing the need to offer sales incentives on our vehicles. These moves, combined with offering attractive, high-quality vehicles, are driving healthier margins—and at the same time building stronger brands.

Our new business model creates a self-sustaining cycle of reinvestment that drives continuous improvement in vehicle design, manufacturing discipline, brand strength, pricing and margins, because we are now able to make money at the bottom as well as the top of the industry cycles.

We are seeing positive results already. In the United States, for example, improved design, content and quality have resulted in solid gains in segment share, average transaction prices and projected residual values for the Chevrolet Equinox, Buick LaCrosse and Cadillac SRX. This is just the beginning.

232. It represented that it had a world-class lineup in North America:

A World-Class Lineup in North America



Chevrolet Equinox

The Chevrolet Equinox delivers best-in-segment 32-mpg highway fuel economy in a sleek, roomy new package. With the success of the Equinox and other strong-selling crossovers, GM leads the U.S. industry in total unit sales for the segment.



Chevrolet Sonic

Stylish four-door sedan and sporty five-door hatchback versions of the Chevrolet Sonic will be in U.S. showrooms in fall 2011. Currently the only small car built in the United States, it will be sold as the Aveo in other parts of the world.



Buick LaCrosse

Buick builds on the brand's momentum in the United States and China with the fuel-efficient LaCrosse. With eAssist technology, the LaCrosse achieves an expected 37 mpg on the highway.



Buick Verano

The all-new Buick Verano, which will be available in late 2011, appeals to customers in the United States, Canada and Mexico who want great fuel economy and luxury in a smaller but premium package.

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GMC Terrain

The GMC Terrain delivers segment-leading fuel economy of 32 mpg highway, plus uncompromising content and premium technology. In a 5-passenger, compact SUV.



Cadillac CTS V-Coupe

Cadillac's new CTS V-Coupe is the complete package for the driving enthusiast—a 556 hp supercharged V-8 engine, stunning lines and performance handling.



GMC Sierra Heavy Duty

The GMC Sierra offers heavy-duty power and performance with the proven and powerful Duramax Diesel/Allison Transmission combination and a completely new chassis with improved capabilities and ride comfort.



GMC Yukon Hybrid

The GMC Yukon Hybrid is America's first full-sized SUV hybrid, with city fuel economy of 20 mpg—better than a standard 6-cylinder Honda Accord and 43 percent better than any full-size SUV in its class.



Cadillac CTS Sport Wagon

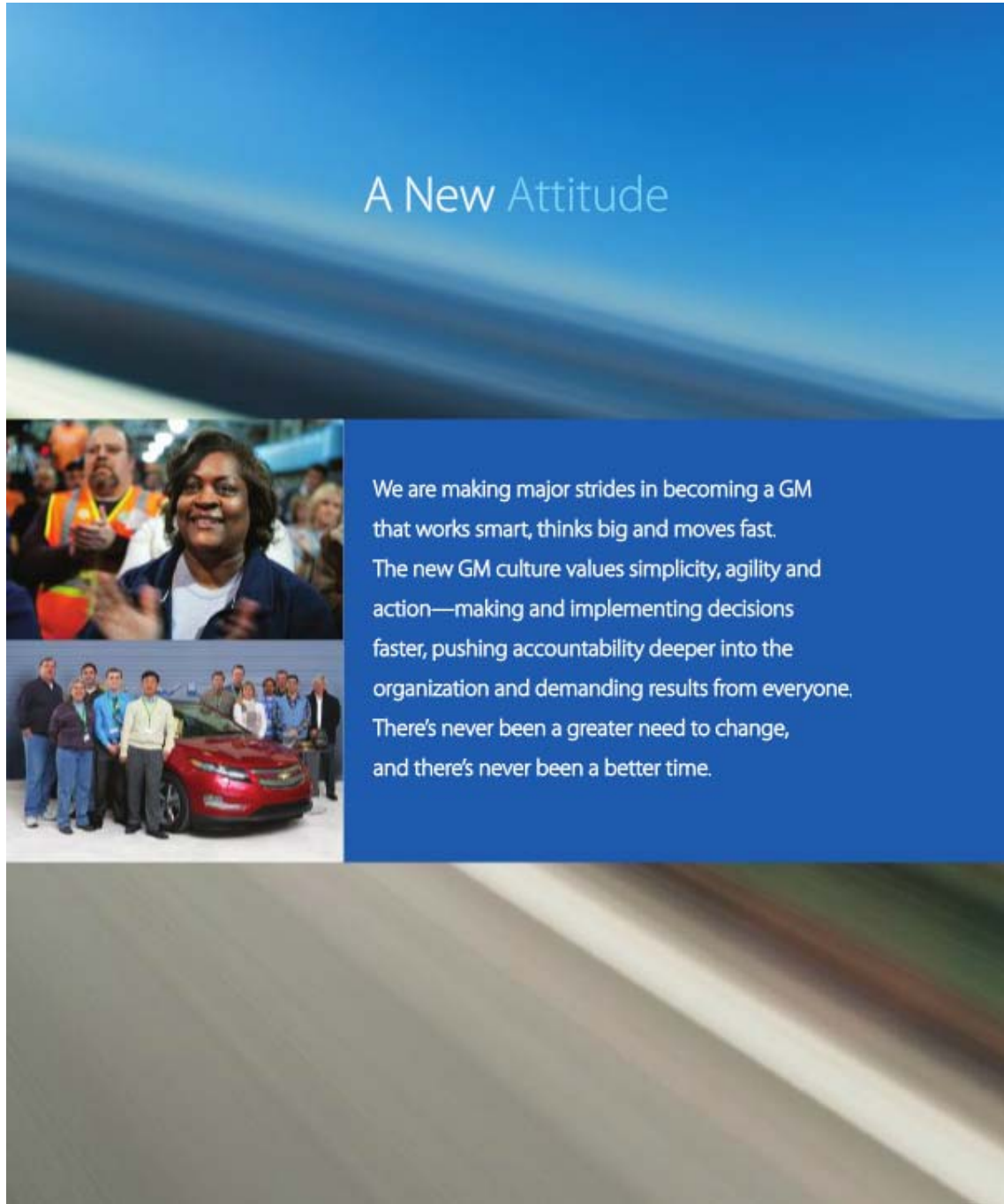
With an available advanced direct-injected V6 engine, the Cadillac CTS Sport Wagon sets a new standard for versatility, while offering excitement and purpose.



Cadillac SRX

The Cadillac SRX looks and performs like no other crossover, with a cockpit that offers utility and elegance and an optional 70-inch Ultraview sunroof.

1 233. It boasted of its new “culture”:



2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

234. In its 2012 Annual Report, GM told the world the following about its brand:

What is immutable is our focus on the customer, which requires us to go from “good” today to “great” in everything we do, including product design, initial quality, durability and service after the sale.

235. GM also indicated it had changed its structure to create more “accountability”

which, as shown above, was a blatant falsehood:

1 That work continues, and it has been complemented by changes to
2 our design and engineering organization that have flattened the
3 structure and created more accountability for produce execution,
4 profitability and customer satisfaction.

5 236. And GM represented that product quality was a key focus – another blatant
6 falsehood:

7 Product quality and long-term durability are two other areas that
8 demand our unrelenting attention, even though we are doing well on
9 key measures.

10 237. In its 2013 Letter to Stockholders GM noted that its brand had grown in value and
11 boasted that it designed the “World’s Best Vehicles”:

12 Dear Stockholder:

13 Your company is on the move once again. While there were highs
14 and lows in 2011, our overall report card shows very solid marks,
15 including record net income attributable to common stockholders of
16 \$7.6 billion and EBIT-adjusted income of \$8.3 billion.

- 17 • GM’s overall momentum, including a 13 percent sales
18 increase in the United States, created new jobs and drove
19 investments. We have announced investments in 29 U.S.
20 facilities totaling more than \$7.1 billion since July 2009, with
21 more than 17,500 jobs created or retained.

22 Design, Build and Sell the World’s Best Vehicles

23 This pillar is intended to keep the customer at the center of
24 everything we do, and success is pretty easy to define. It means
25 creating vehicles that people desire, value and are proud to own.
26 When we get this right, it transforms our reputation and the
27 company’s bottom line.

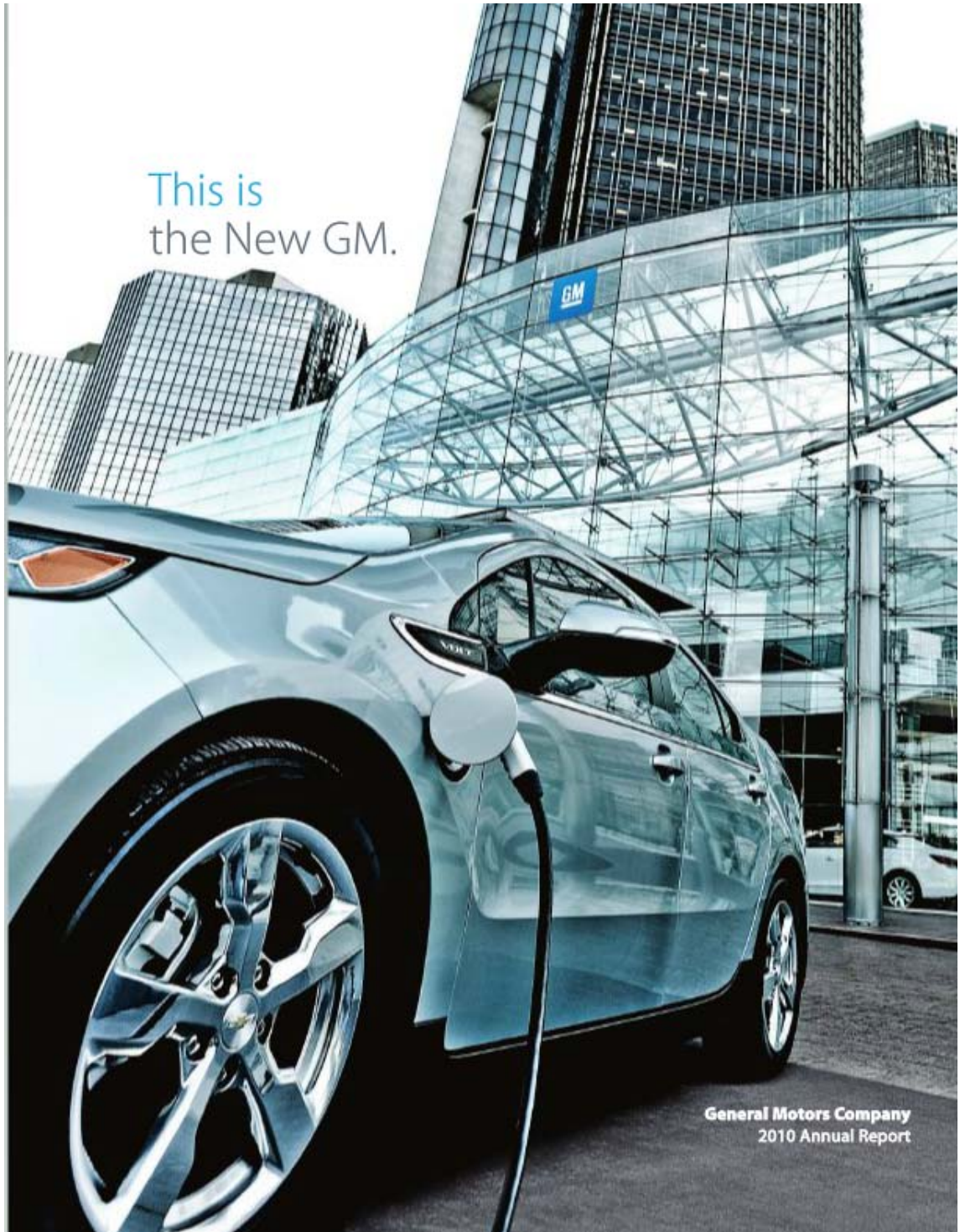
28 Strengthen Brand Value

Clarity of purpose and consistency of execution are the cornerstones
of our product strategy, and two brands will drive our global growth.
They are Chevrolet, which embodies the qualities of value,
reliability, performance and expressive design; and Cadillac, which
creates luxury vehicles that are provocative and powerful. At the
same time the Holden, Buick, GMC, Baojun, Opel and Vauxhall
brands are being carefully cultivated to satisfy as many customers as
possible in select regions.

Each day the cultural change underway at GM becomes more
striking. The old internally focused, consensus-driven and overly
complicated GM is being reinvented brick by brick, by truly
accountable executives who know how to take calculated risks and
lead global teams that are committed to building the best vehicles in
the world as efficiently as we can.

1 That's the crux of our plan. The plan is something we can control.
2 We like the results we're starting to see and we're going to stick to
3 it – always.

3 238. Once it emerged from bankruptcy, GM told the world it was a new and improved
4 company:



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2 239. A radio ad that ran from GM's inception until July 16, 2010, stated that "[a]t GM,
3 building quality cars is the most important thing we can do."

4 240. An online ad for "GM certified" used vehicles that ran from July 6, 2009 until
5 April 5, 2010, stated that "GM certified means no worries."

6 241. GM's Chevrolet brand ran television ads in 2010 showing parents bringing their
7 newborn babies home from the hospital, with the tagline "[a]s long as there are babies, there'll be
8 Chevys to bring them home."

9 242. Another 2010 television ad informed consumers that "Chevrolet's ingenuity and
10 integrity remain strong, exploring new areas of design and power, while continuing to make some
11 of the safest vehicles on earth."

12 243. An online national ad campaign for GM in April of 2012 stressed "Safety. Utility.
13 Performance."

14 244. A national print ad campaign in April of 2013 states that "[w]hen lives are on the
15 line, you need a dependable vehicle you can rely on. Chevrolet and GM ... for power,
16 performance and safety."

17 245. A December 2013 GM testimonial ad stated that "GM has been able to deliver a
18 quality product that satisfies my need for dignity and safety."

19 246. GM's website, GM.com, states:

20 Innovation: Quality & Safety; GM's Commitment to Safety; Quality
21 and safety are at the top of the agenda at GM, as we work on
22 technology improvements in crash avoidance and crashworthiness to
23 augment the post-event benefits of OnStar, like advanced automatic
24 crash notification. Understanding what you want and need from your
25 vehicle helps GM proactively design and test features that help keep
26 you safe and enjoy the drive. Our engineers thoroughly test our
27 vehicles for durability, comfort and noise minimization before you
28 think about them. The same quality process ensures our safety
technology performs when you need it.

25 247. On February 25, 2014, GM North America President Alan Batey publically stated:
26 "Ensuring our customers' safety is our first order of business. We are deeply sorry and we are
27 working to address this issue as quickly as we can."
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1 248. These proclamations of safety and assurances that GM’s safety technology performs
2 when needed were false and misleading because they failed to disclose the dangerous defects in
3 millions of GM-branded vehicles, and the fact GM favored cost-cutting and concealment over
4 safety. GM knew or should have known that its representations were false and misleading.

5 249. GM continues to make misleading safety claims in public statements,
6 advertisements, and literature provided with its vehicles.

7 250. GM violated California law in failing to disclose and in actively concealing what it
8 knew regarding the existence of the defects, despite having exclusive knowledge of material facts
9 not known to the Plaintiff or to California consumers, and by making partial representations while
10 at the same time suppressing material facts. *LiMandri v. Judkins* (1997) 52 Cal. App. 4th 326, 337,
11 60 Cal. Rptr. 2d 539. In addition, GM had a duty to disclose the information that it knew about the
12 defects because such matters directly involved matters of public safety.

13 251. GM violated California law in failing to conduct an adequate retrofit campaign
14 (*Hernandez v. Badger Construction Equip. Co.* (1994) 28 Cal. App. 4th 1791, 1827), and in failing
15 to retrofit the Defective Vehicles and/or warn of the danger presented by the defects after becoming
16 aware of the dangers after their vehicles had been on the market (*Lunghi v. Clark Equip. Co.*
17 (1984) 153 Cal. App. 3d 485; *Balido v. Improved Machinery, Inc.* (1972) 29 Cal. App. 3d 633).

18 252. GM also violated the TREAD Act, and the regulations promulgated under the Act,
19 when it failed to timely inform NHTSA of the defects and allowed cars to remain on the road with
20 these defects. By failing to disclose and actively concealing the defects, by selling new Defective
21 Vehicles and used “GM certified” Defective Vehicles without disclosing or remedying the defects,
22 and by using defective ignition switches for “repairs,” GM engaged in deceptive business practices
23 prohibited by the CLRA, Cal. Civ. Code § 1750, *et seq.*, including (1) representing that GM
24 vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing
25 that new Defective Vehicles and ignition switches and used “GM certified” vehicles are of a
26 particular standard, quality, and grade when they are not; (3) advertising GM vehicles with the
27 intent not to sell them as advertised; (4) representing that the subjects of transactions involving GM
28

1 vehicles have been supplied in accordance with a previous representation when they have not; and
2 (5) selling Defective Vehicles in violation of the TREAD Act.

3 **VI. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

6 253. Plaintiff realleges and incorporates by reference all preceding paragraphs.

7 254. GM has engaged in, and continues to engage in, acts or practices that constitute
8 unfair competition, as that term is defined in section 17200 of the California Business and
9 Professions Code.

10 255. GM has violated, and continues to violate, Business and Professions Code section
11 17200 through its unlawful, unfair, fraudulent, and/or deceptive business acts and/or practices.
12 GM uniformly concealed, failed to disclose, and omitted important safety-related material
13 information that was known only to GM and that could not reasonably have been discovered by
14 California consumers. Based on GM's concealment, half-truths, and omissions, California
15 consumers agreed to purchase or lease one or more (i) new or used GM vehicles sold on or after
16 July 10, 2009; (ii) "GM certified" Defective Vehicles sold on or after July 10, 2009; (iii) and/or to
17 have their vehicles repaired using GM's defective ignition switches. GM also repeatedly and
18 knowingly made untrue and misleading statements in California regarding the purported reliability
19 and safety of its vehicles, and the importance of safety to the Company. The true information
20 about the many serious defects in GM-branded vehicles, and GM's disdain for safety, was known
21 only to GM and could not reasonably have been discovered by California consumers.

22 256. As a direct and proximate result of GM's concealment and failure to disclose the
23 many defects and the Company's institutionalized devaluation of safety, GM intended that
24 consumers would be misled into believing that that GM was a reputable manufacturer of reliable
25 and safe vehicles when in fact GM was an irresponsible manufacture of unsafe, unreliable and
26 often dangerously defective vehicles.

UNLAWFUL

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2 257. The unlawful acts and practices of GM alleged above constitute unlawful business
3 acts and/or practices within the meaning of California Business and Professions Code section
4 17200. GM’s unlawful business acts and/or practices as alleged herein have violated numerous
5 federal, state, statutory, and/or common laws – and said predicate acts are therefore per se
6 violations of section 17200. These predicate unlawful business acts and/or practices include, but
7 are not limited to, the following: California Business and Professions Code section 17500 (False
8 Advertising), California Civil Code section 1572 (Actual Fraud – Omissions), California Civil
9 Code section 1573 (Constructive Fraud by Omission), California Civil Code section 1710 (Deceit),
10 California Civil Code section 1770 (the Consumers Legal Remedies Act – Deceptive Practices),
11 California Civil Code section 1793.2 *et seq.* (the Consumer Warranties Act), and other California
12 statutory and common law; the National Traffic and Motor Vehicle Safety Act (49 U.S.C. § 30101
13 *et. seq.*), as amended by the Transportation Recall Enhancement, Accountability and
14 Documentation TREAD Act, (49 U.S.C. §§ 30101-30170) including, but not limited to 49 U.S.C.
15 §§ 30112, 30115, 30118 and 30166, Federal Motor Vehicle Safety Standard 124 (49 C.F.R. §
16 571.124), and 49 CFR §§ 573.6, 579.11, 579.12, and 579.21.

UNFAIR

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18 258. GM’s concealment, omissions, and misconduct as alleged in this action constitute
19 negligence and other tortious conduct and gave GM an unfair competitive advantage over its
20 competitors who did not engage in such practices. Said misconduct, as alleged herein, also
21 violated established law and/or public policies which seek to promote prompt disclosure of
22 important safety-related information. Concealing and failing to disclose the nature and extent of
23 the numerous safety defects to California consumers, before (on or after July 10, 2009) those
24 consumers (i) purchased one or more GM vehicles; (ii) purchased used “GM certified” Defective
25 Vehicles; or (iii) had their vehicles repaired with defective ignition switches, as alleged herein, was
26 and is directly contrary to established legislative goals and policies promoting safety and the
27 prompt disclosure of such defects, prior to purchase. Therefore GM’s acts and/or practices alleged
28 herein were and are unfair within the meaning of Business and Professions Code section 17200.

1 259. The harm to California consumers outweighs the utility, if any, of GM’s acts and/or
2 practices as alleged herein. Thus, GM’s deceptive business acts and/or practices, as alleged herein,
3 were unfair within the meaning of Business and Professions Code section 17200.

4 260. As alleged herein, GM’s business acts and practices offend established public
5 policies, including, but not limited to, public policies against making partial half-truths and failing
6 to disclose important material facts to consumers.

7 261. In addition, as alleged herein, GM intended that California consumers would be
8 misled and/or deceived into believing that they would be purchasing a safe and reliable vehicle
9 built by a reputable manufacturer that values safety and stands behind its vehicles after they are
10 sold, when, in fact, they were in many cases obtaining a vehicle that had defects that had the
11 potential to cause serious bodily injury and/or death, and, in every case, obtaining a vehicle made
12 by an irresponsible manufacturer that does not value safety and was concealing myriad known
13 safety defects in millions of GM-branded vehicles. This practice is and was immoral, unethical,
14 oppressive, unscrupulous, or substantially injurious to consumers and thus unfair within the
15 meaning of Business and Professions Code section 17200.

16 262. At all times relevant, GM’s misconduct and omissions alleged herein: (a) caused
17 substantial injury to the Public; (b) had no countervailing benefit to consumers or to competition
18 that could possibly outweigh this substantial injury; and (c) caused injury that could not have been
19 avoided or even discovered by ordinary consumers, because it resulted from GM’s concealment,
20 failure to disclose and/or omission of important safety related material information that only the
21 Defendant knew or could have known. Thus, GM’s acts and/or practices as alleged herein were
22 unfair within the meaning of Business and Professions Code section 17200.

23 **FRAUDULENT**

24 263. GM’s acts and practices, as alleged herein, were likely to, and did, deceive the
25 Public. GM’s concealment, material omissions, acts, practices and non-disclosures, as alleged
26 herein, therefore constitute fraudulent business acts and/or practices within the meaning of
27 California Business and Professions Code section 17200.
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1 264. California consumers have been, and continue to be, deceived by GM's
2 concealment and material omissions as alleged herein. California consumers have suffered injury
3 and lost money as a direct result of the deceptive conduct as alleged herein. The unlawful, unfair,
4 deceptive, and/or fraudulent business acts and practices of GM, as fully described herein, present a
5 continuing threat to the citizens of California to be misled and/or deceived by GM as alleged
6 herein, and/or to be substantially injured by these dangerously defective cars.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

9 265. Plaintiff realleges and incorporates by reference all preceding paragraphs.

10 266. California Business and Professions Code § 17500 states: "It is unlawful for any ...
11 corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce
12 the public to enter into any obligation relating thereto, to make or disseminate or cause to be made
13 or disseminated ... from this state before the public in any state, in any newspaper or other
14 publication, or any advertising device, ... or in any other manner or means whatever, including over
15 the Internet, any statement ... which is untrue or misleading, and which is known, or which by the
16 exercise of reasonable care should be known, to be untrue or misleading."

17 267. GM caused to be made or disseminated through California and the United States,
18 through advertising, marketing, and other publications, statements that were untrue or misleading,
19 and which were known, or which by the exercise of reasonable care should have been known to
20 GM, to be untrue and misleading to consumers.

21 268. GM has violated section 17500 because the misrepresentations and omissions
22 regarding the safety and reliability of its vehicles and the importance of safety to the Company as
23 set forth in this Complaint were material and likely to deceive a reasonable consumer.

24 269. California consumers were exposed to and saw advertisements for GM vehicles on
25 television, in magazines, on billboards, in brochures at dealerships, and on the Internet before
26 purchasing GM vehicles. Had those advertisements, window stickers, or any other materials
27 disclosed that millions of GM-branded vehicles contained serious safety defects and that GM did
28

1 not value safety, consumers would not have purchased new GM vehicles on or after July 10, 2009
2 and would not have purchased “GM certified” Defective Vehicles on or after July 10, 2009.

3 270. Despite notice of the serious safety defects in so many its vehicles, GM did not
4 disclose to consumers that its vehicles – which GM for years had advertised as “safe” and
5 “reliable” – were in fact not as safe or reliable as a reasonable consumer expected due to the risks
6 created by the many known defects, and GM’s focus on cost-cutting at the expense of safety and
7 the resultant concealment of numerous safety defects. GM never disclosed what it knew about the
8 defects. Rather than disclose the truth, GM concealed the existence of the defects, and claimed to
9 be a reputable manufacturer of safe and reliable vehicles.

10 271. GM, by the acts and misconduct alleged herein, violated Business & Professions
11 Code section 17500, and GM has engaged in, and continues to engage in, acts or practices that
12 constitute false advertising.

13 272. GM has violated, and continues to violate, Business and Professions Code section
14 17500 by disseminating untrue and misleading statements as defined by Business and Professions
15 Code 17500. GM has engaged in acts and practices with intent to induce members of the public to
16 purchase its vehicles by publicly disseminated advertising which contained statements which were
17 untrue or misleading, and which GM knew, or in the exercise of reasonable care should have
18 known, were untrue or misleading, and which concerned the real or personal property or services
19 or their disposition or performance.

20 273. GM repeatedly and knowingly made untrue and misleading statements in California
21 regarding the purported reliability and safety of its vehicles. The true information was known only
22 to GM and could not reasonably have been discovered by California consumers. GM uniformly
23 concealed, failed to disclose and omitted important safety-related material information that was
24 known only to GM and that could not reasonably have been discovered by California consumers.
25 Based on GM’s concealment, half-truths, and omissions, California consumers agreed (on or after
26 July 10, 2009) (i) to purchase GM vehicles; (ii) to purchase used “GM certified” Defective
27 Vehicles; and/or (iii) to have their vehicles repaired using defective ignition switches,
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1 274. As a direct and proximate result of GM's concealment and failure to disclose the
2 many safety defects, GM intended that consumers would be misled into believing that they would
3 be purchasing a safe and reliable vehicle built by a reputable manufacturer that values safety, when
4 in fact they were purchasing vehicles that were in many cases dangerously defective and were in
5 every case overpriced because they were in fact built by an irresponsible manufacturer that valued
6 cost-cutting over safety and routinely concealed a myriad of serious defects from regulators and the
7 public.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment against GM as follows:

10 A. Pursuant to Business and Professions Code sections 17203 and 17535, that GM, its
11 employees, agents, representatives, successors, assigns, and all persons who act in concert with
12 them be permanently enjoined from committing any acts of unfair competition, including the
13 violations alleged herein.

14 B. Pursuant to Business and Professions Code sections 17206 and 17536, that GM be
15 ordered to pay a civil penalty in the amount of Two Thousand Five Hundred dollars (\$2,500.00) for
16 each violation of Business and Professions Code section 17200 and for Five Thousand dollars
17 (\$5,000) for each violation of Business and Professions Code section 17500 by GM in an amount
18 according to proof.

19 C. That Plaintiff recover its costs of suit, including costs of investigation.

20 D. For reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5,
21 or other applicable law; and

22 E. For such other equitable relief as is just and proper.
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Dated: June 27, 2014

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

By: Tony Rackauckas
TONY RACKAUCKAS

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Dated: June 27, 2014

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Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**WENDY KOSOVEC, individually
and on behalf of others
similarly situated,**

Plaintiff

v.

Case NO.: _____

**GENERAL MOTORS, LLC; GENERAL MOTORS
HOLDINGS, LLC;**

Defendants

**CLASS ACTION
JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Come now Plaintiff, Wendy Kosovec, and brings this action on her own behalf and on behalf of a class of persons defined below against the Defendant General Motors LLC and/or General Motors Holdings, LLC ("GM") and for her Class Action Complaint alleges upon information and belief and based on the investigation to date of counsel, as follows:

I. Preliminary Statement

1. While touting the safety and reliability of its vehicles in its advertising and marketing, General Motors, LLC ("GM") was concealing a defect that caused its vehicles to have a sudden engine and electrical system power loss. Unbeknownst to purchasers of the GM vehicles, millions of GM vehicles contained this life-threatening safety defect in the ignition switch. GM, however, was acutely aware of the defective design of the ignition switches, but intentionally concealed this information from the general public. Indeed, GM's defective ignition switch only recently came to light in a series of recalls, thereby diminishing the value of the

vehicles equipped with this faulty switch. Plaintiff and the class members seek recovery for the damages resulting from the diminution in value of their GM vehicles.

2. As described below, by concealing the existence of the defective Ignition Switch plaguing many models and years of GM-branded vehicles while concurrently marketing the GM brand as "safe" and "reliable," and claiming that it built the "world's best vehicles," GM enticed Plaintiff and the Class Members to purchase or lease vehicles that have now diminished in value as the truth about the GM brand has come out, and a stigma has attached to all GM-branded vehicles.

3. Plaintiff, Wendy Kosovec, brings this action for herself and on behalf of all persons similarly situated who purchased or leased certain vehicles manufactured, distributed, and/or sold by GENERAL MOTORS LLC, GENERAL MOTORS HOLDING, LLC, GENERAL MOTORS CORPORATION, GENERAL MOTORS COMPANY, and/or its related subsidiaries, successors, or affiliates ("GM") with defective ignition switches, as described below. Where relevant, "Old GM" refers to GM and/or its related subsidiaries, successors, or affiliates prior to bankruptcy and restructuring, and "New GM" refers to GM and/or its related subsidiaries, successors, or affiliates after the bankruptcy and reorganization in July 2009.

4. Plaintiff brings this action on behalf of herself and other Class members, each of whom own, owned, lease or leased one or more of the following vehicles:

2005-2010 Chevrolet Cobalt

2007 Pontiac G5

2006-2011 Chevrolet HHR

2006-2010 Pontiac Solstice

2008-10 Pontiac G5

2003-2007 Saturn Ion

2007-2010 Saturn Sky

2010-14 Chevrolet Camaros

2005-2009 Buick Lacrosse

2006-2014 Chevrolet Impala

2000-2005 Cadillac Deville

2004-2011 Cadillac DTS

2006-2011 Buick Lucerne

2004-2005 Buick Regal LS & GS MY

2006-2008 Chevrolet Monte Carlo

1997-2005 Chevrolet Malibu

1998-2002 Oldsmobile Intrigue

1999-2004 Oldsmobile Alero

1999-2005 Pontiac Grand Am

2000-05 Chevrolet Impala and Monte Carlo

2004-08 Pontiac Grand Prix

2003-14 Cadillac CTS

2004-06 Cadillac SRX

2005-10 Pontiac GS;

2005-2006 Pontiac Pursuit (Canada); (the "Defective Vehicles").

5. Plaintiff believes that there are additional GM vehicles that have the same or similar defect in their ignition switch systems as the Defective Vehicles that have not yet been disclosed

by GM. Plaintiff will supplement the definition of Defective Vehicles to include these additional vehicles with defective ignition switch systems as they are identified.

6. The defective ignition switches in the Defective Vehicles allow the vehicle, for no apparent reason, to turn from the “On” position, to the “Accessory” or “Off” position while driving, resulting in a loss of electrical power, power steering, power braking and engine shut off. Put simply, the Ignition Switch failed to stay in the “Run” position when it should have stayed in the “Run” position. GM was aware that the ignition switch failed to keep the car powered on in circumstances that drivers could encounter, resulting in moving stalls on the highway as well as loss of power on rough terrain or jarring that drivers could encounter seconds before a crash. In addition, when the switch failed the air bags would not deploy, which meant that drivers were without airbag protection at the time they needed it most. Further, the Defective Vehicles have a condition in which the ignition key may be removed when the ignition is not in the “Off” position, which can cause unintended vehicle motion and could result in a vehicle crash and occupant or pedestrian injuries.

7. Problems with the switch's ability to keep the car powered on were known within GM's engineering ranks at the earliest stages of its production

8. It was not until February 7, 2014 - 13 years after GM engineers first discovered the problem - that GM finally told NHTSA that it was aware of a major safety defect with its ignition switch.

9. As a result of GM's alleged misconduct, Plaintiff and Class Members were harmed and suffered actual damages, in that the Defective Vehicles are unsafe, unfit for their ordinary and intended use, and have manifested, or are at unreasonable risk of manifesting, ignition switch failure that puts them and others at serious risk of injury or death. Plaintiff and the Class

Members did not receive the benefit of their bargain as purchasers and lessees, received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations. Class Members did not receive vehicles that would reliably operate with reasonable safety, and instead received vehicles that put drivers and occupants in danger of encountering an ongoing and undisclosed risk of harm, which could have been avoided, as GM knew but did not disclose, through the use of non-defective ignition parts. A car purchased or leased under the reasonable assumption that it is "safe" as advertised is worth more than a car-such as the Class Vehicles-that is known to contain a safety defect such as the Ignition Switch Defect.

10. As a result, all purchasers and lessees of the Defective Vehicles overpaid for their cars at the time of purchase. Furthermore, GM's public disclosure of the Ignition Switch Defect has further caused the value of the Defective Vehicles to materially diminish.

11. In addition, the negative perception associated with the defective ignition switch has reduced potential buyers' willingness to purchase the Defective Vehicles in the secondary market, further resulting in diminished value.

12. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defects¹. 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.² GM owed a duty to Plaintiff and the Class that owned or leased the Defective Vehicles and it breached that duty.

¹ 49 U.S.C. §§ 30101-30170.

² 49 U.S.C. § 30118(c)(1) & (2).

13. In addition to the TREAD Act, the Michigan Consumer Protection Act, and the common law laws, GM violated the Florida Deceptive and Unfair Trade Practices Act by engaging in unfair trade practices and by fraudulently concealing the deadly ignition switch defects from consumers, owners, dealers and wholesalers, and lessees of the Defective Vehicles. GM also violated the TREAD Act by failing to timely inform the National Highway Traffic Safety Administration ("NHTSA") of the ignition switch defects and by allowing cars to remain on the road with these safety defects.

14. Plaintiff and the Class Members have been damaged by GM's misrepresentations, concealment, and non-disclosure of the ignition switch defects in the Defective Vehicles, as they are now in possession of highly dangerous and defective vehicles whose value has significantly diminished because of GM's failure to timely disclose the serious and potentially deadly defects. In addition to the danger of driving in these vehicles, vehicles owners and lessees cannot sell or otherwise divest themselves of these automobiles at a fair price given their diminished value.

II. Jurisdiction and Venue

15. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d); 28 U.S.C § 331 because at least one class member is of diverse citizenship from at least one defendant; there are more than 1 million class members; with the aggregate amount in controversy exceeding \$5 million.

16. This Court has personal jurisdiction over GM because GM conducts significant business in this District and has maintained continuous and systematic business contacts through the advertisement and sale of GM vehicles within the State of Florida and therefore the Court has general jurisdiction for all purposes.

17. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory and other relief arising under the Magnuson-Moss Federal Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the entire case or controversy.

18. Pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in this District because a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in this District.

III. Parties

19. Plaintiff Wendy Kosovec is a resident of Escambia County, Florida. Plaintiff owns a 2008 Chevrolet Cobalt subject to the ignition switch recall. Plaintiff's Chevrolet Cobalt was manufactured, sold, distributed, advertised, marketed, and warranted by GM. Plaintiff purchased the Defective Vehicle primarily for personal, family, and household use. Plaintiff no longer feels safe driving the Defective Vehicle and is doubtful about the reliability of GM statements that it will fix the defective ignition switch.

20. On June 1, 2009, General Motors Corporation filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York, Case No. 09-50026. Defendant General Motors LLC is a Delaware limited liability company with its headquarters in Detroit, Michigan formed for the purpose of serving as the successor-in-interest for General Motors Corporation following the bankruptcy. General Motors LLC is registered with the Florida Department of State to conduct business in Florida.

21. As part of the bankruptcy reorganization process, the newly-created company, Defendant General Motors LLC, acquired substantially all of the assets of Old GM, and assumed old GM's business operations. The new company also assumed certain liabilities of Old GM under Bankruptcy Code 363, including the express warranty for Plaintiff's vehicle.

22. On June 26, 2009, the New GM entered into an agreement titled, *Amended and Restated Master Sale and Purchase Agreement by and Among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers and NGMCO, Inc., a Purchaser*, wherein New GM expressly assumed certain liabilities of Old GM, as follows:

Section 2.3 Assumed and Retained Liabilities

* * *

(vii) (A) all liabilities arising under express written warranties of Sellers [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 Sellers [old GM] or Purchaser [new GM] prior to or after the Closing and (B) all obligations under Lemon Laws;

23. At all times relevant herein, General Motors Corporation and its successor in interest General Motors LLC were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Defective Vehicles, and other motor vehicles and motor vehicle components throughout the United States.

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

IV. CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4) on behalf of herself and other similarly situated persons as members of the proposed Class. The proposed class includes all persons who reside in Florida and own, owned, lease or leased one or more of the following vehicles:

2005-2010 Chevrolet Cobalt

2007 Pontiac G5

2006-2011 Chevrolet HHR

2006-2010 Pontiac Solstice

2008-10 Pontiac G5

2003-2007 Saturn Ion

2007-2010 Saturn Sky

2010-14 Chevrolet Camaros

2005-2009 Buick Lacrosse

2006-2014 Chevrolet Impala

2000–2005 Cadillac Deville

2004–2011 Cadillac DTS

2006–2011 Buick Lucerne

2004–2005 Buick Regal LS & GS MY

2006–2008 Chevrolet Monte Carlo

1997-2005 Chevrolet Malibu

1998-2002 Oldsmobile Intrigue

1999-2004 Oldsmobile Alero
1999-2005 Pontiac Grand Am
2000-05 Chevrolet Impala and Monte Carlo
2004-08 Pontiac Grand Prix
2003-14 Cadillac CTS
2004-06 Cadillac SRX
2005-10 Pontiac GS;
2005-2006 Pontiac Pursuit (Canada);
the ("Defective Vehicles").

26. 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; 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 or wrongful death allegedly arising from the Defective Vehicles.

27. The class is sufficiently numerous that joinder of all members is impracticable insofar as, upon information and belief, the class is comprised of over 2.6 million recalled vehicles.

28. There are questions of law and fact common to the class. These questions include, among others, the diminution in value of the recalled vehicles for each class period and causation.

29. The claims of the representative parties are typical of the claims of the class. Plaintiffs have suffered the same claims asserted herein on behalf of the class members, thereby supporting typicality.

30. Plaintiff will fairly and adequately protect the interests of the class. The interest of Plaintiff is representative and coincident with, not antagonistic to, those of the remainder of the class.

31. In addition, Plaintiff is represented by experienced and competent counsel. Counsel for Plaintiff has handled numerous class actions and product liability claims.

32. In addition, the prosecution of separate actions by individual members of the class would create a risk of: inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for defendants; and adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to obtain compensatory or equitable relief.

33. The questions of law and fact common to the members of the class predominate over any questions affecting individual members, and class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because it permits a large number of injured parties, joinder of whom is impracticable, to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender.

34. There are no difficulties likely to be encountered in the maintenance of these claims as a class action, and no superior alternative exists whereby the relative rights of the Plaintiff, the Class Members and GM can be fairly managed.

35. GM has acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FACTUAL BACKGROUND

The Ignition Switch and SDM Module

36. The Ignition Switch was fraught with problems from the outset, with GM personnel ultimately authorizing production of a switch that could rotate as a result of torque less than that required by GM's specifications.

37. Components within the Ignition Switch control the amount of effort required to turn the switch from one position to another. A plunger cap and coiled spring inside the Ignition Switch sit in a small groove called a "detent," which holds the switch in the position to which the driver turns the key: Off, Run, Accessory, or Crank. The driver rotates the key by applying a certain amount of pressure or torque to overcome the detent, thereby rotating the switch out of one position and into another. One method to increase the effort required to rotate the Ignition Switch from one position to another is to use a longer and more tightly coiled spring.

38. As described above, the amount of effort required to rotate the defective Ignition Switch was too low, permitting it to move from the "Run" position to the "Accessory" or "Off" position, when it was not the driver's intention to do so. If the Ignition Switch moved out of "Run" to "Accessory" or "Off" when it should have stayed in "Run", the airbags would not deploy in the event of a crash that would otherwise meet the criteria to trigger airbag deployment.

39. The torque performance of the Ignition Switch was the result of the plunger and spring interacting with the detent profiles inside the switch itself. The Ignition Switch required less effort to rotate from one position to another, because the spring exerted insufficient force on the detent profiles.

40. A fundamental component of the airbag system in the Defective Vehicles is the Sensing Diagnostic Module (“SDM”). The SDM is an onboard electronic module in airbag systems that tracks data about the vehicle’s status, including the vehicle's acceleration and speed, and determines when and whether airbags should deploy, and if so, triggers deployment. By 2004, SDMs could also serve as a vehicle’s "black box", allowing for forensic analysis of accidents or malfunctions of the car's components, including airbags.

41. As early as 2001, during pre-production development of the Ion, internal GM reports addressed an issue relating to the ignition switch's "pass lock" system. The report stated that the causes of the problem included "low detent plunger force" in the ignition switch. The "detent" is part of the ignition switch's inner workings that keeps the switch from rotating from one setting to another unless the driver turns the key. The report also claimed that an “ignition switch design change” had resolved the problem.

42. March 2001, GM finalized the specifications for the Ignition Switch, which required that the torque necessary to move the Ignition Switch from “Run” to “Accessory” was to fall between 15 N-cm and 25 N-cm. The GM specification did not include particularized requirements, such as dimensions, for the Ignition Switch's detent plunger and spring. Rather, the internal components of the Ignition Switch were a "black box design," which meant that GM personnel provided the supplier (Delphi) information regarding the part's packaging and

requirements, including the specification, and let the supplier design the details of the switch as necessary to satisfy those requirements.

43. In prototype testing, in 2001 GM discovered that the Run detent (or groove) in the Ignition Switch was not well-defined and allowed the key to settle somewhere between "Run" and "Accessory" when the car was started.

44. An August 2001 internal GM report on prototype testing noted that when the ignition circuit lost power," the ABS [anti-lock brake system] and SDM would also drop," causing warning lights to come on for the anti-lock brakes, SDM, power steering, and airbags, among other systems.

45. Validation testing conducted by Delphi in late 2001 and early 2002 revealed that the Ignition Switch consistently failed to meet the torque values in the Specification (20 N-cm +/- 5 N-cm).

46. By at least 2004, GM was aware of incidents wherein the vehicle engine would suddenly lose power in the event the key moved out of the "run" position when the driver inadvertently contacted the key or steering column. An investigation was opened and after consideration of lead-time required, cost and effectiveness of potential solutions, the investigation was closed and no action taken.

47. During the 2003 to 2005 time period GM personnel received complaints that the Ignition Switch inadvertently rotated out of the Run position, causing moving stalls. Because the complaints of ignition shut-offs and moving stalls were classified as non-safety issues, GM did nothing to address the problem and instead continued to manufacture and sell cars with the defective Ignition Switch.

48. On November 19, 2004, GM personnel opened a Problem Resolution Tracking System ("PRTS") report to address a complaint that the Cobalt could be "keyed off with knee while driving." This was the first of six reports opened between 2004 and 2009 in connection with moving stalls in the Cobalt.

49. In February 2005, GM issued a Preliminary Information, a communication that GM sends to dealers (but not consumers) about a possible issue, even if there is not yet a resolution to the issue. The Preliminary Information explained the potential for drivers to inadvertently turn off the ignition, explained the cause to be the low torque of the Ignition Switch, and specifically noted the potential for a "stall." See, Preliminary Information, Engine Stalls, Loss of Electrical Systems, and No DTCs (Feb. 28, 2005).

50. In March 2005, GM Product Investigations, the group of engineers with responsibility for safety issues, drafted a multi-factor framework for assessing the safety impact of the engine stall problem.

51. During the course of a PRTS opened in May 2005, an engineer proposed that GM redesign the key head from a "slotted" to a "hole" configuration. The estimated cost to make the key change was \$70,000 for tooling for a new key head, \$400,000 to modify production assembly equipment, and a piece price increase of \$0.50 per vehicle.

52. GM CEO Mary Barra, in testimony given on April 1, 2014, before the House Committee on Energy and Commerce, explained that the proposed "fix" for the Ignition Switch Defect was rejected in 2005 because it would have taken too long and cost too much. Ms. Barra testified that GM's decision making was the product of a "cost culture" versus a "culture that focuses on safety and quality."

53. On June 14, 2005, similar complaints of "inadvertent ignition shut-offs" in the Solstice - which used the same defective Ignition Switch - surfaced.

54. The PRTS process led to GM's issuing Information Service Bulletin 05-02-35-007 in December 2005. This Service Bulletin provided "Information on Inadvertent Turning of Key Cylinder, Loss of Electrical System and No DTCs," and applied to a number of vehicles, including vehicles subject to the Ion, HHR, Solstice and Sky recall-specifically, 2003-06 Saturn Ion, 2006 Chevrolet HHR, and 2006 Pontiac Solstice vehicles- all of which were equipped with the same ignition switch as the Cobalt.

55. On April 26, 2006, the GM design engineer responsible for the ignition switch installed in all of the vehicles subject to the Cobalt and G5 recall and the Ion, ID-IR, Solstice and Sky recall signed a document approving changes to the ignition switch. According to GM, the approved changes included, the use of a new detent plunger and spring that increased torque force in the ignition switch. This change to the ignition switch was not reflected in a corresponding change in the part number for the ignition switch.

56. Upon information and belief, GM's reuse of the part number for the defective ignition switch on the newly designed ignition switch was intended to make it difficult to trace the defective switch back to its original design in 2001.

57. In 2007 GM investigated several frontal impact accidents involving Cobalts in which the airbags did not deploy. Only nine of the vehicles' sensing and diagnostic modules ("SDM's") were available for review. Review of the SDM's revealed that the ignition was in the "Run" position in five of the crashes and in the "Accessory" position in four of the crashes.

58. After another PRTS in 2009, GM redesigned the Chevrolet Cobalt key, changing the top of the key from a "slot" design to a "hole" design-as had been suggested in 2005. GM

instituted the change after finding that consumers with “substantially weighted key chains/additional keys hanging from ignition key have experienced accidental ignition shut-off”, and the design change was intended to “significantly reduce downward force and the likelihood of this occurrence.” The new key design was produced for 2010 model year.

Crash Reports and Data

59. GM was aware the deadly consequences of the defective Ignition Switch, but concealed that information from Plaintiff, the Class Members, safety regulators and the public.

60. In November 2004, engineers in GM's High Performance Vehicle Operations ("HPVO") noted that an individual in their group had repeatedly experienced a moving stall during a track test of the Cobalt SS (the high-performance version of the Cobalt) when the driver's knee "slightly graze[d]" the key fob.³

61. Also in November 2004, a crash occurred in which a 2004 Saturn Ion left the road, traveled through brush and struck a tree head on.⁴ Despite the severity of the impact the air bags in the Ion did not deploy.

62. Further in November 2004, GM personnel opened the first of six PRTS reports to address the complaint that the Cobalt could be “keyed off with knee while driving.” Between 2004 and 2009 five addition PRTS reports were filed in connection with moving stalls in the Cobalt.⁵

63. NHTSA data shows that there were three fatal car crashes involving Saturn Ions due to a failure of the airbag to deploy prior to July 2005.

³ Valukas Report at 61.

⁴ Valukas Report at 124.

⁵ Valukas Report at 63.

64. In July 2005, a sixteen-year old was killed when her 2005 Chevrolet Cobalt crashed with the ignition switch in the accessory mode, which disabled the airbag.⁶

65. In October 2006, a crash occurred in which a 2005 Cobalt left the road and struck a telephone box and two trees, resulting in two fatalities.⁷ The air bags did not deploy.

66. In March 2007, NHTSA presented GM employees with information on a crash involving a 2005 Cobalt in which the airbag did not deploy. NHTSA's Special Crash Investigations (SCI) report on this crash found that the ignition switch had been in the accessory position at the time of the crash. Similarly, a second SCI report on a crash from October 2006 with similar conditions found, "The case vehicle's driver and front right passenger air bags did not deploy as a result of the impact with the clump of trees, possibly due to ... power loss due to movement of the ignition switch just prior to the impact." The report cited six similar complaints in the NHTSA database.

67. GM recently acknowledged at least 16 fatalities linked to the Defective Vehicles.

68. In addition, GM has admitted that it is aware of at least 61 impact accidents tied to defective Ignition Switches.

69. News reports have indicated that analysis shows that frequently of fatal accidents involving the Defective Vehicles may be as high as six time that of comparable vehicles. (See, June 2, 2014 Reuters article Exclusive: At least 74 dead in crashes similar to those GM linked to faulty switches available at <http://www.reuters.com/article/2014/06/03/us-gm-recall-idUSKBN0EE01920140603>).

⁶ Valukas Report at 110.

⁷ Valukas Report at 113.

GM Finally Issues Recalls

70. On February 7, 2014, GM notified the National Highway Transportation Safety Administration ("NHTSA") of its decision to recall 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles ("the Cobalt and G5 recall").

71. On February 25, 2014, GM notified NHTSA of its decision to recall the 2003-2007 model year Saturn Ion, 2006-2007 model year Chevrolet HHR and Pontiac Solstice, and 2007 model year Saturn Sky vehicles ("the Ion, HHR, Solstice and Sky recall").

72. On February 26, 2014, following the first of two recalls for the ignition switch defect, NHTSA opened a timeliness query (TQ) to evaluate the timing of GM's defect decision-making and reporting of the safety defect to NHTSA.

73. On March 28, 2014, GM again expanded the ignition switch recall to cover all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Ion and Sky in the United States. This second expansion of the ignition switch recall covered an additional 823, 788 vehicles in the US, bringing the number of recalled vehicles to 2,191,934.

74. NHTSA and GM signed a Consent Order on May 16, 2014.⁵ By the terms of the Consent Order, "GM admits it violated the Safety Act by failing to provide notice to NHTSA of the safety-related defect that is the subject of Recall No. 14V-047." GM agreed to pay \$35 million - the maximum civil penalty for a related series of violations - to the U.S. Treasury in addition to the penalty owed for the company's failure to respond completely to NHTSA's February 2014 inquiry.

75. On June 13, 2014, GM announced a recall of just over 500,000 Chevrolet Camaros due to a problem with the ignition switches. According to GM's recall announcement, a

driver's knee can bump the key fob and cause the key to move out of the "Run" position, with a corresponding loss in power.

76. On June 16, 2014, GM announced the recall of 3.16 million vehicles including, 2005-2009 Buick Allure; 2005-2009 Buick LaCrosse, 2006-2014 Chevrolet Impala, 2000-2005 Cadillac Deville, 2004-2011 Cadillac DTS, 2006-2011 Buick Lucerne, 2004-2005 Buick Regal LS & GS, 2006-2008 Chevrolet Monte Carlo. GM stated that "the ignition switch may inadvertently move out of the "Run" position if the key is carrying extra weight and experiences some jarring event."

77. On June 30, 2014 GM recalled an additional 8.45 million vehicles including the 1997-2005 Chevrolet Malibu; 1998-2002 Oldsmobile Intrique; 1999-2004 Oldsmobile Alero; 1999-2005 Pontiac Grand Am; 2000-05 Chevrolet Impala and Monte Carlo; and 2004-08 Pontiac Grand Prix.

78. On July 2, 2014 GM issued a recall involving 2005-2009 Buick Lacrosse, 2006-2011 Buick Lucerne, 2000-2005 Cadillac Deville, 2006-2011 Cadillac DTS, 2006-2014 MY Chevrolet Impala and 2006-2007 MY Chevrolet Monte Carlo vehicles.

79. On July 3, 2014, GM issued a recall involving 2000-2005 Chevrolet Impala and Monte Carlo, 1997-2005 Chevrolet Malibu, 1999-2004 Oldsmobile Alero, 1998-2002 Oldsmobile Intrigue, 1999-2005 Pontiac Grand Am and 2004-2008 Pontiac Grand Prix vehicles

80. The defective Ignition Switch in GM vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by their competitors. In the wake of the news reports about this serious problem,

GM customers and consumers generally are - as they should be - skeptical about the quality and safety of GM vehicles. Indeed, it is likely that the entire fleet of GM vehicles has been stigmatized by this defect, but most specifically the vehicles directly affected by this recall.

81. If GM had timely disclosed the defective Ignition Switch as required by the TREAD Act, the law of fraudulent concealment, and Florida consumer laws set forth below, Class members' vehicles would be considerably more valuable than they are now. Because of GM's now highly publicized campaign of deception, and its belated, piecemeal and ever-expanding recalls, so much stigma has attached to the GM brand that no rational consumer would pay what otherwise would have been fair market value for the Defective Vehicles.

TOLLING OF THE STATUTES OF LIMITATION

82. Upon information and belief, GM has known of the defective Ignition Switch since at least 2001, and certainly well before Plaintiff and Class Members purchased the Defective Vehicles, and has actively concealed and/or failed to notify Plaintiff, Class Members, and the public of the full and complete nature of the defective Ignition Switch.

83. All applicable statutes of limitation have been tolled by GM's knowing and active fraudulent concealment and pattern and practice of continuous denial of the facts alleged herein. Plaintiff and the Class Members did not discover, and did not know of material facts that would have caused a reasonable person to suspect, that Old GM and GM did not report vital safety information within their knowledge to federal authorities (NHTSA) purchasers or consumers, nor would a reasonable and diligent investigation have disclosed that Old GM and GM had information in their possession about the existence and dangerousness of the defect and that they opted to conceal that information until very recently.

84. Old GM and GM were, and GM remains, under a continuing duty to disclose to NHTSA, Plaintiff, and the Class Members “the true character, quality, and nature” of the Defective Vehicles; that this defect is based on dangerous, inadequate, and defective design and/or substandard materials; and that the defect will require repair, poses a severe safety concern, and diminishes the value of the Defective Vehicles.

85. Although GM has now acknowledged that “[t]here is a risk, under certain conditions, that your ignition switch may move out of the ‘Run’ position, resulting in a partial loss of electrical power and turning off the engine,” GM did not fully disclose the defective Ignition Switch, but rather, downplayed the prevalence of the problem, and the risk power loss occurring during normal operation of the Defective Vehicles.

86. For example, in 2005, GM issued a Technical Service Bulletin to dealers and service technicians (but not to the general public) directing that customers be advised to “remove unessential items from their key chains” to avoid inadvertent ignition switching, but did not identify or disclose the defective Ignition Switch to the general public. That bulletin did not refer to the problem as “stalling,” however, precisely because GM believed customers might associate stalling with a safety problem. Only a customer who had already experienced a stall and who went into a dealer to complain would get information about the proposed solutions. Other customers would remain unaware of the problem, as well as GM's proposed solutions.⁸

87. GM also stated, in 2005, that it was “rare” for the Ignition Switches in the Defective Vehicles to unintentionally move from the “On” position to the “Accessory” or “Off” position. At the time of the statement GM knew, or in the exercise of reasonable care should have known, that this statement was false and misleading.

⁸ Valukas Report at 8.

88. The systematic concealment of known defects was deliberate. In fact, recently revealed documents show that GM valued cost-cutting over safety, trained its personnel to *never* use the word "defect," "stall," or other words suggesting that any GM-branded vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

ESTOPPEL

89. GM was and is under a continuous duty to disclose to Plaintiff and the Class Members the true character, quality, and nature of the vehicles. GM received reports of crashes and injuries that put GM on notice of the serious safety issues presented by many of these defects. Given the continuity of engineers, corporate counsel, and other key personnel from Old GM to GM, GM was aware of the now infamous ignition switch defect (and many other serious defects in numerous models of GM-branded vehicles) *from the very date of its inception on July 10, 2009*. Plaintiff and the Class Members reasonably relied upon GM's knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, GM is estopped from relying on any statutes of limitation in defense of this action.

DISCOVERY RULE

90. The causes of action alleged herein did not accrue until Plaintiff and the Class Members actually discovered that their vehicles had the defective Ignition Switch.

91. Plaintiff and the Class Members had no realistic ability to determine that the vehicles were defective until - at the earliest - after the defective Ignition Switch caused a sudden stall. Even then, Plaintiff and the Class Members had no reason to know the sudden loss of power was caused by the defective Ignition Switch.

CAUSES OF ACTION

COUNT I FRAUDULENT CONCEALMENT

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

93. As described above, GM made material omissions and affirmative misrepresentations regarding the safety, reliability and quality of the Defective Vehicles and the GM brand.

94. GM had a duty to disclose the defects in the Ignition Switch because the defect was known and/or accessible only to GM who had vastly superior knowledge and exclusive access to the facts, and such facts were not known to or reasonably discoverable by Plaintiff and the Class Members. Further, when GM marketed the Defective Vehicles as safe, reliable and quality vehicles, GM had actual knowledge of the defect in the Ignition Switch. Thus, GM made omissions of material fact necessary in order to make the statements made by GM, in the light of the circumstances under which they are made, not misleading. In other words, GM was under a duty to disclose these omitted facts, because, where one does speak one must speak the whole truth and not conceal any facts that materially qualify those facts stated. These omissions and misrepresentations were material because any reasonable consumer would consider a defect that impacts a vehicle's safety and reliability to be an important fact and because the defect directly impacts the value of the Defective Vehicles purchased or leased by Plaintiff and the Class Members.

95. Plaintiff and the Class Members were unaware of the defective Ignition Switch and would not have purchased or leased the Defective Vehicle or would have paid a reduced price for

said Defective Vehicle if they had been aware of the defective Ignition Switch and its safety and reliability implications.

96. GM engaged in the courses of fraud, manipulation and deception herein described in order to induce Plaintiff and the other Class Members to purchase Defective Vehicles at a higher price for the Defective Vehicles, which did not match Defective Vehicles' true value.

97. GM's material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of concealing the facts set out herein as well as the true condition and value of the Defective Vehicles from Plaintiff and the Class Members and to support the artificially inflated price of the Defective Vehicles.

98. According to the Restatement of Torts (Second), sec 551(1): "One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose "

99. GM knowingly, willfully and/or recklessly deceived Plaintiff and the Class Members through the secretive, misleading and omissive activity described herein.

100. Plaintiff and the Class Members reasonably relied on GM's statements in marketing and advertising material that the Defective Vehicles were safe, and would not have purchased or leased the Defective Vehicles had they known of the defects in the Ignition Switches, or would not have paid the artificially inflated price of the Defective Vehicles.

101. As a direct result of the concealment and/or suppression of the facts, Plaintiff and the Class Members sustained damages in that Plaintiff and the Class Members now own or lease vehicles that diminished in value as a result of GM's concealment of, and failure to timely disclose, the serious safety and quality defects in the Defective Vehicles.

COUNT II
VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT

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

103. At all times relevant hereto, there was in full force and effect Mich. Comp. Laws Ann. § 445.903 *et seq.* (the "MCPA").

104. Plaintiff and the Class Members are "person[s]" within the meaning of the MCPA, Mich. Comp. Laws Ann. § 445.902(1)(d).

105. At all relevant times hereto, GM was a "person[s]" engaged in "trade or commerce" within the meaning of the MCPA, Mich. Comp. Laws Ann. § 445.902(1)(d) and (g).

106. The sale of the Defective Vehicles to Plaintiff and the Class Members occurred within "trade and commerce" within the meaning of the MCPA, Mich. Comp. Laws Ann. § 445.902(d), and both GM and Old GM committed deceptive and unfair acts in the conduct of "trade and commerce" as defined therein.

107. The MCPA makes unlawful any "unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce," as more specifically defined in the MCPA.

Mich. Comp. Laws Ann. § 445.903 (1). GM has engaged in unfair, unconscionable, and deceptive methods, acts and practices in conduct of trade or commerce in violation of the MCPA, and also has successor liability for the unfair, unconscionable, and deceptive methods, acts, and practices of Old GM as set forth above.

108. In addition, Old GM and GM violated the MCPA by “[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.” Mich. Comp. Laws Ann. § 445.903(s).

109. Plaintiff seeks injunctive relief to enjoin GM from continuing these unfair, unconscionable and deceptive acts or; seek monetary relief against GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiff and each Class Member, reasonable attorneys' fees; and any other just and proper relief available under the Mich. Comp. L. Ann. § 445.911.

110. Plaintiff further seeks punitive damages against GM because GM carried out the above described acts with willful and conscious disregard of the rights and safety of others. GM intentionally and willfully misrepresented the safety and reliability of the Defective Vehicles, actively deceived Plaintiff and the Class Members with regard to matter of health and safety, and maliciously concealed material facts, in order to avoid the expense and public relations nightmare of correcting a deadly flaw.

COUNT III
VIOLATIONS OF MAGNUSON-MOSS FEDERAL WARRANTY ACT
15 U.S.C. § 2301, et seq.

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

112. 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)(l). As alleged above, GM has failed to comply with the terms of its implied warranties.

113. The Defective Vehicles are “consumer products” pursuant to 15 U.S.C. § 2301(1).

114. GM is a “warrantor” pursuant to 15 U.S.C. § 2301(5).

115. Plaintiff and the Class Members are “consumers” pursuant to 15 U.S.C. § 2301(3).

116. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class action and is not required to give GM notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure.

117. As a warrantor, GM is obligated to afford the Class, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity. Plaintiff and the Class Members have had sufficient direct dealings with GM and/or its agents (dealerships) to establish privity of contract between GM, on the one hand, and Plaintiff and the Class Members, on the other hand. Regardless, privity is not required here because Plaintiff and the Class Members are intended third-party beneficiaries of contracts between GM and its dealers, and specifically, of GM’s implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements related to the Defective Vehicles; the warranty agreements were intended to benefit the consumers only. Finally, privity is not required because the Defective Vehicles are dangerous instrumentalities due to the defects and nonconformities alleged herein.

118. In connection with its sale of the Defective Vehicles, GM gave an implied warranty as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of merchantability. As a part of the implied warranty of merchantability, GM warranted that the Defective Vehicles were fit for their ordinary purpose as safe passenger motor vehicles, would pass without objection in the trade as designed, manufactured and marketed, and were adequately contained, packaged and labeled.

119. GM is liable to Plaintiff and the Class Members pursuant to 15 U.S.C. § 23 10(d)(1), because it breached the implied warranty of merchantability in that the Defective Vehicles were not fit for the ordinary purposes for which they are used, a safe passenger motor vehicle.

120. The defective Ignition Switch, which allows the Defective Vehicles to shut down during ordinary driving conditions, causing stalls, the loss of power-steering and power-brakes, and the non-deployment of airbags in the event of a collision is a defect which relates to motor vehicle safety, rendering the Defective Vehicles unfit for their ordinary purpose.

121. In addition, GM breached its implied warranty of merchantability to Plaintiff and the Class Members because the Defective Vehicles, as a result of the defective Ignition Switch, would not pass without objection in the trade.

122. Further, despite GM's knowledge of this dangerous condition, the packaging and labelling of the Defective Vehicles did not adequately warn Plaintiff and the Class Members of the dangers of the Defective Vehicles and/or did not adequately instruct Plaintiff and the Class Members on the proper use of the Defective Vehicles in light of the defective Ignition Switches.

123. Plaintiff and the Class Members 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).

124. Affording GM a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Defective Vehicle, GM knew, should have known, or was reckless in not knowing of its misrepresentations concerning the Defective Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff

resort to an informal dispute resolution procedure and/or afford GM a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

125. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and the Class Members are entitled to recover the damages caused to them by GM's breach of the implied warranty of merchantability, which damages constitute the difference in value between the Defective Vehicles as warranted (their sales prices) and the Defective Vehicles as actually delivered.

126. Plaintiff also seeks 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). Plaintiff and the Class Members intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

COUNT IV
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

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

128. Plaintiff brings Count IV, individually, and on behalf of the Class, who purchased or leased the Defective Vehicles.

129. This is an action for actual damages pursuant to Chapter 501, Part II, Fla. Stat., the "Florida Deceptive and Unfair Trade Practices Act" ("FDUTPA").

130. At all times material hereto, Plaintiff and the Class Members were "consumers" within the meaning of FDUTPA, and GM has engaged in "trade or commerce" within the meaning of FDUTPA.

131. Section 501.204(1) of FDUTPA imposes a duty on GM to refrain from engaging in “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

132. Section 501.211 of FDUTPA provides consumers with a private right of action for FDUTPA violations.

133. Based on the foregoing course of conduct alleged throughout this Complaint, GM has engaged in representations, acts, practices or omissions which are material, and which are likely to mislead consumers acting reasonably under the circumstances. Thus, GM has engaged in deceptive acts or practices in violation of § 501.204(1), *Fla. Stat.*

134. Moreover, based on the foregoing course of conduct alleged throughout this Complaint, GM has committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers; or GM has committed acts or practices which have caused, or are likely to cause, consumer injury, which is substantial, not outweighed by any countervailing benefits to consumers or competition that the practice produces, and an injury that consumers themselves could not reasonably have avoided. Therefore, GM has engaged in unfair acts or practices in violation of § 501.204(1), *Fla. Stat.*

135. And as set forth above throughout the Complaint, consumers, including Plaintiff and the Class Members, have suffered losses and thus incurred actual damages as a result of GM’s unfair or deceptive acts or practices in violation of FDUTPA, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against GM and in favor of Plaintiff and the Class Members, 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), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiff as Class Representative and Plaintiff's chosen counsel as Class Counsel;

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

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

D. Award Plaintiff and the Class Members exemplary damages in such amount as proven;

E. Award damages and other remedies as allowed by the laws of the State of Florida;

F. Award Plaintiff and the Class Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and

G. Award Plaintiff and the 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

Plaintiff requests a trial by jury on the legal claims, as set forth herein.

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
 WENDY KOSOVEC, individually and on behalf of other similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, PA
 316 S. Baylen St, Suite 600 Pensacola, FL 32502
 (850)435-7000

DEFENDANTS
 GENERAL MOTORS, LLC; GENERAL MOTORS HOLDINGS, LLC

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

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

Attorneys (If Known)

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

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

4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. 1332; 15 U.S.C 2301

Brief description of cause:
 Violation of Magnuson-Moss; Violation of MCLA 445; Fraud by Concealment; Violation of FDUTPA

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Furman (FDNY) DOCKET NUMBER MDL 2543

DATE 7/28/14 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



WENDY KOSOVEC, individually and on behalf of
 others similarly situated

Plaintiff(s)

v.

GENERAL MOTORS, LLC
 GENERAL MOTORS HOLDINGS, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* General Motors, LLC
 General Motors Holdings, LLC
 By Serving Registered Agent
 Corporation Service Company
 1201 Hays St.
 Tallahassee, FL 32301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Peter J. Mougey (pmougey@levinlaw.com)
 Levin, Papantonio, Thomas, Mitchell, Raferty, & Proctor, PA
 316 S. Baylen St., Suite 600
 Pensacola, FL 32502

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Exhibit C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WILLIAM L. RUKEYSER, individually
and on behalf of all others similarly
situated,

Case No. 14-cv-5715

Plaintiff,

CLASS ACTION

v.

JURY TRIAL DEMANDED

GENERAL MOTORS LLC,

Defendant.

AMENDED COMPLAINT

Plaintiff, William L. Rukeyser (“Plaintiff” or “Rukeyser”), by and through undersigned counsel, on behalf of himself and all other persons and entities similarly situated, brings this complaint against Defendant General Motors LLC (“Defendant” or “General Motors”), and alleges, upon information and belief and based on the investigation to date of counsel, as follows:

INTRODUCTION

1. This class action concerns all persons and entities in the United States (the “Class”) who currently own or lease a Chevrolet Cobalt; Chevrolet HHR; Pontiac Solstice; Saturn Ion; Saturn Sky; or Pontiac G5 (the “GM Vehicles”) containing defective ignition switches (“ignition switches”).

2. Defendant has designed, manufactured, advertised, promoted, warranted and sold millions of GM Vehicles containing defective ignition switches for use in the United States and worldwide.

3. Defendant marketed and warranted to consumers, including Plaintiff and the Class, that its GM Vehicles were of superior quality and engineered and built to be safe, long-lasting and reliable.

4. However, Defendant failed to properly and adequately design, formulate and test its GM Vehicles before advertising and selling them as safe, durable and fit for use to Plaintiff and the Class.

5. GM Vehicles are equipped with ignition systems that are defective. The ignition switches, which are supposed to serve the basic function of turning the vehicle on or off, habitually slip out of a “run” position and into an “accessory” or “off” position without any notice or warning. As a result of the slip, GM Vehicles lose their power, speed and overall brake control. In addition, they do not deploy their airbags. Such failures place Plaintiff and the Class in highly dangerous situations which have resulted in, and will continue to result in, collisions, bodily harm and possibly death. In addition, the defects associated with Defendant’s GM Vehicles diminish the value of the vehicles owned or leased by Plaintiff and the Class.

6. Because of the defects associated with Defendant’s ignition switches, GM Vehicles are unable to function as represented and promised by Defendant and are unfit for their ordinary and intended use(s).

7. Defendant and its predecessor, General Motors Corporation (“Former General Motors”), have known about ignition switch defects and failures in GM Vehicles since at least 2001.

8. For nearly a decade, Defendant has received a litany of complaints from consumers, dealers and service technicians concerning failures with its ignition switches. It has also had access to reports and studies concerning crashes, injuries and deaths that have occurred

as a result of the faulty ignition switches. *See* Ruiz, Ivory and Stout, *13 Deaths, Untold Heartache, From G.M. Defect*, May 24, 2014, NYT (failures with Defendant's ignition switches resulted in at least 13 deaths; "[t]he issue of a potential cover-up hangs heavily over G.M. The company has acknowledged that as early as 2001 it had evidence that the ignition switch could, if jostled, suddenly shut off the power in a moving car, disabling air bags and impeding braking and steering systems"). In addition, Defendant has been subjected to numerous investigations and inquiries organized by the National Highway Traffic Safety Administration ("NHTSA"), the United States Department of Justice, the Securities and Exchange Commission, the United States Congress and numerous state attorneys general.

9. Instead of addressing the various warnings and indications that it has received over the years, Defendant ignored them. Defendant even went as far as to ignore its statutory duty under the Transportation Recall Enhancement, Accountability and Documentation Act, 49 U.S.C. §§ 30101-30170 ("TREAD Act"), which requires a vehicle manufacturer to disclose known defects. Under this important safety statute, if a defect is found to exist, the manufacturer must notify vehicle owners and dealers in an effort to promptly remedy the situation. Because Defendant failed to notify NHTSA that its ignition switches were defective, it was forced to enter into a Consent Order (which required it to pay certain fines) with the Administration and publicly admit that it violated the Act.

10. Defendant refused to inform Plaintiff and the Class about the defect(s) associated with its GM Vehicles because it sought profits over safety.

11. Defendant continues to deceptively and falsely make representations regarding its GM Vehicles, including the product's fitness for use and reliability. *See* Healey, J., *Senators: Fire GM legal chief, pay more recall victims*, USA Today, July 7, 2014,

<http://www.usatoday.com/story/money/cars/2014/07/17/gm-senate-millikin-barra-delphi-recall/12768159/> (reporting that during a July 17, 2014 Senate Subcommittee on Consumer Protection, Product Safety and Insurance hearing, Senator Richard Blumenthal (D-Conn.) stated that GM’s lawyers were possibly involved in “cover-up, concealment, deceit and even fraud” and should be accused of crimes by the Justice Department).

12. Ignition switches installed in the GM Vehicles have failed or will fail prematurely and will not perform as warranted by the Defendant. As a result, Plaintiff and the Class have incurred and will continue to incur actual damages and out of pocket costs and expenses because a vehicle purchased or leased with such a serious safety defect is worth less than a vehicle without such a defect.

13. Had Plaintiff and Class been provided with information regarding the defective nature of Defendant’s GM Vehicles, which Defendant readily possessed, they would not have purchased or otherwise acquired the defective vehicles. Moreover, they would not have relied on the marketing and warranty representations made by the Defendant which suggested that the vehicles were safe and worry-free.

14. Defendant has finally admitted that its GM Vehicles are defective and organized a recall, during February, March, April, June and July of 2014, of approximately 13 million vehicles equipped with dangerous ignition switches.

15. Due to the size of the typical individual Class member’s claim, and because most purchasers of the GM Vehicles have only modest resources, it is unlikely that individual Class members could afford to seek recovery against Defendant on their own. This is especially true in light of the size and resources of the Defendant and its refusal to completely recall or otherwise fully disclose the true nature of the product defects to the Plaintiff and the Class. A

class action is, therefore, the only reasonable means by which Class members can obtain relief from this Defendant.

JURISDICTION AND VENUE

16. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because Plaintiff and members of the proposed Class are citizens of states different from Defendant, and the aggregate amount in controversy exceeds \$5,000,000.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District and Defendant has caused harm and injury to class members residing in this District. Defendant is registered with the New York Department of State to conduct business in this District. In addition, the Defendant's Chapter 11 sale of its assets, implemented through section 363 of Chapter 11, Title 11 of the United States Code, took place in the United States Bankruptcy Court for the Southern District of New York.

PARTIES

18. Plaintiff, William L. Rukeyser, is a citizen and resident of California, residing in Davis, California. In 2008, after reviewing several bids from different vehicle dealers, Plaintiff purchased a new four door LS Sedan Chevrolet Cobalt for approximately \$12,000 from Sanborn Chevy, located in Lodi, California. Plaintiff Rukeyser's Chevrolet Cobalt was purchased primarily for personal, household, and family use.

19. Prior to purchasing his vehicle, Plaintiff reviewed Defendant's website and analyzed representations suggesting that the Cobalt had favorable fuel economy. In addition, Plaintiff visited an additional website to research safety crash test data results (which he has done in the past prior to purchasing a new vehicle). Shortly before the time of his purchase,

Plaintiff test drove the Cobalt at Sanborn Chevy to see how it handled and drove.

20. Plaintiff relied on Defendant's marketing and representations (in particular that the Cobalt was a quality built product). Unbeknownst to Plaintiff, the statements made by Defendant contained misrepresentations and omissions of material fact regarding the quality, safety, reliability, and durability of its GM Vehicles.

21. In May 2014, Defendant, via a recall letter sent by General Motors Customer & Relationship Service General Director Jim Moloney (titled: "Important Safety Recall"), informed Plaintiff that an ignition switch defect existed with his 2008 Chevrolet Cobalt.

22. In June 2014, and pursuant to Defendant's recall letter and directions, Plaintiff took his car to Hanlee Chevy in Davis, California so that it could be equipped with a new ignition switch. To date, over a month later, Plaintiff's Cobalt still remains at the dealership awaiting an ignition switch. (The dealership informed Plaintiff that it has been waiting for Defendant to send new ignition switches for use.)

23. Plaintiff would not have purchased Defendant's vehicle, or paid such a large amount of money for it, had Defendant disclosed that its GM Vehicles contained defective and unsafe ignition switches that have caused and will continue to cause harm and possible death to unsuspecting owners. Defendant has left Plaintiff with an unsafe vehicle that has a greatly diminished value.

24. Defendant, General Motors LLC, is a Delaware Corporation with its principal place of business located at 300 Renaissance Center, Detroit, Michigan 48243.

CLASS ACTION ALLEGATIONS

25. Plaintiff and similarly situated individuals (the "Class") bring this class action pursuant to Federal Rule of Civil Procedure 23 as defined as follows:

Nationwide Class:

All persons and entities in the United States who currently own or lease a GM Vehicle (2005-2010 Chevrolet Cobalt; 2006-2011 Chevrolet HHR; 2006-2010 Pontiac Solstice; 2003-2010 Saturn Ion; 2007-2010 Saturn Sky; and 2007-2010 Pontiac G5) containing defective ignition switches.

Alternatively, Plaintiff and similarly situated individuals bring this class action pursuant to Federal Rule of Civil Procedure 23 as defined as follows:

California Class:

All persons and entities in the state of California who currently own or lease a GM Vehicle (2005-2010 Chevrolet Cobalt; 2006-2011 Chevrolet HHR; 2006-2010 Pontiac Solstice; 2003-2010 Saturn Ion; 2007-2010 Saturn Sky; and 2007-2010 Pontiac G5) containing defective ignition switches.

26. Plaintiff reserves the right to amend his class definitions following further investigation and discovery.

27. Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Defendant and any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant and its legal representatives, assigns and successors of Defendant; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

28. *Numerosity:* The Class is composed of thousands of persons geographically dispersed throughout the United States and the State of California, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class is ascertainable and identifiable from Defendant's records or identifying marks on the GM Vehicles and ignition switches.

29. *Commonality:* The critical question of law and fact common to the Plaintiff's Class that will materially advance the litigation is whether GM Vehicles are inherently defective

and unsafe, contrary to the expectations imparted by Defendant through its representations and omissions.

30. Other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- a. Whether Defendant's ignition switches are defective, defectively designed, and/or defectively manufactured;
- b. Whether Defendant knew or should have known about the defects in its GM Vehicles and ignition switches;
- c. Whether Defendant concealed from Plaintiff and members of the Class defects in its GM Vehicles and ignition switches;
- d. Whether Defendant breached warranties relating to its GM Vehicles and ignition switches;
- e. Whether the terms of Defendant's warranties were unconscionable or failed essential purpose;
- f. Whether Plaintiff and members of the Class are entitled to damages and what the damages consist of;
- g. Whether Defendant engaged in unfair, false, misleading, or deceptive trade practices; and
- h. Whether Defendant made false misrepresentations regarding its GM Vehicles and ignition switches.

31. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in designing, manufacturing,

marketing, advertising, warranting and selling the defective GM Vehicles and Defendant's conduct in concealing the defect in the GM Vehicles to the Class.

32. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and Subclass and has no interests antagonistic to those of the Class or the Subclass. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving, *inter alia*, breach of warranties, product liability, consumer fraud and product design defects.

33. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

COMMON FACTUAL ALLEGATIONS

34. Defendant is, and at all times relevant hereto was, engaged in the business of designing, developing, manufacturing, distributing, marketing, and selling GM Vehicles.

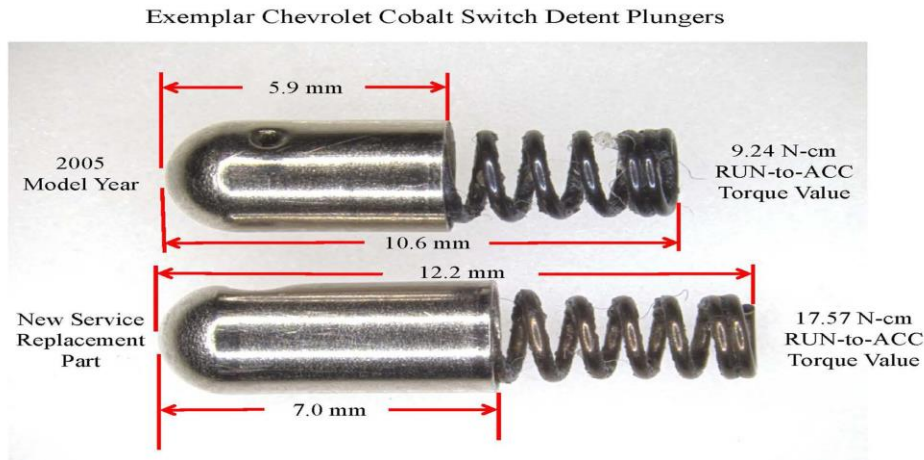
35. GM Vehicles are equipped with ignition systems that are defective.

36. Defendant's ignition switches, which are supposed to serve the basic function of

turning the vehicle on or off, habitually slip out of a “run” position and into an “accessory” or “off” position without any notice or warning.

37. Ignition switches in Defendant’s Cobalt vehicles are equipped with a spring loaded “detent plunger,” located inside the ignition switch controller and attached to the end of the ignition key cylinder in the steering column, that does not operate properly when in use. Gates, G., *The Fault in the Cobalt Ignition Switch*, June 5, 2014, NYT. As a result of this defect, GM Vehicles lose power, speed, and overall brake control. They also do not deploy their airbags.

38. The following diagram illustrates an alteration (size enhancement from 5.9 mm to 7.0 mm) in the ignition switch (spring loaded “detent plunger) that Defendant made for its Chevrolet Cobalt (which is the vehicle Plaintiff purchased and which was subject to a recall):



(Diagram: International Business Times)

39. The following photo illustrates the housing protecting a GM Vehicle’s ignition switch:



(Photo: Michael Spooneybarger/Reuters/Landov)

40. Ignition switch defects in GM Vehicles occur during normal and intended use and are not the result of incorrect installation.

41. GM Vehicles are unfit for the ordinary purposes for which they are used because their ignition switch failure reduces the function (causes brake and power failures and do not deploy their air bags) of the GM Vehicles and/or completely eliminates their ability to function as marketed and represented by Defendant.

42. Defective ignition switches in GM Vehicles caused Plaintiff and members of the Class to suffer damages, including but not limited to, fees and costs for maintenance and diminished vehicle value.

Defendant's Bankruptcy Reorganization Cannot Shield It From Its Liabilities And Obligations

43. In 2009, Defendant, as a result of a sale under Chapter 11 of the U.S. Bankruptcy Code, acquired all assets and assumed various liabilities related to the former General Motors Corporation ("Former General Motors").

44. Two pertinent liabilities and obligations retained by Defendant after the sale and bankruptcy are:

Purchaser 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.

...

all Liabilities arising under express written warranties . . . that are specifically identified as warranties.

45. Defendant has successor liability for Former General Motors' actions related to the design, manufacture, promotion and sales of GM Vehicles because Defendant has continued the general business of Former General Motors (i.e., has retained many of the same quality control, warranty, sales and research and development employees, implements many of the same practice and procedures, has knowledge about the ignition switches at issue here and acquired books, records and property).

After 10 Years Of Concealment And Inaction, Defendant Offered A Recall To Certain Customers

46. In 2014, Defendant admitted that its vehicles were defective and dangerous. According to Defendant's Field Performance Review Committee and the Executive Field Action Decision Committee ("EFADC"), during February, March, April, June and July of 2014, Defendant recalled approximately 13 million vehicles (some of which were equipped with dangerous ignition switches).

47. General Motors' Chief Executive Officer Mary Barra, testifying before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations on April 1, 2014 stated: "More than a decade ago, GM embarked on a small car program. Sitting here today, I cannot tell you why it took years for a safety defect to be announced in that program, but I can tell you that we will find out." See "The GM Ignition Switch Recall: Why

Did It Take So Long?” April 1, 2014.

48. In May 2014, Defendant (via a letter sent by General Motors Customer & Relationship Service General Director Jim Moloney), sent an ignition switch recall letter (titled: “Important Safety Recall”) to Plaintiff concerning defects with his 2008 Chevrolet Cobalt. The letter stated, in part, that:

General Motors has decided that one or more defects as described below which relate to motor vehicle safety exists in certain 2008-2010 model year (MY) Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles. As a result, GM is conducting a recall. We apologize for this inconvenience. However, we are concerned about your safety and continued satisfaction with our products.

...

IMPORTANT

- This notice applies to your 2008 model year Chevrolet Cobalt, **VIN 1G1AK58F587257638.**
- Parts needed for the recall repairs are becoming available for dealers to order. Please contact your GM dealer to schedule an appointment to have the recall repairs performed on your vehicle.
- **Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from the key ring. Also, when exiting your vehicle, always make sure your vehicle is in “Park”, or in the case of a manual transmission, put the transmission into reverse gear. Always set the parking brake.**
- The recall repairs will be performed for you at **no charge.**

...

49. The letter described the ignition switch defect and the associated risks (which Defendant has known about for approximately 10 years):

Why is your vehicle being recalled?

GM records indicate a defective Ignition & Start Switch or a kit containing a defective Ignition & Start Switch may have been installed in some 2008-2010 MY Chevrolet Cobalt, 2008-2011 MY Chevrolet HHR, 2008-2010 MY Pontiac Solstice, 2008-2010 MY Pontiac G5, and 2008-2010 MY Saturn Sky vehicles.

If your vehicle has the defective Ignition & Start Switch, there is a risk, under certain conditions, that your ignition switch may move out of the "run" position, resulting in a partial loss of electrical power and turning off the engine. This risk increases if your key ring is carrying added weight (such as more keys or the key fob) or your vehicle experiences rough road conditions or other jarring or impact related events. If the ignition switch is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality.

...

Some of these vehicles may also have a condition in which the ignition key may be removed when the ignition is not in the "Off" position. If the ignition key is removed when the ignition is not in the "Off" position, unintended vehicle motion may occur: (a) for an automatic transmission, if the transmission is not in "Park"; or (b) for a manual transmission, if the parking brake is not engaged and the transmission is not in reverse gear. This could result in a vehicle crash and occupant or pedestrian injuries.

50. Defendant's knowledge concerning defects with its ignition switches, and the need to develop a recall program to combat such failures, is evidenced by its own admissions. As stated in Defendant's May 2014 letter (above): "General Motors has decided that one or more defects as described" relates to "vehicle safety" in certain GM Vehicles.

51. Rather than take immediate measures to inform Plaintiff and the Class about the defects that it knew existed with its ignition switches and the fact that it was contemplating a recall to combat apparent problems, Defendant failed to disseminate to customers, service people, dealers and distributors information and knowledge that it possessed.

Defendant Was, Or Should Have Been, Aware Of Such Defects As Early As 2001 – Several Years Prior To Plaintiff's Purchase And Years Prior To The Failures Experienced By Plaintiff And The Class

52. There are many general and specific industry reports and studies documenting the defects associated with Defendant's GM Vehicles' switches that were available to

Defendant (and Former General Motors) prior to their sale to Plaintiff and the Class. Despite the mounting evidence of which Defendant knew, or should have been aware, concerning the topic, it took no action to inform Plaintiff and the Class of the defects that its GM Vehicles suffer from.

53. For instance, in 2001, during the pre-production development of the Saturn Ion, Defendant's engineers discovered that the ignition switch could inadvertently slip from "run" to "off."

54. In 2003, according to a report cited by the New York Times, *see* Ivory, D., *G.M. Reveals It Was Told of Ignition Defect in '01*, Mar. 12, 2014, NYT, during an internal inquiry by Defendant, "a service technician observed the car stall after the ignition had switched off while driving. After seeing that a heavy key ring had worn out the switch, the technician replaced it, the chronology said, and the inquiry was then closed."

55. In 2004, Defendant learned "that if a driver bumped the ignition switch in a 2005 Chevrolet Cobalt, it could turn off, shutting the engine." *Id.*

56. In 2005, a 16-year-old motorist, Amber Marie Rose, died when her 2006 Chevrolet Cobalt crashed after an ignition switch failure.

57. In 2005, Defendant received field reports of Chevrolet Cobalt vehicles losing engine power, including instances where the car slipped out of "run" and into a contrary position. *See* "Chronology" attached to Mar. 11, 2014 Letter from M. Carmen Benavides, Director Product Investigations and Safety Regulations on behalf of Defendant to Nancy Lewis, NHTSA (available at: <http://docs.house.gov/meetings/IF/IF02/20140401/102033/HHRG-113-IF02-20140401-SD013.pdf>) ("Chronology").

58. Since 2005, Defendant received the following safety defect reports (some of

which are attributed to steering and/or airbag component failures) concerning injuries and deaths suffered by owners of Chevrolet Cobalts (the vehicle Plaintiff purchased in 2008):

- 2005: 26 death and injury reports.
- 2006: 69 death and injury reports.
- 2007: 87 death and injury reports.
- 2008: 106 death and injury reports.
- 2009: 133 death and injury reports.
- 2010: 400 death and injury reports.
- 2011: 187 death and injury reports.
- 2012: 157 death and injury reports.

59. In 2005, Defendant issued a Technical Service Bulletin (“TSB”) warning service technicians and dealers about inadvertent ignition switch slips and the result of such slips.

60. In 2006, another 16-year-old motorist, Megan Phillips, died when her 2005 Chevrolet Cobalt crashed after an ignition switch failure (NHTSA investigators confirmed that her ignition switch slipped out of position).

61. In 2006, Defendant engineers responsible for ignition switch installations in various vehicle makes reviewed and analyzed alterations to the ignition switch proposed by a supplier. *See Chronology.*

62. In 2007, a Defendant “investigating engineer was tasked with tracking crashes in which Cobalts were involved in frontal impacts and the airbags did not deploy, in order to try to identify common characteristics of these crashes.” *See Chronology.*

63. In 2007, a NHTSA official emailed “the agency's Office of Defects Investigation recommending a probe looking into the failure of air bags to deploy in crashes involving

Chevrolet Cobalts and Saturn Ions, prompted by 29 complaints, four fatal crashes and 14 field reports.” Basu, T., *Timeline: A History Of GM's Ignition Switch Defect*, Mar. 31, 2014, NPR, <http://www.npr.org/2014/03/31/297158876/timeline-a-history-of-gms-ignition-switch-defect>.

64. In 2011, a Defendant “Field Performance Assessment Engineer (“FP AE”) was assigned to move forward with an FPE investigation of a group of crashes in which airbags in 2005-2007 model year Chevrolet Cobalts and a 2007 Pontiac G5 that had not deployed during frontal impacts.” *See* Chronology.

65. In 2012, Defendant “identified two nonfatal crashes involving Saturn Ions that may have been related to the ignition problem. These details were not disclosed in the previous filing.” Ivory, D., *G.M. Reveals It Was Told of Ignition Defect in '01*, Mar. 12, 2014, NYT.

Defendant’s Suppression/Omissions Regarding Defects In Its GM Vehicles

66. Defendant advertised and promoted its GM Vehicles as safe, reliable and worry-free despite failing to test them, including for issues that may arise through normal and foreseeable usage. Defendant represents on its website and within its marketing materials the following:

Quality and safety are at the top of the agenda at GM, as we work on technology improvements in crash avoidance and crashworthiness to augment the post-event benefits of OnStar, like advanced automatic crash notification.
http://www.gm.com/vision/quality_safety/gms_commitment_tosafety.html

...

Our engineers thoroughly test our vehicles for durability, comfort and noise minimization before you think about them. The same quality process ensures our safety technology performs when you need it.
http://www.gm.com/vision/quality_safety/gms_commitment_tosafety.html

...

This means that we are committed to delivering vehicles with compelling designs, flawless quality and reliability, and leading safety, fuel economy and infotainment features.

http://www.gm.com/company/aboutGM/our_company.html

...

Safety will always be a priority at GM.

http://www.gm.com/company/aboutGM/our_company.html

...

Our safety philosophy is at the heart of the development of each vehicle.

http://www.gm.com/company/aboutGM/our_company.html

...

That is why our vehicles go through extreme testing procedures in the lab, on the road and in our production facilities prior to being offered to customers.

http://www.gm.com/company/aboutGM/our_company.html

...

No matter what you're searching for, Chevrolet offers a unique line-up of cars that deliver fuel economy, style, technology, performance, safety and definitive attitude to meet your needs.

<http://www.chevrolet.com/car.html>

67. Defendant and its authorized agents, dealers and distributors made each of the above-described assertions, statements, representations and warranties with the intent and purpose of inducing consumers to purchase its GM Vehicles. However, Defendant knew that the representations were not true and that the GM Vehicles were defective and would not function as promised. Defendant also made numerous material omissions in their product literature and uniformly withheld important information relating to the design, safety, reliability and performance of its GM Vehicles.

68. Defendant has engaged in a scheme to cover up the true nature of the problems with its GM Vehicles. Among other things, it failed to notify NHTSA, pursuant to the TREAD

Act, that its ignition switches were defective. As a result, it was subsequently forced to enter into a Consent Order (which required it to pay certain fines). Defendant has concealed and suppressed from Plaintiff and the Class that the real problem with its GM Vehicles, regardless of the manner of installation, is the unsafe and defective design and manufacture of its ignition switches.

69. To this day, Defendant continues in this pattern of concealment and suppression by deliberately and knowingly misrepresenting to the Plaintiff and Class the true nature of the problems with Defendant's GM Vehicles.

70. Plaintiff and the Class are particularly vulnerable to such deceptive practices because they are anxious to protect the vehicles as best as they can and because of the financial burden and dangers in not having a safe vehicle and mode of transportation.

71. Had the Defendant not withheld and omitted important safety information about the design, reliability and performance of its GM Vehicles, Plaintiff and the members of the Class would not have purchased Defendant's products.

Defendant's Admissions To The United States Congress Concerning GM Vehicle Failures

72. Starting in 2014, as a result of public outrage and the need for hearings to review Defendant's actions, the United States Congress conducted a number of hearings seeking testimony from Defendant's officers.

73. The hearings concerning Defendant's actions took place before the following committees:

- Before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, April 1, 2014.
- Before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Protection, Product Safety and Insurance, April 2, 2014.

- Before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, June 18, 2014.
- Before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Protection, Product Safety and Insurance, July 17, 2014.

74. A small number of Defendant's admissions from the hearings are as follows:

Selected Testimony of General Motors Chief Executive Officer Mary Barra Before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, June 18, 2014:

- "The Valukas report, as you now know, is extremely thorough, brutally tough and deeply troubling. It paints a picture of an organization that failed to handle a complex safety issue in a responsible way."
- "I told our team as bluntly as I knew how, that the series of questionable actions and inactions uncovered in the investigation were inexcusable."
- "I want this terrible experience permanently etched in our collective memories. This isn't just another business challenge. This is a tragic problem that never should have happened. And it must never happen again."
- "First, we have made a number of personnel decisions. Fifteen individuals identified in the report are no longer with the company...Under the new system, this should never happen again."
- "The basic issue is that the switch that he approved to go into production did not meet the performance requirements. That was the first mistake."

Testimony of General Motors Chief Executive Officer Mary Barra Before Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Protection, Product Safety and Insurance, July 17, 2014:

- "In a town hall meeting before thousands of GM employees and several thousand more around the world via satellite we accepted responsibility for what went wrong."

Testimony of General Motors Executive Vice President and General Counsel Michael P. Millikin Before Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Protection, Product Safety and Insurance, July 17, 2014:

- "We now have to correct our mistakes."

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATION**

75. This action is filed within all applicable statutes of limitation.

76. Moreover, because the defects in the GM Vehicles are latent and not detectable until manifestation, Plaintiff and the Class members were not reasonably able to discover that their GM Vehicles were defective until after installation, despite their exercise of due diligence.

77. Defendant knew that the GM Vehicles were defective prior to the time of sale and concealed that material information from Plaintiff and all consumers.

78. As such, any applicable statutes of limitation have been tolled by Defendant's concealment of material facts, and Defendant is estopped from relying on any such statutes of limitation.

CAUSES OF ACTION

COUNT ONE

**Violation of the California Unfair Competition Law ("UCL")
Cal. Bus. & Prof. Code § 17200, *et seq.* and Similar
Laws of Other States**

79. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

80. Defendant's conduct in designing, manufacturing, engineering, fabricating, assembling, constructing, testing, examining, distributing, and/or marketing its GM Vehicles was an unfair, unlawful, or fraudulent business practice in violation of California's UCL, Cal. Bus. & Prof. Code § 17200, *et seq.* Further, Defendant's concealment, intentional and negligent misrepresentation, and breach of warranties constitute unfair, unlawful, and fraudulent business acts and practices in violation of § 17200.

81. California Business and Professions Code § 17200 applies to all claims of all the Plaintiff and Class members.

82. Defendant engaged in and continues to engage in acts or practices that constitute unfair competition as defined by Business and Professions Code § 17200. Those acts include, but are not limited to, the following:

- a. Making or authorizing written and oral statements which were untrue or misleading and which were known or in the existence of reasonable care should have been known to be untrue or misleading, as more fully described above and incorporated herein by this reference as though set forth at length;
- b. Making untrue or misleading statements about the quality, safety and/or abilities of its GM Vehicles.

83. Had Plaintiff and members of the Class known the true facts about the defects in the GM Vehicles they would not have purchased them for use.

84. The unlawful acts and practices of Defendant alleged herein constitute unlawful business acts or practices within the meaning of California Business and Professions Code § 17200. Defendant's unlawful business acts and/or practices as alleged herein have violated numerous state, statutory and/or common laws – and said predicate acts are therefore *per se* violations of § 17200.

85. Defendant's untrue and misleading statements as alleged in this action constitute tortious conduct that gave Defendant an unfair competitive advantage in the market place over competitors who did not engage in such practices. Said misconduct, as alleged herein, also violated established law and/or public policies which seek to promote disclosure of any defects in consumer products. Misleading and failing to properly disclose the nature and extent of such

defects to consumers, prior to those consumers purchasing the subject GM Vehicles, as alleged herein, was and is directly contrary to established legislative goals and policies promoting thorough disclosure of defects in consumer products. Therefore, Defendant's acts and/or practices alleged herein were and are unfair within the meaning of Business and Professions Code § 17200.

86. The harm to Plaintiff and the Class outweighs the utility, if any, of Defendant's acts and/or practices as alleged herein. Thus Defendant's deceptive business acts and/or practices, as alleged herein, were unfair within the meaning of the Business and Professions Code § 17200.

87. In addition, as alleged herein, Defendant intended that Plaintiff and the Class consumers would be misled and/or deceived into believing that they were purchasing GM Vehicles that did not contain defective ignition switches, and that did not require additional maintenance, recall and repair to function as promised and represented.

88. At all relevant times, Defendant's misconduct and omissions alleged herein: (a) caused substantial danger and injury to the public; (b) had no countervailing benefit to consumers or to competition that could possibly outweigh this substantial injury; and (c) caused damage and bodily injury to ordinary consumers. Thus, Defendant's acts and/or practices as alleged herein were unfair within the meaning of Business and Professions Code § 17200.

89. Defendant's acts and practices, as alleged herein, were likely to, and did, deceive the public. Defendant's untrue and misleading statements, as alleged herein, therefore constitute fraudulent business acts and/or practices within the meaning of California Business and Professions Code § 17200.

90. California consumers have been, and continue to be, deceived by Defendant's

untrue and misleading statements as alleged herein. California consumers have suffered damage, been put in harms-way and lost money as a result of the deceptive conduct alleged herein. The unlawful, unfair, deceptive and/or fraudulent business acts and practices of Defendant, as fully described herein, present a continuing threat to the Plaintiff and the Class to be misled and/or deceived by Defendant as alleged herein, and/or to be substantially damaged by these untrue and misleading statements.

91. Plaintiff and the Class have been injured and have suffered loss of money or property as a result of Defendant's unsafe, unfair, unlawful, and/or fraudulent business acts and practices.

92. Plaintiff has standing to pursue claims under the UCL as he lost money or property as a result of Defendant's unsafe, unlawful, unfair, or fraudulent business practices.

93. Additionally, the Class paid more for their defective GM Vehicles than they would have had they known the true defective nature of the units.

94. Accordingly, the Plaintiff and Class have suffered a loss of money or property as a result of Defendant's conduct with regard to the GM Vehicles.

95. Plaintiff has standing to pursue claims under the UCL as he relied on Defendant's affirmative representations regarding the quality, safety, durability, and reliability of the GM Vehicles; additionally, had Defendant disclosed the true, defective and dangerous nature of the GM Vehicles, he would not have purchased them.

96. For instance, and as alleged herein, prior to purchasing his vehicle, Plaintiff reviewed Defendant's website and analyzed representations suggesting that the Cobalt was good on mileage. Shortly before the time of his purchase, Plaintiff test drove his Cobalt at Sanborn Chevy. Plaintiff relied upon the representations and statements made on Defendant's website

and in its marketing materials and literature.

97. As a direct or proximate result of Defendant's unfair, unlawful or fraudulent business practices as set forth above, Defendant has been unjustly enriched by Plaintiff and Class members' payment of consideration in the purchase of the GM Vehicles. As such, Plaintiff and Class members are entitled to restitution of all consideration paid to Defendant under § 17200.

COUNT TWO

Violation of the California False Advertising Law ("FAL"): Cal. Bus. & Prof. Code § 17500, *et seq.* and Similar Laws of Other States

98. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

99. Much of the conduct described above and throughout this Complaint took place within the State of California and constitutes deceptive or false advertising in violation of California Business and Professions Code § 17500.

100. California Business and Professions Code § 17500 applies to all claims of all the Class members because the conduct which constitutes violations of the code by Defendant occurred within the State of California.

101. California Business and Professions Code § 17500 prohibits deceptive or misleading practices in connection with advertising or representations made for the purpose of inducing, or which are likely to induce, consumers to purchase products.

102. Defendant, when it marketed, advertised and sold its GM Vehicles, represented to Plaintiff and Class members that the GM Vehicles were free of manufacturing defects and safe, despite the fact that the GM Vehicles were defective, dangerous and prone to failure. For instance, Defendant on its website stated:

Safety will always be a priority at GM.
http://www.gm.com/company/aboutGM/our_company.html

...

Our safety philosophy is at the heart of the development of each vehicle.
http://www.gm.com/company/aboutGM/our_company.html

...

That is why our vehicles go through extreme testing procedures in the lab, on the road and in our production facilities prior to being offered to customers.
http://www.gm.com/company/aboutGM/our_company.html

103. GM Vehicles were inherently defective and their ignition switches caused failures with the vehicles' brakes, power and air bags – all of which amount to danger. At the time of its misrepresentations, and illustrated herein, Defendant was either aware that the GM Vehicles were defective or was aware that Defendant lacked the information and/or knowledge required to make such a representation truthfully.

104. Defendant's descriptions of the GM Vehicles were false, misleading, and likely to deceive Plaintiff and other reasonable consumers. Defendant's conduct therefore constitutes deceptive or misleading advertising.

105. Plaintiff has standing to pursue claims under the FAL as he reviewed and relied on Defendant's advertising regarding the GM Vehicles. For instance, as alleged herein, Plaintiff researched GM Vehicles before purchase and reviewed and relied on the statements made and contained on Defendant's website and in its marketing materials and literature.

106. In reliance on the statements made in Defendant's advertising, which were ultimately untrue, Plaintiff purchased Defendant's manufactured GM Vehicle.

107. Had Defendant's advertising regarding the GM Vehicles disclosed the true defective nature of the units, Plaintiff and the Class would not have purchased them.

108. Defendant's statements in its advertising regarding GM Vehicles, referenced herein, were part of a scheme or plan by Defendant not to sell its GM Vehicles as advertised and promised.

109. As a direct and proximate result of Defendant's violations of the California Business and Professions Code, Plaintiff and the Class seek restitution of any monies wrongfully acquired or retained by Defendant and by means of its deceptive or misleading representations, including monies already obtained from Plaintiff and the Class under § 17500.

COUNT THREE

Violation of the California Consumers Legal Remedies Act: Cal. Civ. Code § 1750, *et seq.* and Similar Laws of Other States

110. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

111. The conduct described above and throughout this Complaint took place within the State of California and constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of the Consumers Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq.*

112. The CLRA applies to all claims of all the Class members because the conduct which constitutes violations of the CLRA by Defendant occurred within the State of California.

113. Plaintiff and members of the Class are "consumers" as defined by Civ. Code § 1761(d).

114. Defendant is a "person" as defined by Civ. Code § 1761(c).

115. GM Vehicles qualify as "goods" as defined by Civ. Code § 1761(a).

116. Plaintiff's and the Class members' purchases of the GM Vehicles, as alleged and described herein, are "transactions" as defined by Civ. Code § 1761(e).

117. As set forth below, the CLRA deems the following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer as unlawful:

- a. “Representing that goods . . . have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have.” Civ. Code § 1770(a)(5).
- b. “Representing that goods . . . are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Civ. Code § 1770(a)(7).

118. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Civ. Code §§ 1770(a)(5) and (a)(7) when it represented, through its advertising and other express representations, that GM Vehicles had benefits or characteristics that they did not actually have. As detailed in the body of this Complaint, Defendant has repeatedly engaged in conduct deemed a violation of the CLRA, and has made representations regarding the defective units that the GM Vehicles did not in fact have, and represented the units as of a quality that was not true. The products were not and are not safe or durable.

119. As detailed above, Defendant further violated the CLRA when it falsely represented that the GM Vehicles were of a certain standard or quality.

120. As detailed above, Defendant violated the CLRA when it advertised the GM Vehicles with the intent not to sell them as advertised.

121. Defendant’s deceptive practices were specifically designed to induce Plaintiff and Class members to purchase or otherwise acquire the GM Vehicles.

122. Defendant engaged in uniform marketing efforts to reach Class members, their agents, and/or third parties upon whom they relied, to persuade them to purchase GM Vehicles manufactured by Defendant. To this day, Defendant continues to engage in unlawful practices in violation of the CLRA. Furthermore, Defendant continues to conceal the defective nature of the GM Vehicles.

123. Plaintiff and the Class demand judgment against Defendant under the CLRA for injunctive relief in the form of restitution and/or proportional disgorgement of funds paid to Defendant to purchase Defendant's defective products or repair and and/or replace defective GM Vehicles.

124. On July 24, 2014, Plaintiff submitted a CLRA notice letter to Defendant regarding the claims asserted herein. If Defendant fails to provide appropriate relief for its violations of CLRA §§ 1770(a)(5) and (a)(7), within 30 days of receipt of Plaintiff's notification, in accordance with California Civ. Code § 1782(b), Plaintiff is entitled under CLRA § 1780, to recover or obtain any of the following relief for Defendant's violations of the CLRA:

- a. Actual damages under Civ. Code §1780 (a)(1);
- b. Punitive damages under Civ. Code §1780(a)(4);
- c. Attorney's fees and costs under Civ. Code §1780(d); and
- d. Any other relief the Court deems proper under Civ. Code §1780(a)(5).

COUNT FOUR

**Violation of Michigan Consumer Protection Act:
Mich. Comp. Laws Ann. § 445.901, *et seq.* and Similar Laws
of Other States**

125. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

126. The conduct described in this Complaint constitutes a violation of the Michigan Consumer Protection Act, M.C.L.A. § 445.901, *et seq.*, as unfair, unconscionable or deceptive methods, acts or practices in the conduct of trade or commerce are unlawful. *See* M.C.L.A. § 445.903.

127. Defendant engaged in the unfair, unconscionable, and deceptive acts or practices, as set forth in this Complaint, in the conduct of trade or commerce.

128. Defendant engaged in unfair, unconscionable, and deceptive acts or practices in violation of the Michigan Consumer Protection Act when it (1) represented that GM Vehicles were safe, durable and free of defects when it knew the GM Vehicles would fail and were not suitable for use; (2) failed to disclose to, or concealed from, consumers material facts about the defective nature of the GM Vehicles; and (3) failed to disclose its own knowledge of the defective nature of the GM Vehicles.

129. Defendant either knew or should have known its GM Vehicles contained defects, would fail prematurely and were not as warranted as represented by Defendant.

130. Defendant's conduct and omissions described herein repeatedly occurred in Defendant's trade or business and were capable of deceiving a substantial portion of the consuming public.

131. The facts concealed or not disclosed by Defendant are material facts in that Plaintiff and any reasonable consumer would have considered those facts important in deciding whether to purchase the GM Vehicles or purchase vehicles constructed with the Defendant's ignition switches. Had Plaintiff and the Class known the GM Vehicles were unsafe and defective, they would not have purchased the GM Vehicles or they would have either negotiated a lower price to reflect the risk or simply avoided the risk all together by purchasing different

vehicles.

132. Defendant intended that Plaintiff and the Class would rely on the deception by purchasing its GM Vehicles, unaware of the undisclosed material facts. This conduct constitutes consumer fraud.

133. Defendant's unlawful conduct is continuing, with no indication that Defendant will cease.

134. As a direct and proximate result of the deceptive, misleading, unfair and unconscionable practices of the Defendant set forth above, Plaintiff and Class Members are entitled to actual damages, compensatory damages, penalties, attorney's fees and costs as set forth under the Michigan Consumer Protection Act and Michigan law.

135. The Defendant's deceptive, misleading, unfair and unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiff and Class members to an award of punitive damages.

COUNT FIVE

Breach of the Implied Warranty of Merchantability

136. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

137. An implied warranty of merchantability arises automatically when the product is a "good" and the seller is a merchant in the business of furnishing the product to the consumer. The GM Vehicles at issue here are goods and Defendant is a merchant in the business of selling such vehicles to consumers. Accordingly, all of Defendant's GM Vehicles come within the implied warranty of merchantability.

138. An implied warranty of merchantability provides that the product is of merchantable quality and fit for its ordinary and intended use.

139. Defendant breached the aforementioned implied warranty of merchantability because the GM Vehicles were not of merchantable quality or fit for their ordinary and intended use and because they contained a defect at the time of their sale that resulted in, and continues to result in, dangerous failures of the product when used in a normal, foreseeable and customary way.

140. The defects at issue are latent defects. Plaintiff and members of the Class could not have known about the GM Vehicles' propensity for failure.

141. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiff and members of the Class have suffered damages in amounts to be determined at trial.

COUNT SIX

Fraudulent Concealment

142. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

143. Defendant knowingly, fraudulently and actively misrepresented, omitted and concealed from consumers material facts relating to the safety and quality of its GM Vehicles.

144. Defendant had a duty to disclose to Plaintiff and members of the Class the actual quality and dangers related to its GM Vehicles.

145. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiff and members of the Class have been damaged, as alleged herein.

146. Plaintiff and members of the Class reasonably and actually relied upon Defendant's representations, omissions and concealments. Plaintiff and the Class relied on

Defendant's representations suggesting that its products met NHTSA and other vehicle safety standards. Such reliance may also be imputed, based upon the materiality of Defendant's wrongful conduct.

147. As alleged herein, Plaintiff reviewed and relied on the statements contained on Defendant's website and test drove his Cobalt before purchasing it.

148. Based on such reliance, Plaintiff and Class members purchased the GM Vehicles and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

149. Had Plaintiff and members of the Class been aware of the true nature of Defendant's business practices, they would not have purchased the GM Vehicles.

150. Defendant's acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice, entitling Plaintiff and members of the Class to an award of punitive damages to the extent allowed.

151. Plaintiff and the members of the Class are entitled to damages and injunctive relief as claimed below.

COUNT SEVEN

Violation of the Magnuson-Moss Warranty Act

152. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

153. The Magnuson-Moss Warranty Act, 15 U.S.C § 2301, *et seq.* ("MMWA" or the "Act") provides a private right of action to purchasers of consumer products against retailers who, *inter alia*, fail to comply with the terms of a written warranty, express warranty and/or implied warranty. As demonstrated above, Defendant has failed to comply with the terms of its warranties - written, express and implied - with regard to the GM Vehicles that it manufactured,

advertised, distributed, marketed and/or sold.

154. GM Vehicles are a consumer product as defined in 15 U.S.C. § 2301(1).

155. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

156. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

157. Defendant provided Plaintiff and the Class with "written warranties" within the meaning of 15 U.S.C. § 2301(6).

158. Defendant is obligated under the terms of the written warranty to repair and/or replace the defective and dangerous GM Vehicles sold to Plaintiff and the Class.

159. Additionally, pursuant to 15 U.S.C. § 2304(d)(1), the “warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted product [I]f any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.”

160. As a direct and proximate result of Defendant’s breach of its warranties stating that the GM Vehicles would be free from defects and were safe, Defendant has violated the statutory rights due Plaintiff and the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, thereby damaging Plaintiff and the Class in an amount to be proven at trial.

161. Defendant has received notice of its violations (as alleged herein, it has known about its ignition switch failures since at least 2001) and was afforded a reasonable opportunity to cure the violations and did not do so.

COUNT EIGHT

Declaratory and Injunctive Relief

162. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

163. Defendant advertised and sold and continues to advertise and sell its GM Vehicles while concealing associated defects. Such conduct is unconscionable.

164. Plaintiff, on behalf of himself and the Class, seeks a Court declaration of the following:

- a. All Defendant's GM Vehicles have ignition switch defects;
- b. All Defendant's GM Vehicles have a defect in workmanship and material that cause failures;
- c. Defendant knew of the defects in its GM Vehicles;
- d. Defendant shall re-audit and reassess all prior reports and claims concerning its GM Vehicles; and
- e. Defendant shall establish an inspection program and protocol to be communicated to Class members, which will require Defendant to inspect, upon request, a Class member's vehicle to determine whether a failure is manifest.

PRAYER FOR RELIEF

165. WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays that this case be certified and maintained as a class action and for judgment to be entered upon Defendant as follows:

1. For compensatory and other damages;
2. For restitution and other relief;
3. For actual damages sustained or treble damages;

4. For punitive damages;
5. For injunctive and declaratory relief;
6. For reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action; and
7. For such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

166. Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: July 29, 2014

By: /s/ Jonathan W. Cuneo

Jonathan W. Cuneo (S.D.N.Y. Bar #JC1112)
Pamela Gilbert
CUNEO GILBERT & LADUCA, LLP
507 C Street NE
Washington, DC 20002
Tel: 202-789-3960
Fax: 202-789-1813
jonc@cuneolaw.com
pamelag@cuneolaw.com

Exhibit D

JS 44C/SDNY REV. 4/2014

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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

AUG 07 2014

PLAINTIFFS

Ishmail Sesay; Joanne Yearwood

DEFENDANTS

General Motors LLC; Delphi Automotive PLC; DPH-DAS LLC f/k/a Delphi Automotive Systems, LLC

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gary Peller 600 New Jersey Avenue, N.W. Washington, D.C. 20001

ATTORNEYS (IF KNOWN)

Kirkland & Ellis; King & Spalding

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. sec. 1962; racketeering enterprise conducted by defendants to conceal unreasonable safety risks in GM products.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No [x] Yes [] Judge Previously Assigned

If yes, was this case Vol. [] Invol. [] Dismissed. No [] Yes [] If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No [] Yes []

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

Table with columns: TORTS, ACTIONS UNDER STATUTES, CONTRACT, PERSONAL INJURY, PERSONAL INJURY PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY, FORFEITURE/PENALTY, BANKRUPTCY, OTHER STATUTES, REAL PROPERTY, CIVIL RIGHTS, PRISONER CIVIL RIGHTS, LABOR, IMMIGRATION, SOCIAL SECURITY, FEDERAL TAX SUITS. Includes checkboxes for various legal categories.

Check if demanded in complaint:

[x] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE Hon Jesse M. Furman DOCKET NUMBER 14-MD-2543

Check YES only if demanded in complaint JURY DEMAND: [x] YES [] NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment
- a. all parties represented
- b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Ishmail Sesay
3312 Buchanan Street, Ap't 101
Mount Rainier, MD 20712
(Prince George's County, MD)

Joanne Yearwood
5440 Marinelli Road, #121
N. Bethesda/Rockville 20852
(Montgomery County, MD)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

General Motors, LLC
300 Renaissance Center L1
Detroit, MI 48243

Delphi Automotive PLC

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 07-26-14 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

NO
 YES (DATE ADMITTED Mo. _____ Yr. _____)
Attorney Bar Code # *phw pdj*

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 6018

IN RE:
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION 14-MD-2543 (JMF)

ISHMAIL SESAY, and JOANNE YEARWOOD,
for themselves, on behalf of all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS LLC,
DELPHI AUTOMOTIVE PLC,
and DPH-DAS LLC f/k/a DELPHI
AUTOMOTIVE SYSTEMS, LLC,

Defendants.

CLASS ACTION FOR
DECLARATORY,
INJUNCTIVE, AND
MONETARY RELIEF

JURY TRIAL DEMANDED

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
AUG - PM 2:03

COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs ISHMAIL SESAY and JOANNE YEARWOOD bring this action for themselves, and on behalf of all persons similarly situated who own or have owned the substandard and dangerous vehicles identified below at any time since October 19, 2009.

1. Ishmail Sesay lives with his wife in Maryland. The couple own a single car: a 2007 Chevrolet Impala, purchased from a friend on December 20, 2012. Mr. Sesay and his wife depend on the car to get to and from work, to run daily errands, and, most importantly, to provide a safe means of transportation for their one-year-old son. Unbeknownst to Mr. Sesay, until it was recalled on June 23, 2014, however, the Impala never provided such safe transportation; its

dangerous ignition switch had already helped kill or seriously injure hundreds of people across the United States. Every time he used the car, Mr. Sesay relied on its safety. New GM's failure to disclose the dangerous condition was material to his decision to use the car.

2. Mr. Sesay's Impala has a dangerous ignition switch that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable.

3. On April 13, 2013, Joanne Yearwood purchased a used 2010 Chevrolet Cobalt from a dealership in Maryland. She paid over \$16,000 for the car. She regularly drives her 53 year old brother and herself in the car. In February 2014, she learned that New GM had failed to disclose, and in fact concealed from her and others, the fact that her car was unreasonably dangerous to drive because of its ignition switch. She relied on the car's safety every time she used it. GM's failure to disclose the car's dangerous condition was material to her decision to use the car.

4. New GM admits that, since its incorporation on October 19, 2009, General Motors LLC ("GM" or "New GM") has known and failed to disclose that the Plaintiffs' and class members' vehicles are substandard and pose significant, unreasonable, risks of death, serious personal injury, and property damage. New GM could hardly deny these facts in any event - New GM acquired all the books, records and accounts of General Motors Corporation ("Old GM"), including records that document the unlawful concealment of risks in vehicles sold by Old GM prior to New GM's existence. New GM also retained the engineering, legal and management officials who were responsible for designing, engineering, and concealing safety-related risks at Old GM; those officials were immediately assigned to precisely the same tasks at New GM, and they implemented or continued identical policies and practices to conceal safety related risks in GM products.

5. The National Highway Traffic Safety Administration (NHTSA) fined New GM \$28,000,000, the maximum permissible under applicable law, for New GM's failure to disclose risks related to the ignition switches in Plaintiffs' and class members' cars.

6. For nearly five years after its inception, New GM failed to disclose to, and actively concealed from, Plaintiffs, class members, investors, litigants, courts, law enforcement and other government officials including the NHTSA, the risks of death, personal injury, and property damage posed by its products. Instead, conspiring with Delphi, GM's dealers nationwide, outside lawyers, and various others, New GM engaged in, and may still be engaging in, an extensive, aggressive and complex campaign to conceal and minimize the safety-related risks that exist in Plaintiffs' and class members' vehicles. That campaign is designed to mislead Plaintiffs, class members, consumers, investors, courts, law enforcement officials, and other governmental officials, including the NHTSA, that the value of the company and the worth and safety of its products are greater than they are. With those same co-conspirators, New GM directed an unlawful and continuing enterprise calculated to gain an unfair advantage over competitor automakers conducting their businesses within the bounds of the law.

7. Defendants first deployed their campaign of deception on the day that New GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, Defendants recklessly endangered the safety of Plaintiffs, their families, and members of the public. Defendants' wrongful acts and omissions harmed Plaintiffs and class members by exposing them to increased risk of death or serious bodily injury, by depriving them of the full use and enjoyment of their vehicles, and by causing a substantial diminution in the value of the vehicles to Plaintiffs and class members, and a substantial diminution in value of their vehicles on the open automobile market.

8. As of the date of the filing of this Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

9. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that New GM employees knew about safety-related risks in millions of vehicles, including Mr. Sesay's 2007 Impala and Ms. Yearwood's 2010 Cobalt, and that GM did not disclose those risks as it was required to do by law. Ms. Barra attributed New GM's "failure to disclose critical pieces of information," in her words, to New GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks.

10. In executing their scheme to conceal the dangerous character of Plaintiffs' vehicles, Defendants violated a multitude of laws:

- a) In furtherance of their common design to prevent Plaintiffs, class members, other consumers, law enforcement and other governmental officials, litigants, courts, and investors from learning of the safety risks in GM cars, GM, Delphi, and GM's dealers conducted a racketeering enterprise and engaged in a pattern of racketeering activities, including repeated and continuous acts of mail and wire fraud, television and radio fraud, and tampering with witnesses and victims in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, causing the harm to Plaintiffs and class members described above.
- b) By concealing the material fact of the dangerousness of the Plaintiffs' and class members' vehicles, by failing properly to repair the safety risks in the cars in a timely manner, and by engaging in other unconscionable and/or unlawful behavior, GM and Delphi violated the Maryland Consumer Protection Act, Md.

Code, Com. Law § 13-408 *et seq.*, causing the harm described above to Plaintiffs and class members.

c) GM and Delphi also violated their duties to warn Plaintiffs and class members about the dangers that their vehicles posed, resulting in economic loss and increased risk of personal injury for which Defendants are liable to Plaintiffs and Class members under the law of negligence common to the District of Columbia and the States of Maryland, California, Florida, Ohio, and New Jersey.

d) Because they intentionally concealed a material fact from Plaintiffs and Class members, Defendants are liable to Plaintiffs for the harm Plaintiffs and class members have suffered and for punitive damages under the law of fraud common to the several States.

e) By civilly conspiring to conceal the safety-related risks of GM vehicles, both among themselves and among nonparties to this litigation, and because they acted jointly to harm Plaintiffs and class members, Defendants are jointly and severally liable for all harm they or any co-conspirator caused.

f) Defendants aided and abetted the conduct of each other and of nonparties in concealing the safety-related risks of GM vehicles.

PARTIES

11. Plaintiffs Ishmail Sesay and Joanne Yearwood are both citizens and residents of Maryland.

12. Mr. Sesay owns a 2007 Chevrolet Impala he purchased second-hand in December 2010. Although Mr. Sesay is the primary driver of the vehicle, his wife depends upon the car for transportation to and from work, and the couple rely on the car to transport their one-year-old son..

13. Ms. Yearwood owns a 2010 Chevrolet Cobalt purchased on April 13, 2010

14. General Motors LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Detroit, Michigan. On October 19, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout the United States. Plaintiffs' claims and allegations against GM refer solely to this entity. In this First Amended Complaint, Plaintiffs are not making any claim against Old GM (General Motors Corporation) whatsoever, and Plaintiffs are not making any claim against New GM based on its having purchased assets from Old GM or based on its having continued the business or succeeded Old GM. Plaintiffs disavow any claim based on the design or sale of vehicles by Old GM, or based on any retained liability of Old GM. Plaintiffs seek relief from New GM solely for claims that have arisen after October 19, 2009, and solely based on actions and omissions of New GM.

15. Delphi Automotive PLC is headquartered in Gillingham, Kent, United Kingdom, and is the parent company of Delphi Automotive Systems LLC, headquartered in Troy, Michigan. At all times relevant herein, Delphi, through its various entities, designed, manufactured, and supplied GM with motor vehicle components, including the dangerous ignition switches contained in the Cobalts owned by Plaintiffs, and millions of other vehicles.

16. GM and Delphi are collectively referred to in this Complaint as "Defendants."

JURISDICTION AND VENUE

17. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331, because the claims under the Racketeer Influenced and Corrupt Organizations Act present a federal question. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. §

1332(d), because members of the proposed Plaintiff Class are citizens of states different from Defendants' home states, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1404, by the consent of both parties.

FACTUAL BACKGROUND

19. GM has publicly admitted that the ignition switches in Plaintiffs' and class members' cars are dangerous and pose a safety hazard. It has also admitted that, from its inception in 2009, various New GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch risk and/or diminish its significance. GM has been found guilty of failing to disclose the risk to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined New GM the maximum penalty that agency is authorized to impose.

20. 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 risk, the manufacturer must disclose the risk to appropriate government officials and registered owners of the vehicle in question.

21. Upon its inception, New GM instituted and continued policies and practices intended to conceal safety related risks in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, New GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product risks:

- a) GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related risks by limiting the action that GM would take with respect to such risks to the issuance of a Technical Service Bulletin or an Information Service Bulletin.
- b) New GM directed its engineers and other employees to falsely characterize safety-related risks – including the risks described in this complaint – in their reports, business and technical records as “customer convenience” issues, to avoid being forced to recall vehicles as the relevant law requires.
- c) New GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by risks in GM products.
- d) New GM directed its employees to avoid the word “stall” in describing vehicles experiencing a moving stall, because it was a “hot word” that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.
 - i. A “moving stall” is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.
- e) New GM directed its engineering and other personnel to avoid the word “problem,” and instead use a substitute terms, such as “issue,” “concern,” or “matter,” with the intent of deceiving plaintiffs and the public.
- f) New GM instructed its engineers and other employees not to use the term “safety” and refer instead to “potential safety implications.”

- g) New GM instructed its engineers and other employees to avoid the term “defect” and substitute the phrase “does not perform to design.”
- h) New GM instituted and/or continued managerial practices designed to ensure that its employees and officials would not investigate or respond to safety-related risks, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public. In a practice New GM management labeled “the GM nod,” GM managers were trained to feign engagement in safety related product risks issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.
- i) New GM’s lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related risks and GM’s refusal to respond to and/or GM’s continuing concealment of those risks. New GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. New GM did not describe the “no-notes policy” in writing to evade detection of their campaign of concealment.
- j) New GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was risk. New GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for New GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. New GM knew from its inception that the part number irregularity was intended to conceal the faulty ignition switches in Plaintiffs’ and class members’ vehicles.

22. New GM followed a practice and policy of intentionally mischaracterizing safety issues as “customer convenience” issues to avoid recall costs, and it enlisted its dealership network in its campaign of concealment by minimizing the safety aspects of the “technical service bulletins” and “information service bulletins” it sent to dealers. New GM directed dealers to misrepresent the safety risks associated with the product risks of its vehicles. New GM followed this practice with respect to the dangerous ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch risk began to unravel in February 2014.

23. New GM followed a practice or policy of minimizing and mischaracterizing safety related risks in its cars in its communications with Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials

24. Upon the inception of New GM in October 2009, New GM and Delphi agreed to conceal safety related risks from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors. Both New GM and Delphi knew since October 2009 that the design of the faulty ignition switch in Plaintiffs and class members’ cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety risks.

25. Since New GM’s inception in October 2009, both New GM and Delphi have known that the faulty ignition switch in the Plaintiffs’ Impala and Cobalt and class members’ vehicles posed a serious safety and public health hazard because the faulty ignition switch caused moving stalls. Each Defendant had legal duties to disclose the safety related risks. Rather than notifying the NHTSA, Defendants instead decided that Plaintiffs and class members, and

millions of drivers and pedestrians should face imminent risk of injury and death due to the dangerous ignition switches in Plaintiffs' and class members' vehicles. Delphi and GM entered into an agreement to conceal the alteration of the part without simultaneously changing the part number, and concealed the risks associated with the dangerous ignition switches.

26. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the risk.

27. In April 2013, GM hired an outside engineering-consulting firm to investigate the ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Risk until 2014.

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

29. New GM explicitly directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related risks – including the ignition switch risk – in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against New GM by falsely claiming such suits are barred by Order of the Bankruptcy Court, and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their veneer of ignorance concerning the safety related risks. In one case, GM threatened the family of an accident victim with liability for GM's legal

fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated by means of mail and wire to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product risks GM concealed.

TOLLING OF THE STATUTE OF LIMITATIONS

37. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

38. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the safety related risks described herein.

39. Plaintiffs and Class Members had no reason to know that their products were dangerous because of Defendants' active concealment.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this lawsuit as a class action on their own behalves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. All proposed Class and Subclass periods run from the inception of New GM in October 2009 and continue until judgment or settlement of this case.

41. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of New GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch

manufactured by Delphi. As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerous ignition switches:

- 2005-2011 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2006-2010 Pontiac Solstice
- 2007-2010 Pontiac G5
- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2009 Buick Lacrosse
- 2006-2011 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2006-2014 Chevrolet Impala
- 2006-2008 Chevrolet Monte Carlo
- 2000-2005 Cadillac Deville
- 2004-2011 Cadillac DTS

42. Plaintiffs also bring this action on behalf of the following Subclasses:

- a. Mr. Sesay and Ms. Yearwood bring this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch (the "Maryland Subclass");
- b. Plaintiffs also bring this action on behalf of residents of the District of Columbia and the States of California, Florida, Maryland, New Jersey and Ohio who, since October 2009, hold or have held a legal or equitable interest

in a GM vehicle with a dangerous ignition switch (the “Multi-State Negligence Subclass”).

43. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

44. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM’s possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

45. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a GM vehicle during the Class Period that contained a dangerous ignition switch manufactured by Delphi. Plaintiffs, like all class and subclass members, have been damaged by Defendants’ misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles. Furthermore, the factual bases of Defendants’ misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

46. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

47. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

- a. Whether the vehicles owned by class or subclass members during the class periods suffer from the dangerous ignition switch described herein?
- b. Whether the dangerous ignition switch posed an unreasonable danger of death or serious bodily injury?
- c. Whether GM and/or Delphi imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?
- d. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?
- e. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?
- f. Whether GM and Delphi had a legal duty to disclose the ignition switch danger to class and subclass members?

- g. Whether GM and/or Delphi had a legal duty to disclose the ignition switch danger to the NHTSA?
- h. Whether either GM and/or Delphi breached duties to disclose the ignition switch risk?
- i. Whether class and subclass members suffered legally compensable harm?
- j. Whether Defendants violated Maryland's consumer protection statute by concealing the ignition switch risk from Plaintiffs and governmental officials?
- k. Whether the fact that the ignition switch was dangerous was a material fact?
- l. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?
- m. Whether GM should be declared responsible for notifying all Class Members of the risk and ensuring that all GM vehicles with the Ignition Switch risk are recalled and repaired?
- n. Whether Defendants conducted a criminal enterprise in violation of RICO?
- o. Whether Defendants engaged in a pattern or practice of racketeering?
- p. Whether Defendants committed mail or wire fraud in connection with their concealment of the dangerous ignition switch.
- q. Whether class members were harmed by Defendants' violations of RICO?
- r. Whether class and subclass members are entitled to recover punitive damages from Defendants, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

48. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for Defendants' misconduct. Absent a class action, class and subclass members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is also superior for defendants, who could be forced to litigate thousands of separate actions.

49. Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members.

CAUSES OF ACTION

COUNT I VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (18 U.S.C. § 1962(c) and (d))

50. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

51. This claim is brought by all Plaintiffs on behalf of the nationwide Class.

52. 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.” Defendants violated 18 U.S.C. § 1962(d) by conspiring to violate § 1962(c).

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

54. At all times relevant, Plaintiff and each class and subclass 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).

55. At all times relevant, GM and Delphi are and were each a “person” who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While GM and Delphi each participated in the RICO Enterprise, they each exist separately and distinctly from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which GM and Delphi have engaged and are engaging.

56. At all times relevant, GM and Delphi 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 its scheme to defraud.

The RICO Enterprise

57. Defendants participated in the operation and management of an association-in-fact enterprise whose aim was to conceal safety related risks in Delphi products installed in GM

vehicles from Plaintiffs, class members, the NHTSA, litigants, courts, law enforcement officials, consumers, and investors. The Enterprise was motivated by the common design of concealing the true value of the defendant companies and their products, and it constituted an unlawful, continuing enterprise calculated to gain an unfair advantage over competitor automakers who conduct their business within the bounds of the law. The Enterprise was partly embodied in practices and procedures intended to mischaracterize safety related risks – such as the ignition switch – as “customer convenience issues” to avoid incurring the costs of a recall.

58. The RICO Enterprise began with the inception of New GM, on October 19, 2009. The following persons, and others presently unknown, have been members of and constitute the association-in-fact enterprise with the following roles:

- a) New GM, which mandated its employees take the various measures, described above at paragraph 26, to conceal safety related risks, including the ignition switch risks.
- b) GM’s engineers (including but not limited to Ray DeGiorgio, Gary Altman, a program engineering manager, Michael Robinson, vice president for environmental sustainability and regulatory affairs, Gay Kent, general director of product investigations and safety regulations) who have carried out GM’s directives since the inception of New GM in October 2009 by minimizing and misrepresenting the safety aspects of the ignition switch risk – enabling GM to avoid its legal obligations to recall vehicles with safety related risks. GM’s engineers (including but not limited to Mr. DeGiorgio, Mr. Altman, Mr. Robinson and Ms. Kent) have also concealed the part-number-labeling fraud of which they have known since New GM’s inception in October 2009.
- c) GM’s in-house lawyers (including but not limited to Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo, and Jennifer Sevigny), who knowingly assisted GM

in evading its legal responsibilities by taking measures allowing GM management to claim ignorance about the increasing number of accidents and personal injuries that the ignition switches were causing throughout the Class period. GM's in-house lawyers, as described in Paragraph 36, also took measures to ensure that lawsuits filed by victims of the ignition switch risk and their surviving families were settled confidentially – preventing them from revealing the risk to other Plaintiffs, class members, law enforcement officials, or other government authorities, including the NHTSA – for amounts below the threshold that would trigger closer scrutiny within GM.

d) GM's outside lawyers, retained to defend the Company against lawsuits filed by victims with injuries allegedly caused by the ignition switch risk, who were directed to play, and played, the same roles as those of in-house counsel described above – taking analogous measures to help GM conceal the ignition switch risk.

e) Delphi, who, since the inception of the new GM in October 2009, has participated in the Enterprise to conceal the dangerous ignition switch system and its knowledge that ignition switch part numbers on vehicles driven by class members during the class period were misleading or fraudulent and would hinder any attempt to investigate or learn about the ignition switch risk.

f) GM's Dealers, whom New GM instructed, explicitly or implicitly, to present false and misleading information regarding the ignition switch risks to Plaintiffs and Class members, through, *inter alia*, Technical Service Bulletins and Information Service Bulletins, and who did, in fact, present such false and misleading information to Plaintiffs and Class members during the Class period.

58. GM and Delphi conducted and participated in the affairs of this RICO Enterprise through a continuous pattern of racketeering activity that began with the inception of the New GM in October 2009, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and 18 U.S.C. § 1512 (tampering with witnesses and victims).

Predicate Acts of Wire and Mail Fraud

59. Since its inception in October 2009 and in furtherance of its scheme to defraud, GM, its engineers and its lawyers communicated with Delphi on a regular basis via the mail and/or wires regarding the dangerous ignition switch. Through those communications, GM instructed Delphi to continue concealing the ignition switch risk and to continue to produce ignition mislabeled or fraudulently labeled switches to help GM evade detection of New GM's unlawful failure to recall vehicles with dangerous ignition switches by the NHTSA or other law enforcement officials. GM's and Delphi's communications constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

60. Since GM's inception in October 2009, in furtherance of its scheme to defraud, GM's lawyers communicated with those claiming injuries caused by the ignition switch risks on a regular basis via the mail and/or wires. Upon information and belief, GM's lawyers utilized the mail and wires to insist that litigants agree to confidentiality agreements forbidding disclosure that the ignition switch risks caused their injuries, and to communicate with supervisors and each other about ensuring that the cases settled below the threshold that would trigger scrutiny that might endanger Defendants' concealment of the ignition switch risks.

61. Since its inception in October 2009, GM has routinely used the wires and mail to disseminate false and fraudulent advertising about Plaintiffs' and Class members' vehicles,

misrepresenting the vehicles as safe and dependable and failing to disclose the ignition switch risks in its advertising.

Predicate Acts of Tampering With Witnesses and Victims

62. New GM engaged in an ongoing scheme to tamper with witnesses and victims as described in 18 U.S.C. § 1512(b) by using misleading conduct to influence, delay and prevent the testimony of victims in official proceedings and by entering into a campaign of intimidation and false statements to discourage victims from pursuing their claims against GM, as described elsewhere in the complaint. New GM also corruptly encouraged its employees and engaged in misleading conduct to prevent said employees from reporting safety risks and therefore delay or prevent their testimony about said risks. GM accomplished this by, inter alia, punishing employees who raised red flags about safety risks, thus intentionally intimidating and threatening employees who otherwise could have raised red flags.

63. Defendants' conduct in furtherance of this scheme to conceal and/or minimize the significance of the ignition switch risk was intentional. Plaintiff, Class and Subclass members were harmed in that they were forced to endure increased risk of death or serious bodily injury, they lost use and enjoyment of their vehicles, and their vehicles' values have diminished because of Defendants' participation in conducting the RICO Enterprise. The predicate acts committed in furtherance of the enterprise each had a significant impact on interstate commerce.

COUNT II
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

64. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

65. At the time of New GM's inception in 2009, Defendants knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. This fact was material to Plaintiffs and class members.

66. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch risks, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

67. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

68. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

**Asserted on Behalf of Plaintiffs and on Behalf of the Multi-State Negligence Subclass
(Negligent Infliction of Economic Loss and Increased Risk under the Common Law of the
District of Columbia and California, Florida, Maryland, New Jersey, and Ohio)**

69. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

70. This claim is brought on behalf of Plaintiffs and the District of Columbia and Maryland Classes.

71. Because the dangerous ignition switches created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the risk as soon as soon as they learned of the problem – upon the inception of New GM in October 2009.

72. Rather than alerting vehicle owners to the danger, Defendants actively concealed and suppressed knowledge of the problem.

73. Defendants created an unreasonable risk of death or serious bodily injury to Plaintiffs and Subclass members. Plaintiffs and Subclass members were particularly identifiable and foreseeable victims of Defendants' negligence, and their injuries in terms of the diminution in the value of their vehicles, increased risk to them, and the loss of use and enjoyment of the vehicles was particularly foreseeable.

74. Defendants created an unreasonable risk of death or serious bodily injury through a pattern and practice of negligent hiring and training of its employees, and by creating and allowing to continue a culture at GM which encouraged the minimizing and hiding of safety risks from the public. GM negligently increased this risk by firing or otherwise retaliating against employees who did attempt to convince GM to fix safety problems.

75. As a result of Defendants' failure to warn them about the risks or repair their vehicles, Plaintiffs and Class Members sustained, and continue to sustain, damages arising from the increased risk of driving vehicles with safety related risks, from the loss of use and enjoyment of their vehicles, and from the diminished value of their vehicles attributable to Defendants' wrongful acts.

76. Plaintiffs and class members seek compensatory damages in an amount to be proved at trial, including compensation for any pain and suffering they endured.

COUNT IV

**Asserted on Behalf of Mr. Sesay, Ms. Yearwood, and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"),
Md. Code, Comm. Law § 13-101 et seq.)**

77. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

78. This Count is brought on behalf of Plaintiffs, the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3) and the portion of the Maryland Class who purchased vehicles after October 19, 2009, with respect to violations of MDCPA §§ 13-301(2)(i), 13-301(2)(iv), and 13-301(3).

79. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

80. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

81. Upon the inception of GM in 2009, Defendants knew the Plaintiffs and Subclass members' vehicles, due to the ignition switch risk, are prone to engine and electrical failure during normal and expected driving conditions. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. Because of the life threatening nature of the risk, its existence was a material fact that Defendants concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily injury, and diminution of the value of each of their vehicles.

82. At no time during the Class Period did Mr. Sesay, Ms. Yearwood, or Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their vehicles from similar vehicles without the ignition switch risk, and the Defendants' failure to do so tended to mislead consumers into believing no distinctive risk was present in their vehicles.

83. With respect to the Subclass, Defendants violated Md. Code, Comm. Laws § 13-301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch risk from Plaintiffs and Subclass members. Plaintiffs were harmed by the diminished value of their vehicles to themselves and on the open market and by the imposition of increased risk and the associated loss of full use of their automobiles.

84. Plaintiffs seek compensatory damages and an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT V

Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses (Civil Conspiracy, Joint Action, Aiding and Abetting)

85. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

86. This Count is brought on behalf of the nationwide Class and all Subclasses.

87. Defendants are jointly and severally liable for Plaintiffs' and Class and Subclass members' injuries because they acted in concert to cause those injuries.

88. Defendants are jointly and severally liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with each other and with others, including but not limited to the other defendants, dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this First Amended Complaint, to inflict those injuries and to conceal their actions from Plaintiffs, Class and Subclass members and others. By these agreements, Defendants conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

89. Defendants each committed overt acts in furtherance of the conspiracy.

90. Defendants knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

91. Defendants gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

92. Defendants were aware that their assistance and encouragement of the wrongful acts herein complained of substantially assisted the wrongful acts herein complained of.

93. The wrongful acts herein complained of harmed plaintiffs.

94. All defendants are therefore liable under the law of joint liability, civil conspiracy, and aiding and abetting for all harm to plaintiffs and class members as described in this complaint.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

95. As of the date of the filing of this Complaint, GM concedes that it knew but did not disclose that some 20 million GM products have safety related risks that create an unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

96. Despite purporting to admit and cease its campaign of concealment and deceit

in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. GM has recklessly endangered the public safety and the safety of Plaintiffs and class members. GM has not effectively remedied its policies and practices to ensure that this misconduct does not continue, and accordingly its business practices continue to threaten the public safety, warranting that this Court impose preliminary and permanent relief to ensure that all elements of the enterprise alleged in this Complaint are identified and eliminated.

PRAYER FOR RELIEF

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

A. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge and decree that Defendants have recklessly endangered the public safety and order specific steps that Defendants must take to restore public safety, including but not limited to preliminary relief aimed at removing unreasonably dangerous GM vehicles from the public streets and thoroughfares forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related risks; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly

admitted its years-long campaign of concealment and deceit, providing continuing judicial management over New GM through the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its business of marketing to the public complex products that can so easily be a threat of death or serious bodily injury if not manufactured properly;

C. Declare, adjudge and decree that the ignition switches in Plaintiffs' and Class and Subclass Members vehicles are unreasonably dangerous, and/or that the vehicles themselves are unreasonably dangerous;

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

E. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the ignition switch danger;

F. Declare, adjudge and decree that Defendants are financially responsible for notifying all Class Members about the dangerous nature of the Class Vehicles;

G. Declare, adjudge and decree that Defendants must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members all or part of the ill-gotten gains it received from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

H. Award Plaintiffs, Class Members, and Subclass Members the greater of actual compensatory damages or statutory damages as proven at trial;

I. Award Plaintiff and the nation-wide Class Members treble damages pursuant to 18 U.S.C. § 1964 (c);

J. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

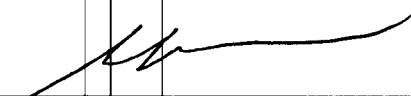
K. Award Plaintiff, Class Members and Subclass Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and

L. Award Plaintiff, Class Members, and Subclass 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 request a trial by jury on all the legal claims alleged in this Complaint.

Respectfully submitted



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