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

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In re:	:	CHAPTER 11
	:	Case No.: 09-50026 (REG)
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	
f/k/a/ General Motors Corp., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
-----X	:	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO  
WITHDRAW THE REFERENCE WITH REGARD TO NO STRIKE PLEADINGS**

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The State of Arizona (“Arizona”) *ex rel.* Mark Brnovich, the Attorney General, and the People of the State of California (“California”), by and through Orange County District Attorney Tony Rackauckas, respectfully submit this *Memorandum of Law* in support of the *Motion to Withdraw the Reference*, pursuant to 28 U.S.C. § 157(d), Bankruptcy Rule 5001, Rule 5011-1 of the Local Bankruptcy Rules (the “Motion”), filed contemporaneously herewith.<sup>1</sup>

## I. PRELIMINARY STATEMENT

For nearly five years, General Motors LLC (“New GM”) knowingly concealed the Ignition Switch Defect, a dangerous safety defect that causes the loss of power, an inability to control speed and braking functions, and the disablement of airbags. New GM’s blatant disregard for safety resulted in tragic consequences, including more than a hundred deaths, thousands of injuries, and billions of dollars of losses. Numerous reports suggest that the Department of Justice is considering criminal charges against New GM in connection with its cover-up of the Ignition Switch Defect.<sup>2</sup> New GM has already conceded that it violated the law by failing to properly disclose the Ignition Switch Defect and conduct a timely recall in its Consent Order with the National Highway Safety Administration.<sup>3</sup>

While continuing to hide the Ignition Switch Defect, New GM made numerous misrepresentations to consumers in Arizona and California concerning the safety and reliability of its vehicles and the integrity of the New GM brand. In response to New GM’s unconscionable disregard for public safety and its blatant misrepresentations, Arizona and California each

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Decision on Motion to Enforce Sale Order, In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015) (the “*Decision*”) or in the *Judgment*, dated June 1, 2015 [ECF No. 13177] (the “*Judgment*”).

<sup>2</sup> See, e.g., Christopher Matthews and Mike Spector, *U.S. Weighs Wire-Fraud Charges Against General Motors*, WALL STREET JOURNAL (June 9, 2015 2:45 p.m.), available at <http://www.wsj.com/articles/u-s-weighs-wire-fraud-charge-against-general-motors-1433853283>; Danielle Ivory, Ben Protess, and Bill Vlasic, *G.M. Inquiry Said to Find Criminal Wrongdoing*, N.Y. TIMES (May 22, 2015), available at [http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?\\_r=0#](http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?_r=0#).

<sup>3</sup> See *Consent Order, In re TQ14-001 NHTSA Recall No. 14V-047* (U.S. Dep’t of Transp. May 16, 2014), available at <http://www.nhtsa.gov/staticfiles/communications/pdf/May-16-2014-TQ14-001-Consent-Order.pdf>, at 4.

commenced law enforcement actions against New GM seeking injunctive relief under state consumer protection statutes.

The Arizona action asserts that New GM's post-Sale conduct violated the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1521, *et seq.*<sup>4</sup> The California action asserts that New GM's post-Sale conduct violated California's Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200, *et seq.*) and False Advertising Law (CAL. BUS. & PROF. CODE § 17500, *et seq.*)<sup>5</sup>

New GM's conduct has led to a fire storm of negative publicity, governmental investigations, and an avalanche of litigation. The Arizona and California actions are pending in the Superior Court in Arizona and California, respectively. This Court is presiding over the MDL Proceeding.<sup>6</sup> The Bankruptcy Court maintains jurisdiction over post-confirmation matters in the chapter 11 proceedings of General Motors Corporation ("Old GM"). Most recently, the Bankruptcy Court adjudicated four Threshold Issues in connection with New GM's contested Motions to Enforce the Sale Order<sup>7</sup> and entered the Decision and Judgment.<sup>8</sup>

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<sup>4</sup> See *Complaint for Injunctive and Other Relief, State of Arizona v. General Motors LLC*, No. CV2014-014090 (Superior Court, Maricopa County, AZ) (the "Arizona Complaint"), attached hereto as Ex. A.

<sup>5</sup> See *First Amended Complaint for Violations of California Unfair Competition Law and False Advertising Law, People of California v. General Motors LLC*, No. 30-2014-00731038-CU-BT-CXC (Orange County, Cal.) (the "California Complaint"), attached hereto as Ex. B.

<sup>6</sup> Over 150 class actions have been brought against New GM alleging economic loss damages, many of which are being jointly administered for pretrial purposes in a multi-district proceeding before Judge Jesse Furman in the District Court, Case No. 14-MD-2543 (JMF) (the "MDL Proceeding"). See *Motors Liquidation Co. GUC Trust, Annual Report* (Form 10-K), at 21 (May 22, 2015) ("GUC Trust 10-K").

<sup>7</sup> See 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, dated April 21, 2014 [ECF No. 12620]; Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce this Court's July 5, 2009 Sale Order and Injunction Against Plaintiffs in *Pre-Closing Accident Lawsuits*, dated August 1, 2014 [ECF No. 12807]. Judgment on a third Motion to Enforce relating to the Non-Ignition Switch Plaintiffs was deferred pending determination of the other Motions to Enforce. See *In re Motors Liquidation Co.*, 529 B.R. at 523.

<sup>8</sup> The Decision and Judgment are on appeal and certain plaintiffs are seeking that the appeals be heard in the first instance before the District Court. See *Notice of Appeal*, dated June 2, 2015, ECF No. 13185; *Notice of Appeal*, dated June 10, 2015, ECF No. 13194.

In relevant part, the Decision found that “Independent Claims”<sup>9</sup> were not barred under the Sale Order and may proceed. *See In re Motors Liquidation Co.*, 529 B.R. at 598. The Arizona and California Complaints assert only Independent Claims. However, the Bankruptcy Court stayed the State actions after concluding that certain allegations contained therein somehow violate the Sale Order.<sup>10</sup>

The Bankruptcy Court’s imposed stay is subject to the States’ right to show a good faith basis to maintain their actions (a “No Strike Pleading”). *See* Judgment ¶ 12(c). Accordingly, the States have filed No Strike Pleadings setting forth the reasons why the Arizona and California Complaints should not be stayed or allegations contained therein stricken.<sup>11</sup> For the reasons set forth below, withdrawal of the reference of the No Strike Pleadings is necessary and proper.

Resolution of the No Strike Pleadings is properly before this Court under 28 U.S.C. § 157. Indeed, under *Manville IV*,<sup>12</sup> as well as *Stern v. Marshall*,<sup>13</sup> the Bankruptcy Court lacks jurisdiction to prospectively enjoin the State actions – law enforcement actions seeking injunctive relief, profit disgorgement and civil penalties against New GM based, not on any theory of successor liability, but solely on its own, non-derivative post-Sale acts and omissions.

The States are not seeking an “escape hatch” from Bankruptcy Court, but rather the District Court’s determination of the following discrete legal issues:

- (i) whether the State actions raise Independent Claims;

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<sup>9</sup> “Independent Claims” are defined as “claims against New GM for any causes of action that might exist arising solely out of New GM’s own, independent, post-Closing acts.” *In re Motors Liquidation Co.*, 529 B.R. at 598.

<sup>10</sup> *See Decision re Form of Judgment*, entered May 27, 2015 [ECF No. 13162] (the “Decision on Judgment”), at 6; Judgment ¶ 12(a).

<sup>11</sup> *See State of Arizona’s “No-Strike” Pleading*, dated June 16, 2015, ECF No. 13211, attached hereto as Ex. C (exhibit omitted); *People of the State of California’s “No-Strike” Pleading*, dated June 16, 2015, ECF No. 13210, attached hereto as Ex. D (exhibit omitted).

<sup>12</sup> *See In re Johns-Manville Corp.*, 600 F.3d 135 (2d Cir. 2010) (“*Manville IV*”).

<sup>13</sup> 131 S. Ct. 2594 (2011).



- (ii) whether the Bankruptcy Court lacks jurisdiction to prospectively enjoin the State actions; and
- (iii) whether factual allegations (as distinguished from legal claims) concerning Old GM and its pre-Sale conduct in the State actions is somehow improper.

Since the No Strike Pleadings involve significant non-core matters and substantial interpretation of non-bankruptcy law, the District Court should withdraw the reference “for cause.”<sup>14</sup> Under longstanding Second Circuit precedent as set forth in *Orion Pictures* and *Burger Boys*, the threshold test to determine whether “cause” exists is whether or not a cause of action is essential to the administration of a bankruptcy estate, *i.e.*, whether the claim is “core” or “non-core.”<sup>15</sup> The No Strike Pleadings require a determination of whether the State actions assert Independent Claims arising under state statutes. Thus, the No Strike Pleadings are patently non-core. Given that the States have not consented to the Bankruptcy Court’s adjudication of the dispute, these claims must be finally determined by an Article III court and should be withdrawn.

Judicial economy supports withdrawal. Withdrawal would allow this Court, which is considering similar claims under the Economic Loss Plaintiffs’ Amended Consolidated Complaint,<sup>16</sup> to finally determine the merits of the No Strike Pleadings. It is also likely that other plaintiffs will file similar No Stay, No Strike and Objection Pleadings and seek withdrawal

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<sup>14</sup> Withdrawal of the reference is mandatory when “resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” See 28 U.S.C. § 157(d). The States are not seeking mandatory withdrawal because consideration of state, as opposed to federal, law does not mandate withdrawal. See *In re Quebecor World (USA)*, 2012 WL 5289919, at \*1 (S.D.N.Y. Oct. 26, 2012) (“This case raises no genuine conflict between Title 11 and other federal (as opposed to state) laws and, accordingly, does not qualify for mandatory withdrawal under Section 157(d).”); *In re Oakwood Homes, Corp.*, 2007 WL 2071730, at \*2 (D. Del. July 17, 2007) (same).

<sup>15</sup> See *In re Burger Boys, Inc.*, 94 F.3d 755, 762 (2d Cir. 1996); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993).

<sup>16</sup> See *Second Amended Consolidated Complaint, In re: Gen. Motors LLC Ignition Switch Litig.*, No. 14-md-2543-JMF (filed June 12, 2015), ECF No. 1038 (the “Amended Consolidated Complaint”).

of the reference. Withdrawal here would promote judicial economy and uniformity, and minimize cost and delay to the parties.

Accordingly, the States respectfully request that this Court withdraw the reference of the No Strike Pleadings.

## II. BACKGROUND

### A. The Ignition Switch Defect and New GM's Parade of Recalls

Beginning in February and March 2014, New GM first disclosed the existence of the Ignition Switch Defect which, to date, has been linked to 111 deaths and 220 serious injuries.<sup>17</sup> Although New GM knew about the Ignition Switch Defect since its inception in 2009, it concealed its existence from the public for nearly five years.<sup>18</sup>

Following the February and March recalls, New GM issued numerous additional recalls for a series of additional defects, recalling approximately 26 million vehicles by early August 2014.<sup>19</sup>

#### 1. The States' claims against New GM.

##### a. Arizona.

On November 19, 2014, the Attorney General of Arizona commenced the Arizona action, which alleges that New GM violated the Arizona Consumer Fraud Act. *See Arizona Compl.* ¶¶ 494-511. Through this law enforcement action Arizona seeks injunctive relief and civil penalties. The Arizona action seeks to hold New GM liable for only its *own* acts and omissions *after* the Bankruptcy Court approved the 363 Sale. The Arizona action is not predicated on a

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<sup>17</sup> See Detailed Overall Program Statistics, GM Ignition Compensation Claims Resolution Facility (June 5, 2015), available at [www.GMIgnitionCompensation.com/docs/program\\_Statistics1.pdf](http://www.GMIgnitionCompensation.com/docs/program_Statistics1.pdf).

<sup>18</sup> As the Bankruptcy Court recognized, at least twenty-four (24) Old GM personnel, including engineers, senior managers, and attorneys, were informed or otherwise aware of the Ignition Switch Defect, all of whom were transferred to New GM. *See In re Motors Liquidation Co.*, 529 B.R. at 538, 557.

<sup>19</sup> See Agreed and Disputed Stipulations of Fact Pursuant to the Court's Supplemental Scheduling Order, Dated July 11, 2014, *In re Motors Liquidation Co.*, Case No. 09-50026 (REG), dated August 8, 2014 [ECF No. 12826], Ex. D ¶ 77.

successor liability theory and does *not* seek to recover *any* damages resulting from the actions or conduct of Old GM.

The claims in the Arizona Complaint all relate to New GM's post-Sale conduct or omissions in: (i) concealing the existence of the many known defects plaguing an astounding number of models and years of GM-branded vehicles; (ii) maintaining a corporate culture that valued cost-cutting over safety and actively discouraging New GM personnel from flagging or addressing safety issues; while (iii) falsely marketing its brand and its vehicles as safe and reliable. *See, e.g., id.* ¶¶ 8-10, 494-511.

As the Arizona Complaint alleges, after the 363 Sale, "New GM repeatedly proclaimed that it was a company committed to innovation, safety and maintaining a strong brand." *See id.* ¶ 6. The Complaint provides many examples of New GM's public statements to that effect, and New GM's marketing of its vehicles as safe, reliable and of high-quality. *See id.* ¶¶ 35-78. New GM made these misrepresentations in order "to boost vehicle sales while knowing that millions of GM-branded vehicles, across numerous models and years, were plagued with serious and concealed safety defects." *See id.* ¶ 79. The Arizona Complaint further alleges that New GM failed to disclose, and affirmatively concealed, both its own systemic devaluation of safety and a staggering and ever-growing number of safety defects in GM-branded vehicles – at least 60 separate defects affecting over 27 million vehicles according to recalls announced during the first ten months of 2014. *See id.* ¶ 115. New GM's conduct caused Arizona residents to purchase GM-branded vehicles under false pretenses and, as a result of the revelation of New GM's fraudulent omissions and extreme mishandling of safety issues, the value of *all* GM-branded vehicles diminished. *See id.* ¶¶ 10, 22-23.

**b. California.**

On June 27, 2014, Tony Rackauckas, Orange County District Attorney, filed the California action against New GM asserting violations of California's Unfair Competition Law and False Advertising Law. *See* California Compl. ¶¶ 1, 25, 253-74. The California Complaint alleges that New GM has committed: (i) acts or practices that constitute unfair competition within the meaning of the Unfair Competition Law; and (ii) acts and or practices that constitute false advertising within the meaning of the False Advertising Law. *Id.* ¶¶ 254-71.

The California action is a law enforcement action for civil penalties and injunctive relief against New GM based *exclusively* on New GM's independent violations of the California Business and Professions Code §§ 17200 & 17500, *et seq.* *Id.* ¶¶ 253-74. The California action seeks to hold New GM liable for only its own acts and omissions after the Bankruptcy Court approved the 363 Sale and does not assert a successor liability claim. *Id.* Indeed, claims under the Unfair Competition Law are subject to a four year statute of limitations period. *See* CAL. BUS. & PROF. CODE § 17208, so, by definition those claims did not arise until June 2010 – four years prior to the filing of the California action.

The California action asserts that New GM is liable as a result of its post-Sale conduct or omissions in: (i) concealing, failing to disclose, and omitting important safety-related material information that was known only to New GM and that could not reasonably have been discovered by California consumers (including defects affecting the ignition, power steering, airbags, brake lights, gear shift systems, and seatbelts in New GM vehicles (*see* California Compl. ¶¶ 35, 179-211)); and (ii) repeatedly and knowingly making untrue and misleading statements in California, including through advertising, marketing, and other publications, regarding the purported reliability and safety of its vehicles and the importance of safety to New GM – including repeated characterizations of New GM vehicles as “safe” and “reliable” and

assertions that “safety” and “product quality” were the key focuses of New GM’s “new culture.”  
*Id.* ¶¶ 225-252.

In sum, both the Arizona and California Complaints assert claims based *solely* on the post-Sale conduct of New GM. As such, the claims do not fall properly within the category of claims barred by the Sale Order as more fully described in the No Strike Pleadings.

### III. THE DECISION AND JUDGMENT’S IMPACT ON THE STATES’ CLAIMS

In April 2014, New GM sought to enjoin the prosecution of numerous actions against it asserting economic loss arising from the Ignition Switch Defect by filing the Motion to Enforce. New GM asserted, *inter alia*, that these actions asserted successor liability claims or claims seeking “to hold New GM liable for economic damages based on Old GM’s conduct – claims that are prohibited by the Sale Order.” Motion to Enforce ¶¶ 28-31. New GM asserted that the State actions were also subject to the Motion to Enforce.<sup>20</sup>

On April 15, 2015, the Bankruptcy Court entered its Decision.<sup>21</sup> The Bankruptcy Court found that the Ignition Switch Plaintiffs were “known creditors” who were denied the notice that due process requires, and were prejudiced by the overbreadth of the Sale Order. *See In re Motors Liquidation Co.*, 529 B.R. at 524-27. Therefore, the Ignition Switch Plaintiffs’ due process rights were violated. *See id.* at 527. To remedy this due process violation, the Decision and Judgment permits the Ignition Switch Plaintiffs to pursue “claims against New GM for any causes of action that might exist arising solely out of New GM’s own, independent, post-Closing acts.” *Id.* at 598; Judgment ¶ 4 (“The Sale Order shall be deemed modified to permit the

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<sup>20</sup> See 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, dated August 7, 2014 [ECF No. 12818]; Notice of Filing of Twelfth 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, dated December 1, 2014 [ECF No. 13009].

<sup>21</sup> The Decision and Judgment are subject to appeal by several parties. *See* ECF Nos. 13179, 13180, 13185, 13194, 13200.

assertion of Independent Claims.”). Accordingly, under the Decision, the States should be free to proceed with the State actions.

However, the Decision on Judgment determined that the Complaints “intermix claims involving pre- and post-sale conduct” and that “[r]eliance on allegations of that character was expressly prohibited under the Court’s decision.” Decision on Judgment at 6. The Bankruptcy Court then stayed the State actions pending appeal or until the Complaints were amended or “judicially determined (by this or any higher court) not to require amendment.” *See id.*; Judgment ¶ 12(a). Under the Judgment, absent amendment, the States must make a showing of a good faith basis to maintain that the allegations, claims, and/or causes of action should not be stricken from the State Complaints because only Independent Claims are pled. *See* Judgment ¶ 12(c)-(d).

On June 16, 2015, the States filed No Strike Pleadings, which contend that the States allege solely Independent Claims that should not be enjoined or stricken and over which the Bankruptcy Court lacks jurisdiction.

#### **A. The MDL Proceeding**

Since disclosure of the Ignition Switch Defect, over 250 class actions have been brought against New GM alleging economic loss damages, wrongful death and personal injury. *See* GUC Trust 10-K at 21. Many of these class actions are being jointly administered for pretrial purposes in the MDL Proceeding. *See id.* On June 12, 2015, Lead Counsel in the MDL Proceeding filed the Amended Consolidated Complaint. The Amended Consolidated Complaint asserts numerous Independent Claims against New GM under various federal non-bankruptcy and state laws, including state consumer protection acts.

Like the State actions, the Amended Consolidated Complaint seeks to hold New GM liable for Independent Claims relating to New GM’s concealment of defects in certain GM-

branded vehicles or parts and New GM's misrepresentations concerning the safety and reliability of certain of its vehicles and the integrity of the New GM brand. *See, e.g.*, Am. Compl. ¶¶ 4-12. For example, the Amended Consolidated Complaint alleges that post-Sale, New GM engaged in unlawful, unfair, and fraudulent acts and practices prohibited by California's Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200, *et seq.*), including, *inter alia*, by falsely asserting that GM-branded cars were safe and reliable in advertisements and other publications knowing the statements were false and likely to mislead consumers. *See, e.g., id.* ¶¶ 191-226, 1493-1515.

#### IV. STATEMENT OF JURISDICTION

28 U.S.C. § 1334(b) vests in the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334.

Under 28 U.S.C. § 157(a), the district court may refer actions within its bankruptcy jurisdiction to the bankruptcy courts within its district. *See* 28 U.S.C. § 157(a). Under the *Amended Standing Order of Reference* signed by Acting Chief Judge Loretta A. Preska dated January 31, 2012, actions within the District Court's bankruptcy jurisdiction are automatically referred to the Bankruptcy Court for the Southern District of New York.

28 U.S.C. § 157(d) permits a district court to withdraw cases or proceedings from the bankruptcy court "for cause shown," and it mandates withdrawal of the reference when "resolution of the proceeding requires consideration of both [the Bankruptcy Code] and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d).

## V. ARGUMENT

### A. Legal Standard for Withdrawal of the Reference

The District Court has broad authority to withdraw the automatic reference to the Bankruptcy Court of any proceeding “in whole or in part, ... on its own motion or on timely motion of a party, for cause shown.”<sup>22</sup> See 28 U.S.C. § 157(d).<sup>23</sup>

Whether “cause” exists is determined by weighing various factors, known as the *Orion* factors, including: “(1) whether the claim is core or non-core, (2) what is the most efficient use of judicial resources, (3) what is the delay and what are the costs to the parties, (4) what will promote uniformity of bankruptcy administration, (5) what will prevent forum shopping, and (6) other related factors.” *In re Burger Boys, Inc.*, 94 F.3d at 762; see also *In re Orion Pictures Corp.*, 4 F.3d at 1101.

Following *Stern v. Marshall*, another factor has been identified – whether the bankruptcy court has final power to adjudicate the matter, including whether the parties knowingly and voluntarily consented to have the bankruptcy court adjudicate the claim. See, e.g., *Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1944-49 (2015); *ResCap Liquidating Trust v. PHH Mortg. Corp.*, 518 B.R. 259, 265-66 (S.D.N.Y. 2014) (noting that courts in this District have modified the *Orion* test to include final power to adjudicate the matter as a factor).

As set forth below, each of the *Orion* factors weigh in favor of withdrawal of reference.

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<sup>22</sup> The States have timely moved to withdraw the reference by filing the Motion contemporaneously with the No Strike Pleadings. Timeliness is a fact specific inquiry that has been interpreted to mean “as soon as possible after the moving party has notice of the grounds for withdrawing the reference.” See *Secs. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff)*, 454 B.R. 307, 316-17 (S.D.N.Y. 2011) (citations omitted). Further, given New GM’s likely opposition to the No Strike Pleadings, the Motion is not premature. See *In re Ephedra Prods. Liab. Litig.*, 329 B.R. 1, 5-6 (S.D.N.Y. 2005) (a matter becomes a “contested matter” even before a request is opposed if such opposition is reasonably foreseeable); *In re Laventhol & Horwath*, 139 B.R. 109, 113 (S.D.N.Y. 1992) (motion to withdraw the reference prior to objection by party in interest was timely given that the parties would be adversaries in near future).

<sup>23</sup> 28 U.S.C. § 157(d) requires withdrawal of the reference when “resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” As noted above, the States are not seeking mandatory withdrawal.



**B. The Bankruptcy Court Lacks Final Authority to Adjudicate the No Strike Pleadings**

The threshold question in a permissive withdrawal analysis is whether a claim is “core” or “non-core” under title 28 and whether the bankruptcy court has final power to adjudicate the matter.<sup>24</sup> This is so because it is generally most efficient to proceed before the court making final determinations. *See ResCap Liquidating Trust*, 518 B.R. at 265-66; *Orion*, 4 F.3d at 1101. When non-core claims predominate the proceeding, “unnecessary costs could be avoided by a single proceeding” before the District Court where all issues can be finally adjudicated. *See Orion*, 4 F.3d at 1101.

The No Strike Pleadings require a determination of, *inter alia*, whether the State actions assert Independent Claims<sup>25</sup> and does not involve the restructuring of debtor/creditor rights. Thus, the No Strike Pleadings raise non-core claims under 28 U.S.C. § 157(c)(1) and withdrawal is appropriate. *See In re Adelpia Commc’ns Corp. Sec. & Derivative Litig.*, 2006 WL 337667, at \*4-5 (S.D.N.Y. Feb. 10, 2006) (withdrawing non-core claims that were “not unique to a bankruptcy proceeding” and did not implicate “matters [with] which the bankruptcy court would ordinarily be expected to have greater familiarity”).

Given that the States have not consented to final determination by the Bankruptcy Court, the Bankruptcy Court does not have final authority to adjudicate this matter and withdrawal is

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<sup>24</sup> Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, which are referred from the District Court, and may enter appropriate orders and judgments, subject to review under section 158 of title 28. *See* 28 U.S.C. § 157(b)(1). For matters that are non-core under 28 U.S.C. § 157(b)(2), bankruptcy judges may only issue proposed findings of fact and conclusions of law to the District Court, and any final order or judgment must be entered by the District Court. *See* 28 U.S.C. § 157(c)(1). Upon timely and specific objection of any party, the District Court shall review proposed findings of fact and conclusions of law *de novo*. *Id.*; *see also* Fed. R. Bankr. P. 9033. Bankruptcy judges may enter final judgment on non-core issues only where all parties have consented to final determination. *See* 28 U.S.C. § 157(c)(2); *see also Wellness Int’l Network*, 135 S. Ct. at 1944-49 (finding that bankruptcy courts have authority to finally adjudicate claims for which litigants are constitutionally entitled to an Article III adjudication upon “knowing and voluntary” consent).

<sup>25</sup> The Arizona action asserts that New GM’s post-Sale conduct and omissions violated the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1521, *et seq.* In turn, the California action asserts that New GM’s post-Sale conduct and omissions violated California’s Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200, *et seq.*) and False Advertising Law (CAL. BUS. & PROF. CODE § 17500, *et seq.*).

appropriate under the first *Orion* factor. That the No Strike Pleadings require reference to the Sale Order (as interpreted in the Decision and Judgment) does not transform the dispute into a core matter. For example, in *Residential Funding Co.*, plaintiff argued that a breach of contract action relating to an indemnification provision was a core matter because the dispute required reference to a bankruptcy court order approving a settlement agreement under which the indemnification obligation was incurred. *See In re Residential Cap. LLC*, 519 B.R. 593, 601 (S.D.N.Y. 2014). Judge Castel rejected that argument, noting that the bankruptcy court's retention of jurisdiction to interpret and enforce its own orders is irrelevant to a core/non-core determination. *See id.* Because the proceeding did not depend on bankruptcy law for its existence, it was non-core. *See id.* at 600-02. Similarly, the State actions raise Independent Claims against New GM based on its own Post-Sale conduct and omissions, and the reference to the scope of the Sale Order fails to change the non-core nature of the No Strike Pleadings.

**C. Withdrawal of the No Strike Pleadings Promotes the Efficient Use of Judicial Resources and Minimizes Cost and Delay**

Good cause to withdraw the reference exists when it leads to the efficient use of judicial resources. *See In re Parmalat Finanziaria S.p.A.*, 320 B.R. 46, 50 (S.D.N.Y. 2005) (holding that the “higher interest ... of judicial efficiency” justified withdrawal of core proceeding under predecessor statute to Chapter 15). This goal is particularly relevant where, as here, the proceeding to be withdrawn shares common issues of fact or law with actions pending in the District Court. *See In re Wedtech Corp.*, 81 B.R. 237, 239 (S.D.N.Y. 1987) (finding “good cause” to withdraw the reference in the interests of fairness and judicial economy based on the “overlapping of facts, transactions, and issues” with on-going District Court actions).

For example, in *In re Pan Am Corp.*, an adversary proceeding before the Bankruptcy Court arose from the same factual context as two related actions before the District Court. *See In*

*re Pan Am. Corp.*, 163 B.R. 41, 42-44 (S.D.N.Y. 1993). The adversary proceeding sought, *inter alia*, damages for Delta's bad faith refusal to participate in Pan Am's reorganization, while the related District Court actions sought wages that certain employees allegedly would have received from the reorganized Pan Am. *See id.* at 42. Withdrawal would allow the three cases to be consolidated and the overlapping issues of fact to be heard and decided in one forum. *See id.* at 44. Thus, the District Court held that "the higher interest ... of promoting judicial efficiency" justified withdrawal even though the proceeding involved core claims. *See id.* at 43.

Here, withdrawal of the No Strike Pleadings is particularly appropriate because the causes of action in the Amended Consolidated Complaint share common issues of fact and law with the issues to be determined in the No Strike Pleadings. As it is likely additional plaintiffs will file and seek withdrawal of No Stay, No Strike and Objection Pleadings, withdrawal of the reference will ensure judicial economy and uniformity as these actions may be collectively decided by the District Court. Judicial economy is further underscored if the appeal of the Decision and Judgment is heard in the first instance before the District Court (as several plaintiffs advocate). *See ResCap Liquidating Trust*, 518 B.R. at 266-67 (finding "that this proceeding would be transferred to the District Court" where similar actions are pending "informs the Court's analysis" and favors withdrawal). Moreover, the No Strike Pleadings and the Amended Consolidated Complaint also raise similar questions of statutory construction. Indeed, claims for the violation of California's Unfair Competition Law and Arizona's Consumer Fraud Act are asserted in the Amended Consolidated Complaint. *See Am. Compl.* ¶¶ 1297-1321, 1493-1515.

Proceeding in the forum that has familiarity with the issues will reduce costs and delay, further justifying withdrawal. *See In re G.M. Crocetti, Inc.*, 2008 WL 4601278, at \*6 (Oct. 15,

2008) (finding that when related District Court action was “proceeding apace; there [was] no undue delay and therefore no prejudice to [debtor] from the withdrawal”); *In re Houbigant, Inc.*, 185 B.R. 680, 686 (S.D.N.Y. 1995) (finding that “the resources of the [parties] will not be further taxed” by withdrawal because, *inter alia*, the District Court was “familiar with the facts of this case [and had] had the parties before it several times”).

The District Court has, among other things, held many conferences with the parties regarding case management and pre-trial matters, ordered the production of documents by New GM, and instituted protocols to govern discovery.<sup>26</sup> The District Court’s familiarity with the facts and claims at issue in the No Strike Pleadings will help minimize costs and delay and supports withdrawal.

Accordingly, withdrawal will maximize efficiency and ensure that the MDL Proceeding fulfills its mandate to provide for the orderly administration of pretrial proceedings and avoidance of the cost and delay of a two-step process. *See Parmalat Finanziaria*, 320 B.R. at 50-51 (withdrawing the reference because, *inter alia*, permitting the bankruptcy court to decide certain issues in the first instance would be inefficient and counterproductive to the goals of the multi-district litigation).

In addition, rather than have the Bankruptcy Court determine the issues in the No Strike Pleadings subject to *de novo* review by the District Court, judicial economy and efficiency are better served by withdrawal of the No Strike Pleadings now. *See Orion*, 4 F.3d at 1101 (noting that “unnecessary costs could be avoided by a single proceeding in the district court” in non-core matters); *Solutia Inc. v. FMC Corp.*, 2004 WL 1661115, at \*3 (S.D.N.Y. July 27, 2004) (“By

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<sup>26</sup> *See, e.g.*, MDL Order Nos. 7 [ECF No. 215]; 12 [ECF No. 296]; 14 [ECF No. 312]; 20 [ECF No. 383]; 31 [ECF No. 526]; 32 [ECF No. 529]; 36 [ECF No. 604]; 52 [ECF No. 926].

litigating this non-core matter in the district court, judicial resources will be conserved instead of having two courts administer two rounds of briefing and argument on the same issues.”).

Finally, there are no countervailing efficiency considerations militating in favor of denying the motion. In that regard, it should be noted that Judge Gerber has retired from the Bankruptcy Court, and it is unclear how long he will remain under recall status. In addition, the Bankruptcy Court’s expertise in bankruptcy law and familiarity with Old GM’s chapter 11 proceedings is irrelevant to determining whether the States have properly asserted Independent Claims. *See In re Residential Cap., LLC*, 527 B.R. 865, 872 (S.D.N.Y. 2014) (withdrawing non-core claim because, *inter alia*, the bankruptcy judge had no expertise in state law and resolution of the claim would not draw upon his “unparalleled depth of familiarity with the underlying bankruptcy case”).

**D. Withdrawal of the No Strike Pleadings Does not Interfere with the Uniform Administration of Bankruptcy Law**

Courts also consider whether withdrawal of the reference will undermine the uniform administration of bankruptcy law. *See Orion Pictures*, 4 F.3d at 1101. This factor weighs in favor of withdrawal when the proceeding concerns legal issues that are more commonly resolved in district courts. *See In re Complete Mgmt., Inc.*, 2002 WL 31163878, at \*3 n.5 (S.D.N.Y. Sept. 27, 2002) (withdrawal of core matters warranted because, *inter alia*, the district court had familiarity with related securities litigation and the proceeding required determination of “legal issues more commonly resolved by [the district] court than the bankruptcy courts”); *ResCap Liquidating Trust*, 518 B.R. at 266-67 (withdrawing the reference because, *inter alia*, the district court had more familiarity with claims governed by state law and the claims did not involve “complicated questions of bankruptcy law”).

By contrast, when the proceeding implicates complex and novel questions of bankruptcy law that are better decided by a bankruptcy court in the first instance, courts are less inclined to withdraw the reference. *See In re Extended Stay, Inc.*, 466 B.R. 188, 207 (S.D.N.Y. 2011) (denying withdrawal of the reference because, *inter alia*, “[a]llowing the bankruptcy courts to consider complex questions of bankruptcy law [such as questions related to § 546(e)] ... promotes a more uniform application of bankruptcy law”).

The District Court has the benefit of Judge Gerber’s interpretation of the Sale Order in the Decision. The No Strike Pleadings require a determination of the “good faith basis” to maintain claims against New GM in light of the Decision – *i.e.*, whether the State actions raise Independent Claims. *See* Judgment ¶¶ 12(c). Thus, the No Strike Pleadings require the evaluation of the state law claims in the Arizona and California Complaints – not complex bankruptcy law issues – which favors withdrawal. *See ResCap Liquidating Trust*, 518 B.R. at 266-67.

Moreover, resolution of the No Strike Pleadings by the Bankruptcy Court is not necessary to ensure the uniform, expedited administration of Old GM’s bankruptcy estate. Old GM’s Chapter 11 Plan was confirmed over four years ago and has been substantially consummated. *See In re Motors Liquidation Co.*, 529 B.R. at 536. Resolution of the non-core No Strike Pleadings is not integral to the restructuring of debtor/creditor rights. *Cf. In re Oakwood Homes, Corp.*, 2007 WL 2071730, at \*2 (D. Del. July 17, 2007) (uniformity in bankruptcy administration supports hearing core proceedings “integral to the restructuring of debtor-creditor rights” in the Bankruptcy Court); *Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, 462 B.R. 457, 473 (S.D.N.Y. 2011) (withdrawal of claims under state law, the resolution of which will not deplete the bankruptcy estate, “have no impact that would require uniform, coordinated

adjudication before the Bankruptcy Court”). There are no concerns that withdrawal of the No Strike Pleadings will interfere with the bankruptcy process or uniformity in the administration of Old GM’s estate. *See Mirant Corp. v. The S. Co.*, 337 B.R. 107, 122 (N.D. Tex. 2006) (expediting the bankruptcy process not a relevant factor on a motion to withdraw the reference where bankruptcy judge had already confirmed the plan of reorganization).

Accordingly, withdrawal of the No Strike Pleadings is appropriate under this *Orion* factor.

**E. The States are not Forum Shopping**

In determining whether withdrawal is appropriate, courts seek to prevent forum shopping by considering whether withdrawal is sought for legitimate reasons, such as promoting efficiency, or rather sought to obtain an undue advantage. *See In re Residential Cap., LLC*, 519 B.R. at 605-06.

Where, as here, withdrawal of the reference would allow the proceeding to be heard in the most efficient forum, forum shopping is not a concern. *See Pan Am*, 163 B.R. at 44 (finding no forum shopping when party sought to have disputes arising from the same factual context adjudicated in one forum); *Adelphia Commc’ns*, 2006 WL 337667, at \*5 (“[T]he usual objectives of ‘forum-shopping’ – finding a jurisdiction with more favorable law, and geographical convenience – do not apply, both the bankruptcy court and the district court being bound to follow Second Circuit law, and both courts being located in downtown Manhattan.”).

Moreover, a motion to withdraw the reference for a non-core proceeding is by definition not forum shopping because the movant is merely seeking to reduce time and expense by requesting that the court that must finally adjudicate the proceeding hear and determine the dispute in the first instance. *See Development Specialists*, 462 B.R. at 473 (“[I]nsofar as the [Movants] are entitled to have their dispute ... finally determined in this Court, the Court does

not condone forum shopping by allowing them to come here sooner rather than later.”); *In re EbaseOne Corp.*, 2006 WL 2405732, at \*4 (Bankr. S.D. Tex. June 14, 2006) (finding that moving to withdraw the reference does not constitute forum shopping when it is “nothing more than a reasonable effort to have a non-core proceeding litigated with a minimum of time and expense” by the court empowered “to adjudicate the dispute once and for all”). Given that purpose here, withdrawal is appropriate.

## VI. CONCLUSION

In sum, all *Orion* factors favor withdrawal and this Court should exercise its discretion to withdraw the reference with regard to the No Strike Pleadings.

Dated: New York, New York, June 16, 2015.

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**THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA, *ex rel.* THOMAS C.  
HORNE, Attorney General,

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

Case No. CV2014-014090

**COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF**

(Non-classified Civil; Consumer Fraud)

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For its Complaint against Defendant General Motors LLC (“New GM”), Plaintiff State of Arizona (the “State”) *ex rel.* Thomas C. Horne, the Attorney General, alleges as follows:

## I. INTRODUCTION

1. This action is brought pursuant to the Arizona Consumer Fraud Act (A.R.S. § 44-1521, *et seq.*) to obtain injunctive relief to permanently enjoin and prevent the unlawful acts and practices alleged in this Complaint, and to obtain other relief, including disgorgement, civil penalties, costs of investigation and attorneys’ fees.

2. This Complaint arises from New GM’s egregious violation of two fundamental rules all manufacturers must follow if they do business in the State of Arizona.

3. Rule No. 1: Manufacturers of any product—from toys to automobiles—must make and sell products that are, above all else, safe to use. Safety is not only essential to long-term brand value, it is also required by law.

4. Rule No. 2: Manufacturers must also tell the complete truth about the safety of their products. When a safety defect does occur, manufacturers must promptly initiate some form of recall to address the problem.

5. New GM violated both of these rules. It manufactured and sold millions of vehicles that were not safe, including hundreds of thousands in Arizona, and it failed to remedy serious defects in millions of older GM-branded vehicles.<sup>1</sup> As New GM has belatedly disclosed in scores of recalls in 2014, safety defects affected over 27 million GM-branded vehicles on the road in the United States. These vehicles were not recalled until 2014, but the vast majority of them should have been recalled years earlier.

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<sup>1</sup> The term “GM-branded vehicles” refers to vehicles manufactured and sold by both New GM, and its predecessor, “Old GM.”



6. New GM led consumers in Arizona and across the country to believe that, after bankruptcy, it was a new company. For example, in numerous public announcements and public filings, New GM repeatedly proclaimed that it was a company committed to innovation, safety, and maintaining a strong brand.

7. New GM was successful in selling its story that it had changed its “processes and culture” and was building “the best vehicles in the world.” Sales of all New GM models went up, including in Arizona, and New GM became profitable. As far as the public knew, a new General Motors was born, and the GM brand once again stood strong in the eyes of consumers.

8. New GM’s brand image was an illusion given the company’s egregious failure to disclose, and its affirmative concealment of, ignition switch defects and a plethora of other safety defects in GM-branded vehicles.

9. New GM concealed the existence of many known safety defects plaguing many models and years of GM-branded vehicles, and hid the fact that New GM valued cost-cutting over safety.

10. At the same time, New GM marketed its vehicles as “safe” and “reliable,” and claimed that it built the “world’s best vehicles.” Consequently, New GM intentionally enticed Arizona consumers to buy or lease new or used GM-branded vehicles that have now diminished in value as the truth about the New GM brand has come out and a stigma has attached to all GM-branded vehicles.

11. A vehicle made by a reputable manufacturer of safe and reliable vehicles is worth more than an otherwise similar vehicle made by a disreputable manufacturer that is known to devalue safety and to conceal serious defects from consumers and regulators.

12. New GM vehicle Safety Chief, Jeff Boyer, recently highlighted the heightened materiality to consumers of safety: “Nothing is more important than the safety of our customers

in the vehicles they drive.” Yet New GM failed to live up to this commitment, instead choosing to conceal at least 60 serious defects in over 27 million GM-branded vehicles sold in the United States.

13. The systematic concealment of known defects was deliberate, as New GM followed a consistent pattern of endless “investigation” and delay each time it became aware of a given defect.

14. Recently revealed documents show that New 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.

15. In addition, New GM was plagued by what CEO Mary Barra calls “transactional decision making,” in which New GM employees “color[] inside the lines of their own precise job description without thinking independently or holistically,” *i.e.*, without looking at the larger issue of safety.<sup>2</sup>

16. In light of New GM’s systemic devaluation of safety issues, it is not surprising that, from the date of its inception, New GM itself produced a grossly inordinate number of vehicles with serious safety defects. Until this year, New GM was successful in concealing both its disregard of safety and the myriad defects that resulted from that disregard.

17. According to the administrator of the National Highway Traffic Safety Administration (“NHTSA”), New GM worked to hide documents from NHTSA and created firewalls to prevent people within New GM from “connecting the dots” with respect to safety issues and defects. New GM did so to keep information about safety issues and defects secret.

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<sup>2</sup> TIME MAGAZINE, October 6, 2014, p. 36.

18. The array of concealed defects is astounding and goes far beyond the ignition switch defects, the belated revelation of which sparked GM's 2014 serial recalls. The defects affected virtually every safety system in GM-branded vehicles, including but by no means limited to the airbags, seatbelts, brakes, brake lights, electronic stability control, windshield wipers, sensing and diagnostic modules, and warning chimes.

19. Given the continuity of engineers, corporate counsel, and other key personnel from Old GM to New GM, New GM knew and was fully aware of the now infamous ignition switch defects (and many other serious defects in numerous models of GM-branded vehicles) *from the very date of its inception on July 11, 2009*. New GM was not born innocent.

20. New GM's claims that the defects were known only to lower level engineers are false. For example, current CEO Mary Barra, while head of product development, was informed in 2011 of a safety defect in the electronic power steering of several models. Despite 4,800 consumer complaints and more than 30,000 warranty repairs, GM waited until 2014 to disclose this defect.

21. On May 16, 2014, New GM entered into a Consent Order with NHTSA in which it admitted that it violated the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act") by not disclosing the ignition switch defect that gave rise to the February and March 2014 recalls, and agreed to pay the maximum available civil penalties for its violations.

22. New GM's false representations and/or omissions concerning the safety and reliability of its vehicles, and its concealment of a plethora of known safety defects plaguing its vehicles and its brand, caused Arizona residents to purchase GM-branded vehicles under false pretenses.

23. New GM's false representations and omissions harmed Arizona consumers because the emergence of the truth about New GM's abysmal safety record and culture of deceit, and its failure to promptly remedy known defects, has greatly diminished the value of GM-branded vehicles sold after the inception of New GM. For example: the 2010 and 2011 Chevrolet Camaro have both suffered a diminished value of \$2,000 when compared to the value of comparable vehicles; the 2009 Pontiac Solstice has diminished \$2,900 in value; the 2010 Cadillac STS had diminished in value by \$1,235 in September 2014; and the 2010 Buick LaCrosse had diminished by \$649 in that same month. New GM's egregious and widely-publicized conduct and the never-ending and piecemeal nature of New GM's recalls has so tarnished GM-branded vehicles that no reasonable consumer would pay the price they would have paid if the brand continued to mean safety and success.

24. These same false representations, omissions and acts of concealment violated the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* As a result, the State seeks injunctive relief preventing further violations of the Act, civil penalties, disgorgement of any profits, gain, gross receipts, or other benefit obtained by means of such unlawful practices, and the costs of litigation including attorneys' fees.

## **II. PARTIES, JURISDICTION AND VENUE**

### **A. Plaintiff**

25. Plaintiff is the State of Arizona, *ex rel.* Thomas C. Horne, the Attorney General of Arizona (the "State").

### **B. Defendant**

26. Defendant General Motors LLC ("New GM") is a Delaware limited liability company with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and Michigan.

27. The sole member and owner of General Motors LLC is General Motors Holding LLC. General Motors Holdings LLC is a Delaware limited liability company with its principal place of business in the State of Michigan.

28. The sole member and owner of General Motors Holdings LLC is General Motors Company, which is a Delaware Corporation with its principal place of business in the State of Michigan, and is a citizen of the States of Delaware and Michigan.

29. New GM was incorporated in 2009 and, effective on July 11, 2009, acquired substantially all assets and assumed certain liabilities of General Motors Corporation (“Old GM”) through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code.

30. This Court has jurisdiction to enter appropriate orders both prior to and following a determination of liability pursuant to the Arizona Consumer Fraud Act (A.R.S. § 44-1521, *et seq.*).

31. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

### **III. FACTUAL ALLEGATIONS**

#### **A. New GM Falsely Promoted All of Its Vehicles as Safe, Reliable, and High-Quality.**

32. New GM was financially successful in emerging from the Old GM bankruptcy. Sales of all its models went up, and New GM became profitable. New GM claimed to have turned over a new leaf in the bankruptcy—a new GM was born, and the GM brand once again stood strong—or so consumers thought.

33. In 2010, New GM sold 4.26 million vehicles globally, an average of one every 7.4 seconds. Joel Ewanick, New GM’s global chief marketing officer at the time, described the success of one of its brands in a statement to the press: “Chevrolet’s dedication to compelling

designs, quality, durability and great value is a winning formula that resonates with consumers around the world.”<sup>3</sup>

34. New GM repeatedly proclaimed to the world and U.S. consumers that, once it emerged from bankruptcy in 2009, it was a new and improved company committed to innovation, safety, and maintaining a strong brand.

35. In New GM’s 2010 Annual Report, New GM proclaimed its products would “improve safety and enhance the overall driving experience for our customers.”

36. In that same Annual Report, New GM claimed it would create vehicles that would “define the industry standard.”

37. In its 2010 Annual Report, New GM told consumers that it built “the world’s best vehicles.”

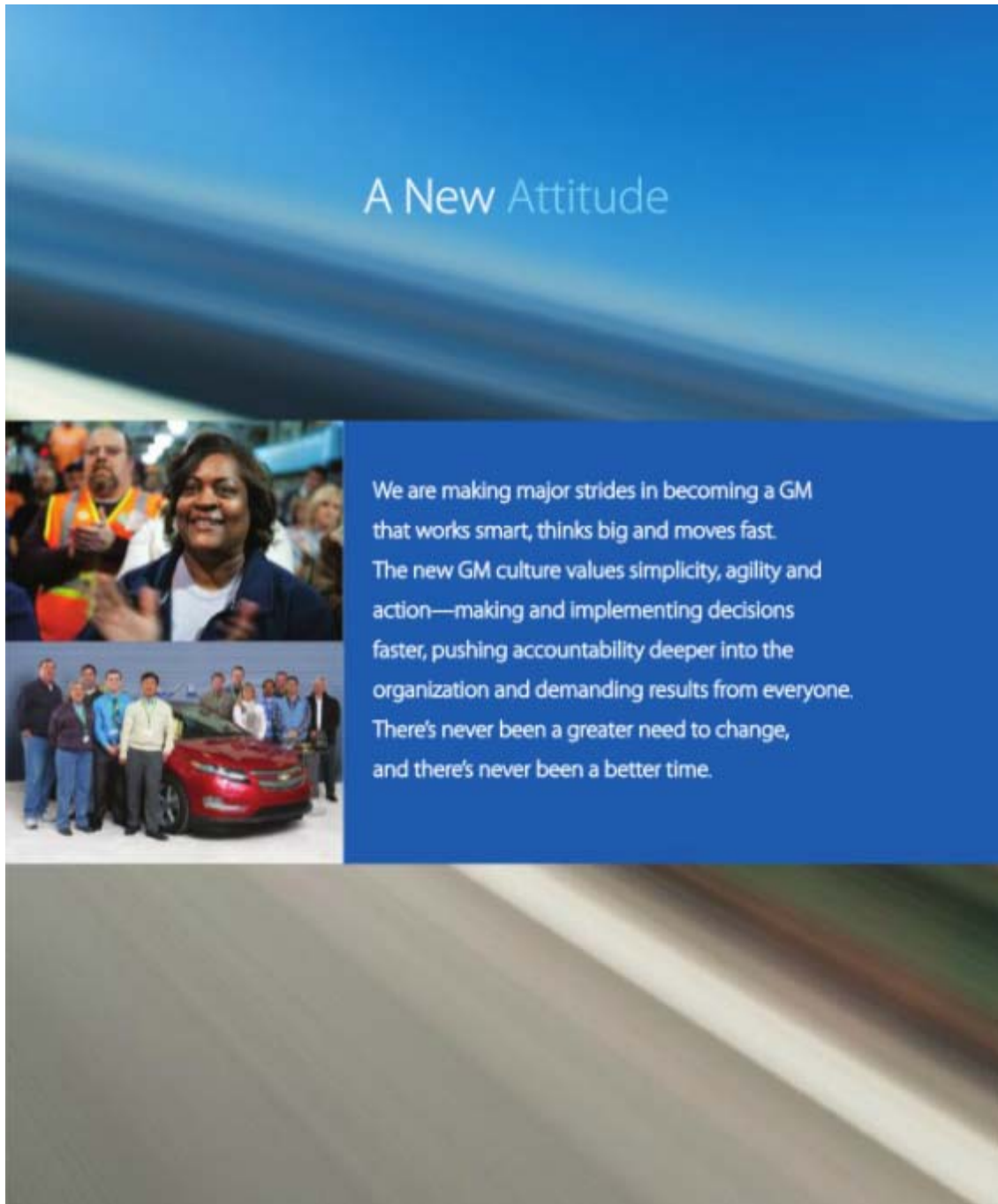
38. New GM repeatedly put forward these themes—safety first, “design excellence, quality and performance,” and building “word class vehicles—as the core message about New GM’s Brand.

39. New GM repeatedly boasted of its new “culture”:

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[https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Jan/0117\\_chev\\_global](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Jan/0117_chev_global).



General Motors Company 2010 Annual Report, p. 16.

40. In its 2011 Annual Report, New GM announced its commitment to leadership in vehicle safety:


*Automotive*

We offer a global vehicle portfolio of cars, crossovers and trucks. We are committed to leadership in vehicle design, quality, reliability, telematics and infotainment and safety, as well as to developing key energy efficiency, energy diversity and advanced propulsion technologies, including electric vehicles with range extending capabilities such as the Chevrolet Volt. Our business is

General Motors Company 2011 Annual Report, p. 11.

41. In a “Letter to Stockholders” contained in its 2011 Annual Report, New GM boasted that it was “creating vehicles that people desire, value and are proud to own, noted that its brand had grown in value and again proclaimed that it designed the “World’s Best Vehicles.”

42. These themes continued in New GM’s 2012 Annual Report:



DANIEL F. AKERSON  
Chairman & Chief Executive Officer  
with the 2014 Cadillac CTS

**TO OUR STOCKHOLDERS:**  
Last year, I closed my letter to you by talking about how GM was changing its processes and culture in order to build the best vehicles in the world much more efficiently and profitably. This year, I want to pick up where I left off, and articulate what success looks like for you as stockholders, and for everyone else who depends on us. >>

General Motors Company 2012 ANNUAL REPORT 3

General Motors Company 2012 Annual Report, p. 3.



43. New GM touted its “focus on the customer” and its plan to be “great” and produce “quality” vehicles:

*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.*

General Motors Company 2012 Annual Report, p. 4.

44. New GM also indicated it had changed its structure to create more “accountability” which, as shown below, was a blatant falsehood:

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

General Motors Company 2012 Annual Report, p. 10.

45. And New GM represented that product quality was a key focus—another blatant falsehood:

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

General Motors Company 2012 Annual Report, p. 10.

46. New GM’s 2013 Annual Report falsely proclaimed, “Nothing is more important than the safety of our customers.” General Motors Company 2013 Annual Report, p. 4.

**B. New GM’s Advertising and Marketing Literature Falsely Claimed that GM Placed Safety and Quality First.**

47. In May of 2014, New GM sponsored the North American Conference on Elderly Mobility. Gay Kent, director of New GM global vehicle safety and a presenter at the conference, proclaimed the primacy of safety within New GM’s new company culture: “The safety of all our customers is our utmost concern.”<sup>4</sup>

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<https://media.gm.com/media/us/en/gm/news.detail./content/Pages/news/us/en/2014/May/0514-cameras>.

48. New GM vigorously incorporated this messaging into its public-facing communications. In advertisements and company literature, New GM consistently promoted all its vehicles as safe and reliable, and presented itself as a responsible manufacturer that stands behind GM-branded vehicles after they are sold. Examples of New GM's misleading claims of safety and reliability made in public statements, advertisements, and literature provided with its vehicles follow.

49. An online ad for "GM certified" used vehicles that ran from at least July 11, 2009, until April 5, 2010, stated that "GM certified means no worries."

50. In April 2010, General Motors Company Chairman and CEO Ed Whitacre starred in a video commercial on behalf of New GM. In it, Mr. Whitacre acknowledged that not all Americans wanted to give New GM a second chance, but that New GM wanted to make itself a company that "all Americans can be proud of again" and "exceed every goal [Americans] set for [General Motors]." He stated that New GM was "designing, building, and selling the best cars in the world." He continued by saying that New GM has "unmatched lifesaving technology" to keep customers safe. He concluded by inviting the viewer to take a look at "the new GM."<sup>5</sup>

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

52. On November 10, 2010, New GM published a video that told consumers that New GM actually prevents any defects from reaching consumers. The video, entitled "Andy Danko: The White Glove Quality Check," explains that there are "quality processes in the plant that prevent any defects from getting out." The video also promoted the ideal that, when a customer buys a New GM vehicle, they "drive it down the road and they never go back to the dealer."<sup>6</sup>

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<sup>5</sup> <https://www.youtube.com/watch?v=jbXpV0aqEM4>.

<sup>6</sup> [https://www.youtube.com/watch?v=JRFO8UzoNho&list=UUxN-Csvy\\_9sveq15HJviDjA](https://www.youtube.com/watch?v=JRFO8UzoNho&list=UUxN-Csvy_9sveq15HJviDjA).

53. In 2010, New GM ran a television advertisement for its Chevrolet brand that implied its vehicles were safe by showing parents bringing their newborn babies home from the hospital, with the tagline “as long as there are babies, there will be Chevys to bring them home.”<sup>7</sup>

54. Another 2010 television ad informed consumers that “Chevrolet’s ingenuity and integrity remain strong, exploring new areas of design and power, while continuing to make some of the safest vehicles on earth.”

55. New GM’s 2010 brochure for the Chevy Cobalt states, “Chevy Cobalt is savvy when it comes to standard safety” and “you’ll see we’ve thought about safety so you don’t have to.” It also states “[w]e’re filling our cars and trucks with the kind of thinking, features and craftsmanship you’d expect to pay a lot more for.”<sup>8</sup>



 <b>CHEVY</b> To us, it's pretty simple: Build vehicles that anyone would be proud to own, and put them within reach. We offer more models than Toyota or Honda with <b>30 MPG HIGHWAY OR BETTER!</b> We're backing our quality with the <b>BEST COVERAGE IN AMERICA</b> , which includes the 100,000 mile/5-year <sup>2</sup> transferable Powertrain Limited Warranty plus Roadside Assistance and Courtesy	Transportation Programs. We're filling our cars and trucks with the kind of thinking, features and craftsmanship you'd expect to pay a lot more for. This philosophy has earned us more <b>CONSUMERS DIGEST</b> "BEST BUY" awards for 2009 models <sup>3</sup> than any other brand. So owning a Chevy isn't just a source of transportation. It's a source of pride. <b>CHEVY.COM</b>
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<sup>7</sup> <https://www.youtube.com/watch?v=rb28vTN382g>.

<sup>8</sup> [https://www.auto-brochures.com/makes/Chevrolet/Cobalt/Chevrolet\\_US%20Cobalt\\_2010.pdf](https://www.auto-brochures.com/makes/Chevrolet/Cobalt/Chevrolet_US%20Cobalt_2010.pdf).

56. New GM's 2010 Chevy HHR brochure proclaims, "PLAY IT SAFE" and "It's easier to have fun when you have less to worry about."<sup>9</sup>

57. New GM's brochure for the 2011 Chevrolet Silverado states, "Silverado – the most dependable, long-lasting full size pickups on the road." It goes on to say, "There are three stages of safety. Silverado takes every one as seriously as you do."<sup>10</sup>

58. The brochure for the 2011 Cadillac DTS and STS states, "Passenger safety is a primary consideration throughout the engineering process," and "[t]he STS and DTS were carefully designed to provide a host of features to help you from getting into a collision in the first place."<sup>11</sup>

59. On August 29, 2011, New GM's website advertised: "Chevrolet provides consumers with fuel-efficient, safe and reliable vehicles that deliver high quality, expressive design, spirited performance and value."<sup>12</sup>

60. On September 29, 2011, New GM announced on the "News" portion of its website the introduction of front center airbags. The announcement included a quote from Gay Kent, New GM Executive Director of Vehicle Safety and Crashworthiness, who stated that: "This technology is a further demonstration of New GM's above-and-beyond commitment to provide continuous occupant protection before, during and after a crash."<sup>13</sup>

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<sup>9</sup> [https://www.auto-brochures.com/makes/Chevrolet/HHR/Chevrolet\\_US%20HHR\\_2010.pdf](https://www.auto-brochures.com/makes/Chevrolet/HHR/Chevrolet_US%20HHR_2010.pdf).

<sup>10</sup> [https://www.auto-brochures.com/makes/Chevrolet/Silverado/Chevrolet\\_US%20Silverado\\_2011.pdf](https://www.auto-brochures.com/makes/Chevrolet/Silverado/Chevrolet_US%20Silverado_2011.pdf).

<sup>11</sup> [https://www.auto-brochures.com/makes/Cadillac/Cadillac\\_US%20STS-DTS\\_2011.pdf](https://www.auto-brochures.com/makes/Cadillac/Cadillac_US%20STS-DTS_2011.pdf).

<sup>12</sup> <https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2014/Jul/0731-mpg>.

<sup>13</sup> [https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Sep/0929\\_airbag](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Sep/0929_airbag).

61. On December 27, 2011, Gay Kent was quoted in an interview on New GM's website as saying: "Our safety strategy is about providing continuous protection for our customers before, during and after a crash."<sup>14</sup>

62. New GM's brochure for the 2012 Chevrolet Impala proclaims: "A safety philosophy that RUNS DEEP," and that "if a moderate to severe collision does happen, Impala is designed to respond quickly."<sup>15</sup>

63. New GM's brochure for the 2012 Cadillac CTS, captioned "A Holistic Approach to Safety," announces, "At Cadillac, we believe the best way to survive a collision is to avoid one in the first place," and "Active safety begins with a responsive engine, powerful brakes, and an agile suspension."<sup>16</sup>

64. On January 3, 2012, Gay Kent, New GM Executive Director of Vehicle Safety, was quoted on New GM's website as saying: "From the largest vehicles in our lineup to the smallest, we are putting overall crashworthiness and state-of-the-art safety technologies at the top of the list of must-haves."<sup>17</sup>

65. An online national ad campaign for New GM in April 2012 stressed "Safety. Utility. Performance."

66. On June 5, 2012, New GM posted an article on its website announcing that its Malibu Eco had received top safety ratings from the National Highway Traffic Safety

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<sup>14</sup> [https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Dec/1227\\_safety](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2011/Dec/1227_safety).

<sup>15</sup> [https://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Help%20Center/Download%20a%20Brochure/02\\_PDFs/2012\\_Impala\\_eBrochure.pdf](https://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Help%20Center/Download%20a%20Brochure/02_PDFs/2012_Impala_eBrochure.pdf).

<sup>16</sup> [https://www.auto-brochures.com/makes/Cadillac/CTS/Cadillac\\_US%20CTS\\_2012.pdf](https://www.auto-brochures.com/makes/Cadillac/CTS/Cadillac_US%20CTS_2012.pdf).

<sup>17</sup> [https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jan/0103\\_sonic](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jan/0103_sonic).

Administration and the Insurance Institute for Highway Safety. The article includes the following quotes: “With the Malibu Eco, Chevrolet has earned seven 2012 TOP SAFETY PICK awards,” said IIHS President Adrian Lund. “The IIHS and NHTSA results demonstrate GM’s commitment to state-of-the-art crash protection.” And, “We are now seeing the results from our commitment to design the highest-rated vehicles in the world in safety performance,” said Gay Kent, New GM Executive Director of Vehicle Safety. “Earning these top safety ratings demonstrates the strength of the Malibu’s advanced structure, overall crashworthiness and effectiveness of the vehicle’s state-of-the-art safety technologies.”<sup>18</sup>

67. On June 5, 2012, New GM posted an article on its website entitled “Chevrolet Backs New Vehicle Lineup with Guarantee,” which included the following statement: “We have transformed the Chevrolet lineup, so there is no better time than now to reach out to new customers with the love it or return it guarantee and very attractive, bottom line pricing,” said Chris Perry, Chevrolet global vice president of marketing. “We think customers who have been driving competitive makes or even older Chevrolets will be very pleased by today’s Chevrolet designs, easy-to-use technologies, comprehensive safety and the quality built into all of our cars, trucks and crossovers.”<sup>19</sup>

68. On November 5, 2012, New GM published a video to advertise its “Safety Alert Seat” and other safety sensors. The video described older safety systems and then added that new systems “can offer drivers even more protection.” A “Cadillac Safety Engineer” added that there “are a variety of crash avoidance sensors that work together to help the driver avoid

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<sup>18</sup> [https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jun/0605\\_malibu\\_safety](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jun/0605_malibu_safety).

<sup>19</sup> [https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jul/0710\\_confidence](https://media.gm.com/media/us/en/gm/news.detail/content/Pages/news/us/en/2012/Jul/0710_confidence).

crashes.” The engineer then discussed all the sensors and the safety alert seat on the Cadillac XTS, leaving the viewer with the impression safety was a top priority at Cadillac.<sup>20</sup>

69. New GM’s brochure for the 2013 Chevrolet Traverse states, “Traverse provides peace of mind with an array of innovative safety features,” and “[i]t helps protect against the unexpected.”<sup>21</sup>



70. A national print ad campaign in April 2013 states that, “[w]hen lives are on the line, you need a dependable vehicle you can rely on. Chevrolet and GM ... for power, performance and safety.”

71. A December 2013 New GM testimonial ad stated that “GM has been able to deliver a quality product that satisfies my need for dignity and safety.”

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<sup>20</sup> <https://www.youtube.com/watch?v=CBEvflZMTeM>.

<sup>21</sup> [https://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet\\_US%20Traverse\\_2013.pdf](https://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet_US%20Traverse_2013.pdf).

72. In 2013, New GM proclaimed on its website, <https://www.gm.com>, that the company's passion for building and selling the world's best vehicles is "the hallmark of our customer-driven culture."<sup>22</sup>

73. On the same website in 2013, New GM stated: "At GM, it's about getting everything right for our customers – from the way we design, engineer and manufacture our vehicles, all the way through the ownership experience."<sup>23</sup>

74. On its website, Chevrolet.com, New GM promises that it is "Putting safety ON TOP," and that "Chevy Makes Safety a Top Priority."<sup>24</sup>



75. On its website, Buick.com, New GM represents that "Keeping you and your family safe is a priority."<sup>25</sup>

76. New GM's website currently touts its purported "Commitment to Safety," which is "at the top of the agenda at GM."<sup>26</sup>

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<sup>22</sup> [https://www.gm.com/company/aboutGM/our\\_company](https://www.gm.com/company/aboutGM/our_company).

<sup>23</sup> [https://www.gm.com/vision/quality\\_safety/it\\_begins\\_with\\_a\\_commitment\\_to\\_Quality](https://www.gm.com/vision/quality_safety/it_begins_with_a_commitment_to_Quality).

<sup>24</sup> <https://www.chevrolet.com/culture/article/vehicle-safety-preparation>.

<sup>25</sup> <https://www.buick.com/top-vehicle-safety-features>.

<sup>26</sup> [https://www.gm.com/vision/quality\\_safety/gms\\_commitment\\_tosafety](https://www.gm.com/vision/quality_safety/gms_commitment_tosafety).



*Innovation: Quality & Safety; GM's Commitment to Safety; 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.*

*Understanding what you want and need from your vehicle helps GM proactively design and test features that help keep you safe and enjoy the drive. 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.*

77. New GM's website further promises "Safety and Quality First: Safety will always be a priority at New GM. We continue to emphasize our safety-first culture in our facilities," and that, "[i]n addition to safety, delivering the highest quality vehicles is a major cornerstone of our promise to our customers."<sup>27</sup>

78. New GM's website currently states that "leading the way is our seasoned leadership team who set high standards for our company so that we can give you the best cars and trucks. This means that we are committed to delivering vehicles with compelling designs, flawless quality, and reliability, and leading safety, fuel economy and infotainment features..."<sup>28</sup>

79. New GM made these and similar representations to boost vehicle sales while knowing that millions of GM-branded vehicles, across numerous models and years, were plagued with serious and concealed safety defects.

80. New GM was well aware of the impact vehicle recalls, and their timeliness, have on its brand image. In its 2010 Form 10-K submitted to the United States Securities and Exchange Commission ("SEC"), New GM admitted that "Product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business." General Motors 2010

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<sup>27</sup> [https://www.gm.com/company/aboutGM/our\\_company](https://www.gm.com/company/aboutGM/our_company).

<sup>28</sup> [https://www.gm.com/company/aboutGM/our\\_company](https://www.gm.com/company/aboutGM/our_company).

Form 10-K, p. 31.<sup>29</sup> This is precisely why New GM chose to conceal safety issues rather than remedy them.

**C. Contrary to its Barrage of Representations about Safety and Quality, New GM Concealed and Disregarded Safety Issues as a Way of Doing Business.**

81. Ever since its inception, New GM possessed vastly superior (if not exclusive) knowledge and information to that of consumers about the design and function of GM-branded vehicles and the existence of the defects in those vehicles.

82. Recently revealed information presents a disturbing picture of New GM's approach to safety issues—both in the design and manufacturing stages, and in discovering and responding to defects in GM-branded vehicles that have already been sold.

83. New GM made very clear to its personnel that cost-cutting was more important than safety, deprived its personnel of necessary resources for spotting and remedying defects, trained its employees not to reveal known defects, and rebuked those who attempted to “push hard” on safety issues.

84. In stark contrast to New GM's public mantra that “Nothing is more important than the safety of our customers” and similar statements, a prime “directive” at New GM was “cost is everything.”<sup>30</sup> The messages from top leadership at New GM to employees, as well as their actions, were focused on the need to control cost.<sup>31</sup>

85. One New GM engineer stated that emphasis on cost control at New GM “permeates the fabric of the whole culture.”<sup>32</sup>

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<sup>29</sup> [https://www.sec.gov/Archives/edgar/data/1467858/000119312510078119/d10k.htm#toc85733\\_4](https://www.sec.gov/Archives/edgar/data/1467858/000119312510078119/d10k.htm#toc85733_4).

<sup>30</sup> Valukas Report at 249.

<sup>31</sup> *Id.* at 250.

<sup>32</sup> *Id.*

86. According to Mark Reuss (President of GMNA from 2009-2013 before succeeding Mary Barra as Executive Vice President for Global Product Development, Purchasing and Supply Chain in 2014), cost and time-cutting principles known as the “Big 4” at New GM “emphasized timing over quality.”<sup>33</sup>

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

88. As another cost-cutting measure, parts were sourced to the lowest bidder, even if they were not the highest quality parts.<sup>34</sup>

89. Because of New GM’s focus on cost-cutting, New GM engineers did not believe they had extra funds to spend on product improvements.<sup>35</sup>

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

91. New GM used its TREAD database (known as “TREAD”) to store the data required to be reported quarterly to NHTSA under the TREAD Act.<sup>36</sup> From the date of New GM’s inception in 2009, TREAD has been the principal database used by New GM to track incidents related to its vehicles.<sup>37</sup>

92. From 2003-2007 or 2008, the TREAD Reporting team had eight employees who would conduct monthly searches and prepare scatter graphs to identify spikes in the number of

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 251.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 306.

<sup>37</sup> *Id.*

accidents or complaints with respect to various GM-branded vehicles. The TREAD Reporting team reports went to a review panel and sometimes spawned investigations to determine if any safety defect existed.<sup>38</sup>

93. In or around 2007-08, Old GM reduced the TREAD Reporting team from eight to three employees, and pared down the monthly data mining process.<sup>39</sup> In 2010, New GM restored two people to the team, but they did not participate in the TREAD database searches.<sup>40</sup> Moreover, until 2014, the TREAD Reporting team did not have sufficient resources to obtain any of the advanced data mining software programs available in the industry to better identify and understand potential defects.<sup>41</sup>

94. By starving the TREAD Reporting team of the resources it needed to identify potential safety issues, New GM helped to ensure that safety issues would not come to light.

95. “[T]here was resistance or reluctance to raise issues or concerns in the GM culture.” The culture, atmosphere and supervisor response at New GM “discouraged individuals from raising safety concerns.”<sup>42</sup>

96. New GM CEO, Mary Barra, experienced instances where New GM engineers were “unwilling to identify issues out of concern that it would delay the launch” of a vehicle.<sup>43</sup>

97. New GM supervisors warned employees to “never put anything above the company” and “never put the company at risk.”<sup>44</sup>

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<sup>38</sup> *Id.* at 307.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 307-308.

<sup>41</sup> *Id.* at 208.

<sup>42</sup> *Id.* at 252.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 252-253.

98. New GM systematically “pushed back” on describing matters as safety issues and, as a result, “GM personnel failed to raise significant issues to key decision-makers.”<sup>45</sup>

99. So, for example, New GM discouraged the use of the word “stall” in Technical Service Bulletins (“TSBs”) that it sometimes sent to dealers about issues in GM-branded vehicles. According to Steve Oakley, who drafted a Technical Service Bulletin in connection with the ignition switch defects, “the term ‘stall’ is a ‘hot’ word that GM generally does not use in bulletins because it may raise a concern about vehicle safety, which suggests GM should recall the vehicle, not issue a bulletin.”<sup>46</sup> Other New GM personnel confirmed Oakley on this point, stating that “there was concern about the use of ‘stall’ in a TSB because such language might draw the attention of NHTSA.”<sup>47</sup>

100. Oakley further noted that “he was reluctant to push hard on safety issues because of his perception that his predecessor had been pushed out of the job for doing just that.”<sup>48</sup>

101. Many New GM employees “did not take notes at all at critical safety meetings because they believed GM lawyers did not want such notes taken.”<sup>49</sup>

102. A New GM training document released by NHTSA as an attachment to its Consent Order sheds further light on the lengths to which New GM went to ensure that known defects were concealed. It appears that the defects were concealed pursuant to a company policy that New GM inherited from Old GM. The document consists of slides from a 2008 Technical Learning Symposium for “designing engineers,” “company vehicle drivers,” and other employees at Old GM. On information and belief, the vast majority of employees who

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<sup>45</sup> *Id.* at 253.

<sup>46</sup> *Id.* at 92.

<sup>47</sup> *Id.* at 93.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 254.

participated in this webinar presentation continued on in their same positions at New GM after July 10, 2009.

103. The presentation focused on recalls and the “reasons for recalls.”

104. One major component of the presentation was captioned “Documentation Guidelines,” and focused on what employees should (and should not say) when describing problems in vehicles. Employees were instructed to “[w]rite smart,” and to “[b]e factual, not fantastic” in their writing. In practice, “factual” was a euphemism for avoiding facts and relevant details.

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

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

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

108. As NHTSA’s Acting Administrator Friedman noted at the May 16, 2014 press conference announcing the Consent Order in connection with the February and March recall for the ignition switch defect, it was New GM’s company policy to avoid using words that might suggest the existence of a safety defect:

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

109. Thus, New GM trained its employees to conceal the existence of known safety defects from consumers and regulators. Indeed, it is nearly impossible to convey the potential existence of a safety defect without using the words “safety” or “defect” or similarly strong language that was forbidden at New GM.

110. So institutionalized was the “phenomenon of avoiding responsibility” at New GM that the practice was given a name: “the ‘GM salute,’” which was “a crossing of the arms and pointing outward towards others, indicating that the responsibility belongs to someone else, not me.”<sup>50</sup>

111. CEO Mary Barra described a related phenomenon, “known as the ‘GM nod,’” which was “when everyone nods in agreement to a proposed plan of action, but then leaves the room with no intention to follow through, and the nod is an empty gesture.”<sup>51</sup>

112. According to the New GM Report prepared by Anton R. Valukas (the “Valukas Report”), part of the failure to properly correct the ignition switch defect was due to problems with New GM’s organizational structure<sup>52</sup> and a corporate culture that did not care enough about safety.<sup>53</sup> Other culprits included a lack of open and honest communication with NHTSA regarding safety issues,<sup>54</sup> and the improper conduct and handling of safety issues by lawyers

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<sup>50</sup> Valukas Report at 255.

<sup>51</sup> *Id.* at 256.

<sup>52</sup> *Id.* at 259-260.

<sup>53</sup> *Id.* at 260-61.

<sup>54</sup> *Id.* at 263.

within New GM's Legal Staff.<sup>55</sup> On information and belief, all of these issues independently and in tandem helped cause the concealment of, and failure to remedy, the many defects that have led to the spate of recalls in 2014.

113. An automobile manufacturer has a duty to promptly disclose and remedy defects. New GM knowingly concealed information about material safety hazards from the driving public, and its own customers, including those in Arizona. As a result, hundreds of thousands of unsuspecting vehicle owners and lessees in Arizona continued driving patently unsafe vehicles that posed a mortal danger to themselves, their passengers and loved ones, other drivers, and pedestrians.

114. Not only did New GM take far too long in failing to address or remedy the defects, it deliberately worked to cover-up, hide, omit, fraudulently conceal, and/or suppress material facts from consumers who purchased GM-branded vehicles.

**D. There Are Serious Safety Defects in Millions of GM-Branded Vehicles across Many Models and Years and, Until Recently, New GM Concealed Them from Consumers.**

115. Over the first ten months of 2014, New GM announced at least 60 recalls for more than 60 separate defects affecting over 27 million GM-branded vehicles sold in the United States from model years 1997-2014. The numbers of recalls and serious safety defects are unprecedented, and can only lead to one conclusion: New GM was concealing the fact that it was incapable of building safe vehicles free from defects.

116. For context, in 2013, the whole auto industry in the United States issued recalls affecting 23 million vehicles, and the record for the whole industry in a given year is 31 million (in 2004). Thus, New GM's recalls just 10 months into this year impacts more vehicles than the

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<sup>55</sup> *Id.* at 264.



*entire industry*'s recalls did last year and is approaching the *industry-wide* record for a single year.

117. The available evidence shows that, from its inception in 2009, New GM knew about an ever-growing list of serious safety defects in millions of GM-branded vehicles, but concealed them from consumers and regulators in order to cut costs, boost sales, and avoid the negative publicity of recalls.

118. Unsurprisingly in light of New GM's systemic devaluation of safety issues, the evidence also shows that New GM has manufactured and sold a grossly inordinate number of vehicles with serious safety defects.

119. New GM inherited from Old GM a company that valued cost-cutting over safety, actively discouraged its personnel from taking a "hard line" on safety issues, avoided using "hot" words like "stall" that might attract the attention of NHTSA and suggest that a recall was required, and trained its employees to not use words such as "defect" or "problem" that might flag the existence of a safety issue. New GM did nothing to change these practices.

120. The Center for Auto Safety recently stated that it has identified 2,004 death and injury reports filed by New GM with federal regulators in connection with vehicles that have recently been recalled.<sup>56</sup> Many of these deaths and injuries would have been avoided had New GM complied with its TREAD Act obligations over the past five years.

121. The many defects concealed and/or created by New GM affect important safety systems in GM-branded vehicles, including the ignition, power steering, airbags, brake lights, gearshift systems, and seatbelts.

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<sup>56</sup> See *Thousands of Accident Reports Filed Involving Recalled GM Cars: Report*, Irvin Jackson (June 3, 2014).

122. The available evidence shows a consistent pattern: New GM learned about a particular defect and, often only at the prodding of regulatory authorities, “investigated” the defect and decided upon a “root cause.” New GM then took minimal action—such as issuing a carefully worded “Technical Service Bulletin” to its dealers, or even recalling a limited number of the vehicles with the defect. All the while, the true nature and scope of the defects were kept under wraps, vehicles affected by the defects remained on the road, New GM continued to create new defects in new vehicles, and New GM enticed consumers to purchase its vehicles by touting the safety, quality, and reliability of its vehicles, and presenting itself as a manufacturer that stands behind its products.

123. Many of the defects are discussed below.

**E. The Ignition Switch System Defects.**

124. More than 13 million GM-branded vehicles were made and sold with an ignition switch and cylinder with the key position of the lock module located low on the steering column, in close proximity to a driver’s knee. The ignition switch in these vehicles, the “Defective Ignition Switch Vehicles,” is prone to fail during ordinary and foreseeable driving situations.

125. When the ignition switches fail, the vehicles stall, the power steering and power brakes fail, and the airbags will not deploy in the event of a collision.

126. New GM initially recalled 2.1 million of these Defective Ignition Switch Vehicles in February and March of 2014, and it was this initial recall that set in motion the avalanche of recalls that is described in this Complaint.

127. In June and July of 2014, New GM recalled an additional 11 million vehicles, ostensibly for distinct safety defects involving the ignition and ignition key. As set forth below, however, each of these recalls involves a defective ignition switch, and the consequences of product failure in each of the recalled vehicles are substantially similar, if not identical.

128. More specifically, in each of the Defective Ignition Switch Vehicles, the ignition switch can inadvertently move from the “run” to the “accessory” or “off” position at any time during normal and proper operation of the Defective Ignition Switch Vehicles. The ignition switch can move when the vehicle is jarred or travels across a bumpy road; if the key chain is heavy; if a driver inadvertently touches the ignition key with his or her knee; or for a host of additional reasons. When the ignition switch inadvertently moves out of the “run” position, the vehicle suddenly and unexpectedly loses engine power, power steering, and power brakes, and certain safety features are disabled, including the vehicle’s airbags. This leaves occupants vulnerable to crashes, serious injuries, and death.

129. The ignition switch systems at issue are defective in at least three major respects. First, the switches are simply weak; because of a faulty “detent plunger,” the switch can inadvertently move from the “run” to the “accessory” position. Second, because the ignition switch is placed low on the steering column, the driver’s knee can easily bump the key (or the hanging fob below the key) and cause the switch to inadvertently move from the “run” to the “accessory” or “off” position. Third, when the ignition switch moves from the “run” to the “accessory” or “off” position, the vehicle’s power is disabled. This also immediately disables the airbags. Thus, when power is lost during ordinary operation of the vehicle, a driver is left without the protection of the airbag system even if he or she is traveling at high speeds.

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

131. Indeed, New GM itself has acknowledged that the defective ignition switches pose an “increas[ed] risk of injury or fatality” and has linked the ignition switch defect to at least 13 deaths and over 50 crashes. Ken Feinberg, who was hired by New GM to settle wrongful

death claims arising from the ignition switch defects that led to the February and March 2014 recall, has already linked the defect to 30 deaths, and has many more wrongful death claims still to review. The Center for Auto Safety studied collisions in just two vehicle makes, and linked the defect to over 300 accidents. There is every reason to believe that as more information is made public, these numbers will continue to grow.

132. Alarming, New GM knew of the deadly ignition switch defects and their dangerous consequences from the date of its inception on July 11, 2009, but concealed its knowledge from consumers and regulators. To this day, New GM continues to conceal material facts regarding the extent and nature of this safety defect, as well as what steps must be taken to remedy the defect.

133. While New GM has instituted a recall of millions vehicles for defective ignition switches, it knew—*and its own engineering documents reflect*—that the defects transcend the design of the ignition switch and also include the placement of the ignition switch on the steering column, a lack of adequate protection of the ignition switch from forces of inadvertent driver contact, and the need to redesign the airbag system so that it is not immediately disabled when the ignition switch fails in ordinary and foreseeable driving situations. To fully remedy the problem and render the Defective Ignition Switch Vehicles safe and of economic value to their owners again, New GM must address these additional issues (and perhaps others).

134. Further, and as set forth more fully below, New GM's recall of the Defective Ignition Switch Vehicles has been, to date, incomplete and inadequate, and it underscores New GM's ongoing fraudulent concealment and fraudulent misrepresentation of the nature and extent of the defects. New GM has long known of and understood the ignition switch defects, and its failure to fully remedy the problems associated with this defect underscores the necessity of this law enforcement action.

**1. New GM knew of the ignition switch defects from the date of its inception.**

135. Effective July 11, 2009, a United States Bankruptcy Court approved the sale of General Motors Corporation, which was converted into General Motors, LLC, or New GM. From its creation, New GM, which retained the vast majority of Old GM's senior level executives and engineers, knew that Old GM had manufactured and sold millions of vehicles afflicted with the ignition switch defects.

136. The knowledge of Old GM is important and relevant because it is *directly attributable* to New GM. In light of its knowledge of the ignition switch defects, and the myriad of other defects, New GM violated the Arizona Consumer Fraud Act, and harmed Arizona consumers in the process.

137. In part, New GM's knowledge of the ignition switch defects arises from the fact that key personnel with knowledge of the defects were employed by New GM when Old GM ceased to exist. Moreover, many of these employees held managerial and decision making authority in Old GM, and accepted similar positions with New GM. For example, the design research engineer who was responsible for the rollout of the defective ignition switch in the Saturn Ion was Ray DeGiorgio. Mr. DeGiorgio continued to serve as an engineer at New GM until April 2014, when he was suspended (and ultimately fired) as a result of his involvement in the ignition switch crisis.

138. Mr. DeGiorgio was hardly the only employee who retained his Old GM position with New GM. Other Old GM employees who were retained and given decision making authority in New GM include: current CEO Mary T. Barra; director of product investigations Carmen Benavides; Program Engineering Manager Gary Altman; engineer Jim Federico; vice presidents for product safety John Calabrese and Alicia Boler-Davis; vice president of regulatory

affairs Michael Robinson; director of product investigations Gay Kent; general counsel and vice president Michael P. Milliken; and in-house product liability lawyer William Kemp.

139. Indeed, on or around the day of its formation as an entity, New GM acquired notice and full knowledge of the facts set forth below.

140. In 2001, during pre-production testing of the 2003 Saturn Ion, Old GM engineers learned that the vehicle's ignition switch could unintentionally move from the "run" to the "accessory" or "off" position. Old GM further learned that where the ignition switch moved from "run" to "accessory" or "off," the vehicle's engine would stall and/or lose power.

141. Delphi Mechatronics ("Delphi"), the manufacturer of many of the defective ignition switches in the Defective Ignition Switch Vehicles, informed Old GM that the ignition switch did not meet Old GM's design specifications. Rather than delay production of the Saturn Ion in order to ensure that the ignition switch met specifications, Old GM's design release engineer, Ray DeGiorgio, simply lowered the specification requirements and approved use of ignition switches that he knew did not meet Old GM's specifications.

142. In 2004, Old GM engineers reported that the ignition switch on the Saturn Ion was so weak and the ignition placed so low on the steering column that the driver's knee could easily bump the key and turn off the vehicle.

143. This defect was sufficiently serious for an Old GM engineer to conclude, in January 2004, that "[t]his is a basic design flaw and should be corrected if we want repeat sales."

144. A July 1, 2004 report by Siemens VDO Automotive analyzed the relationship between the ignition switch in GM-branded vehicles and the airbag system. The Siemens report concluded that when a GM-branded vehicle experienced a power failure, the airbag sensors were disabled. The Siemens report was distributed to at least five Old GM engineers. The Chevrolet Cobalt was in pre-production at this time.

145. In 2004, Old GM began manufacturing and selling the 2005 Chevrolet Cobalt. Old GM installed the same ignition switch in the 2005 Cobalt as it did in the Saturn Ion.

146. During testing of the Cobalt, Old GM engineer Gary Altman observed an incident in which a Cobalt suddenly lost engine power because the ignition switch moved out of the “run” position during vehicle operation.

147. In late 2004, while testing was ongoing on the Cobalt, Chief Cobalt Engineer Doug Parks asked Mr. Altman to investigate a journalist’s complaint that he had turned off a Cobalt vehicle by hitting his knee against the key fob.

148. Old GM opened an engineering inquiry known as a Problem Resolution Tracking System (“Problem Resolution”) to evaluate a number of potential solutions to this moving engine stall problem. At this time, Problem Resolution issues were analyzed by a Current Production Improvement Team (“Improvement Team”). The Improvement Team that examined the Cobalt issue beginning in late 2004 included a cross-section of business people and engineers, including Altman and Lori Queen, Vehicle Line Executive on the case.

149. Doug Parks, Chief Cobalt Engineer, was also active in Problem Resolution. On March 1, 2005, he attended a meeting whose subject was “vehicle can be keyed off with knee while driving.” Parks also attended a June 14, 2005 meeting that included slides discussing a NEW YORK TIMES article that described how the Cobalt’s engine could cut out because of the ignition switch problem.

150. In 2005, Parks sent an email with the subject, “Inadvertent Ign turn-off.” In the email, Parks wrote, “For service, can we come up with a ‘plug’ to go into the key that centers the ring through the middle of the key and not the edge/slot? This appears to me to be the only real, quick solution.”

151. After considering this and a number of other solutions (including changes to the key position and measures to increase the torque in the ignition switch), the CPIT examining the issue decided to do nothing.

152. Old and New GM engineer Gary Altman recently admitted that engineering managers (including himself and Ray DeGiorgio) knew about ignition switch problems in the Cobalt that could cause these vehicles to stall, and disable power steering and brakes, but launched the vehicle anyway because they believed that the vehicles could be safely coasted off the road after a stall. Mr. Altman insisted that “the [Cobalt] was maneuverable and controllable” with the power steering and power brakes inoperable.

153. On February 28, 2005, Old GM issued a bulletin to its dealers regarding engine-stalling incidents in 2005 Cobalts and 2005 Pontiac Pursuits (the Canadian version of the Pontiac G5).

154. In the February 28, 2005 bulletin, Old GM provided the following recommendations and instructions to its dealers—but not to the public in general:

There is potential for the driver to inadvertently turn off the ignition due to low key ignition cylinder torque/effort. The concern is more likely to occur if the driver is short and has a large heavy key chain.

In the case this condition was documented, the driver’s knee would contact the key chain while the vehicle was turning. The steering column was adjusted all the way down. This is more likely to happen to a person that is short as they will have the seat positioned closer to the steering column.

In cases that fit this profile, question the customer thoroughly to determine if this may be the cause. The customer should be advised of this potential and to take steps, such as removing unessential items from their key chains, to prevent it.

Please follow this diagnosis process thoroughly and complete each step. If the condition exhibited is resolved without completing every step, the remaining steps do not need to be performed.



155. On June 19, 2005, the NEW YORK TIMES reported that Chevrolet dealers were advising some Cobalt owners to remove items from heavy key rings so that they would not inadvertently move the ignition into the “off” position. The article’s author reported that his wife had bumped the steering column with her knee while driving on the freeway and the engine “just went dead.”

156. The NEW YORK TIMES contacted Old GM and Alan Adler, manager for safety communications, who provided the following statement:

In rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running. Service advisers are telling customers they can virtually eliminate the possibility by taking several steps, including removing nonessential material from their key rings.

157. Between February 2005 and December 2005, Old GM opened multiple Problem Resolution inquiries regarding reports of power failure and/or engine shutdown in Defective Ignition Switch Vehicles.

158. One of these, opened by quality brand manager Steve Oakley in March 2005, was prompted by Old GM engineer Jack Weber, who reported turning off a Cobalt with his knee while driving. After Oakley opened the PRTS, Gary Altman advised that the inadvertent shut down was not a safety issue.

159. As part of the Problem Resolution, Oakley asked William Chase, an Old GM warranty engineer, to estimate the warranty impact of the ignition switch defect in the Cobalt and Pontiac G5 vehicles. Chase estimated that for Cobalt and G5 vehicles on the road for 26 months, 12.40 out of every 1,000 vehicles would experience inadvertent power failure while driving.

160. In September 2005, Old GM received notice that Amber Marie Rose, a 16 year-old resident of Clinton, Maryland, was killed in an accident after her 2005 Chevrolet Cobalt drove off the road and struck a tree head-on. During Old GM’s investigation, it learned that the

ignition switch in Amber's Cobalt was in the "accessory" or "off" position at the time of the collision. Upon information and belief, Old GM subsequently entered into a confidential settlement agreement with Amber's mother.

161. In December 2005, Old GM issued Technical Service Bulletin 05-02-35-007. The Bulletin applied to 2005-2006 Chevrolet Cobalts, 2006 Chevrolet HHRs, 2005-2006 Pontiac Pursuits, 2006 Pontiac Solstices, and 2003-2006 Saturn Ions. The Bulletin explained that "[t]here is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort."

162. By the time it issued this Technical Services Bulletin, Old GM knew that there had been fatal incidents involving vehicles with the ignition switch defect. On November 17, 2005—shortly after Amber's death and immediately before Old GM issued the December Bulletin—a Cobalt went off the road and hit a tree in Baldwin, Louisiana. The front airbags did not deploy in this accident. Old GM received notice of the accident, opened a file, and referred to it as the "Colbert" incident.

163. On February 10, 2006, in Lanexa, Virginia—shortly after Old GM issued the Technical Service Bulletin—a 2005 Cobalt flew off of the road and hit a light pole. As with the Colbert incident (above), the frontal airbags failed to deploy in this incident as well. The download of the SDM (the vehicle's "black box") showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this accident, opened a file, and referred to it as the "Carroll" incident.

164. On March 14, 2006, in Frederick, Maryland, a 2005 Cobalt traveled off the road and struck a utility pole. The frontal airbags did not deploy in this incident. The download of the SDM showed the key was in the "accessory/off" position at the time of the crash. Old GM received notice of this incident, opened a file, and referred to it as the "Oakley" incident.

165. In April 2006, Old GM design engineer Ray DeGiorgio approved a design change for the Chevrolet Cobalt's ignition switch, as proposed by Delphi. The changes included a new detent plunger and spring and were intended to generate greater torque values in the ignition switch. These values, though improved, were still consistently below Old GM's design specifications. Despite its redesign of the ignition switch, Old GM did not change the part number for the switch.

166. In congressional testimony in 2014, New GM CEO Mary Barra acknowledged that Old GM should have changed the part number when it redesigned the ignition switch, and that its failure to do so did not meet industry standard behavior. In October 2006, Old GM updated Technical Service Bulletin 05-02-35-007 to include additional model years: the 2007 Saturn Ion and Sky, 2007 Chevrolet HHR, 2007 Cobalt, and 2007 Pontiac Solstice and G5. These vehicles had the same safety-related defects in the ignition switch systems as the vehicles in the original Bulletin.

167. On December 29, 2006, in Sellenville, Pennsylvania, a 2005 Cobalt drove off the road and hit a tree. The frontal airbags failed to deploy in this incident. Old GM received notice of this incident, opened a file, and referred to it as the "Frei" incident.

168. On February 6, 2007, in Shaker Township, Pennsylvania, a 2006 Cobalt sailed off the road and struck a truck. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "White" incident.

169. On August 6, 2007, in Cross Lanes, West Virginia, a 2006 Cobalt rear-ended a truck. The frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "McCormick" incident.

170. On September 25, 2007, in New Orleans, Louisiana, a 2007 Cobalt lost control and struck a guardrail. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Gathe" incident.

171. On October 16, 2007, in Lyndhurst, Ohio, a 2005 Cobalt traveled off road and hit a tree. The frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Breen" incident.

172. On April 5, 2008, in Sommerville, Tennessee, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "Freeman" incident.

173. On May 21, 2008, in Argyle, Wisconsin, a 2007 G5 traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. Old GM received notice of this incident, opened a file, and referred to it as the "Wild" incident.

174. On May 28, 2008, in Lufkin, Texas, a 2007 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "McDonald" incident.

175. On September 13, 2008, in Lincoln Township, Michigan, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the "Harding" incident.

176. On November 29, 2008, in Rolling Hills Estates, California, a 2008 Cobalt traveled off the road and hit a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. Old GM received notice of this incident, opened a file, and referred to it as the “Dunn” incident.

177. On December 6, 2008, in Lake Placid, Florida, a 2007 Cobalt traveled off the road and hit a utility pole. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the “accessory/off” position. Old GM received notice of this incident, opened a file, and referred to it as the “Grondona” incident.

178. In February 2009, Old GM opened another Problem Resolution regarding the ignition switches in the Defective Ignition Switch Vehicles. Old GM engineers decided at this time to change the top of the Chevrolet Cobalt key from a “slot” to a “hole” design, as had originally been suggested in 2005. The new key design was produced for the 2010 model year. Old GM did not provide these redesigned keys to the owners or lessees of any of the vehicles implicated in prior Technical Service Bulletins, including the 2005-2007 Cobalts.

179. Just prior to its bankruptcy sale, Old GM met with Continental Automotive Systems US, its airbag supplier for the Cobalt, Ion, and other Defective Ignition Switch Vehicles. Old GM requested that Continental download SDM data from a 2006 Chevrolet Cobalt accident where the airbags failed to deploy. In a report dated May 11, 2009, Continental analyzed the SDM data and concluded that the SDM ignition state changed from “run” to “off” during the accident. According to Continental, this, in turn, disabled the airbags. Old GM did not disclose this finding to NHTSA, despite its knowledge that NHTSA was interested in airbag non-deployment incidents in Chevrolet Cobalt vehicles.

**2. New GM continues to conceal the ignition switch defects.**

180. In March 2010, New GM recalled nearly 1.1 million Cobalt and Pontiac G5 vehicles for faulty power steering issues. In recalling these vehicles, New GM recognized that loss of power steering, standing alone, was grounds for a safety recall. Yet, incredibly, New GM claims it did not view the ignition switch defect as a “safety issue,” but only a “customer convenience issue.” Despite its knowledge of the ignition switch defect, New GM did not include the ignition switch defect in this recall. Further, although the Saturn Ion used the same steering system as the Cobalt and Pontiac G5 (and had the same ignition switch defect), New GM did not recall any Saturn Ion vehicles at this time.

181. On March 10, 2010, Brooke Melton was driving her 2005 Cobalt on a two-lane highway in Paulding County, Georgia. While she was driving, her key turned from the “run” to the “accessory/off” position causing her engine to shut off. After her engine shut off, she lost control of her Cobalt, which traveled into an oncoming traffic lane, where it collided with an oncoming car. Brooke was killed in the crash. New GM received notice of this incident.

182. On December 31, 2010, in Rutherford County Tennessee, a 2006 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the “accessory/off” position. New GM received notice of this incident, opened a file, and referred to it as the “Chansuthus” incident.

183. On December 31, 2010, in Harlingen, Texas, a 2006 Cobalt traveled off the road and struck a curb. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. New GM received notice of this incident, opened a file, and referred to it as the “Najera” incident.

184. On March 22, 2011, Ryan Jahr, a New GM engineer, downloaded the SDM from Brooke Melton's Cobalt. The information from the SDM download showed that the key in Brooke's Cobalt turned from the "run" to the "accessory/off" position 3-4 seconds before the crash. On June 24, 2011, Brooke Melton's parents, Ken and Beth Melton, filed a lawsuit against New GM.

185. In August 2011, New GM assigned Engineering Group Manager Brian Stouffer to assist with a Field Performance Evaluation that it had opened to investigate frontal airbag non-deployment incidents in Chevrolet Cobalts and Pontiac G5s.

186. On December 18, 2011, in Parksville, South Carolina, a 2007 Cobalt traveled off the road and struck a tree. Despite there being a frontal impact in this incident, the frontal airbags failed to deploy. The download of the SDM showed the key was in the "accessory/off" position. New GM received notice of this incident, opened a file, and referred to it as the "Sullivan" incident.

187. In early 2012, Mr. Stouffer asked Jim Federico, who reported directly to Mary Barra, to oversee the Field Performance Evaluation investigation into frontal airbag non-deployment incidents. Federico was named the "executive champion" for the investigation to help coordinate resources.

188. In May 2012, New GM engineers tested the torque on numerous ignition switches of 2005-2009 Chevrolet Cobalt, 2009 Pontiac G5, 2006-2009 HHR, and 2003-2007 Saturn Ion vehicles that were parked in a junkyard. The results of these tests showed that the torque required to turn the ignition switches from the "run" to the "accessory" or "off" position in most of these vehicles did not meet GM's minimum torque specification requirements. These results were reported to Mr. Stouffer and other members of the Field Performance Evaluation team.

189. In September 2012, Stouffer requested assistance from a “Red X Team” as part of the Field Performance Evaluation investigation. The Red X Team was a group of engineers within New GM assigned to find the root cause of the airbag non-deployments in frontal accidents involving Chevrolet Cobalts and Pontiac G5s. By that time, however, it was clear that the root cause of the airbag non-deployments in a majority of the frontal accidents was the defective ignition switch and airbag system.

190. Indeed, Mr. Stouffer acknowledged in his request for assistance that the Chevrolet Cobalt could experience a power failure during an off-road event, or if the driver’s knee contacted the key and turned off the ignition. Mr. Stouffer further acknowledged that such a loss of power could cause the airbags not to deploy.

191. At this time, New GM did not provide this information to NHTSA or the public.

192. Acting NHTSA Administrator David Friedman recently stated, “At least by 2012, GM staff was very explicit about an unreasonable risk to safety” from the ignition switches in the Defective Ignition Switch Vehicles.

193. Mr. Friedman continued: “GM engineers knew about the defect. GM lawyers knew about the defect. But GM did not act to protect Americans from the defect.”

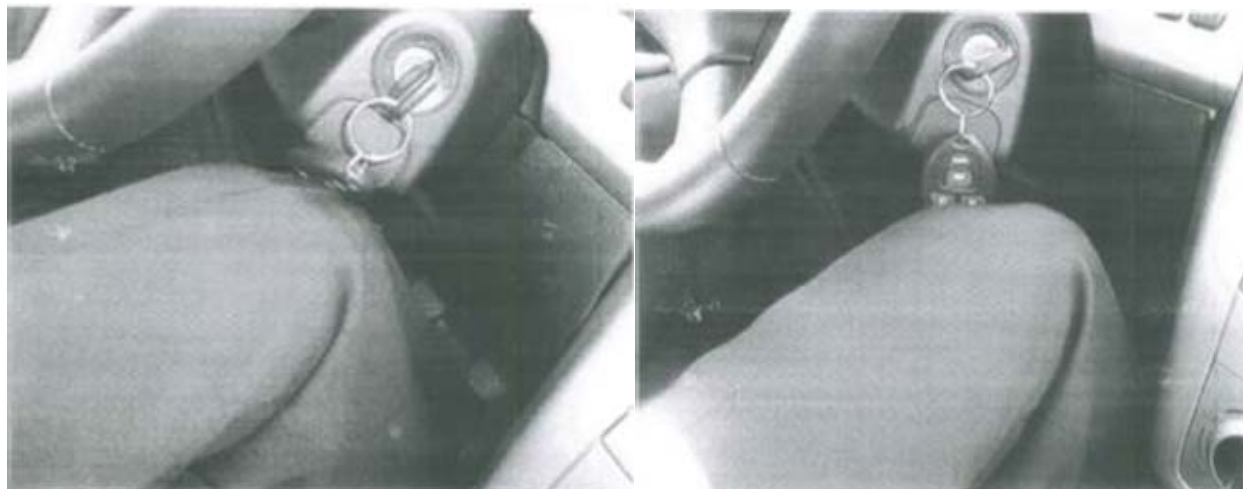
194. There is significant evidence that multiple in-house attorneys also knew of and understood the ignition switch defect. These attorneys, including Michael Milliken, negotiated settlement agreements with families whose loved ones had been killed and/or injured while operating a Defective Ignition Switch Vehicle. In spite of this knowledge, New GM’s attorneys concealed their knowledge and neglected to question whether the Defective Ignition Switch Vehicles should be recalled. This quest to keep the ignition switch defect secret delayed its public disclosure and contributed to increased death and injury as a result of the ignition switch defect.



195. During the Field Performance Evaluation process, New GM determined that, although increasing the detent in the ignition switch would reduce the chance that the key would inadvertently move from the “run” to the “accessory” or “off” position, it would not be a total solution to the problem.

196. Indeed, the New GM engineers identified several additional ways to actually fix the problem. These ideas included adding a shroud to prevent a driver’s knee from contacting the key, modifying the key and lock cylinder to orient the key in an upward facing orientation when in the run position, and adding a push button to the lock cylinder to prevent it from slipping out of “run.” New GM rejected each of these ideas.

197. The photographs below are of a New GM engineer in the driver’s seat of a Cobalt during the investigation of Cobalt engine stalling incidents:



198. These photographs show the dangerous position of the key in the lock module on the steering column, as well as the key with the slot, which allow the key fob to hang too low off the steering column. New GM engineers understood that the key fob can be impacted and pinched between the driver’s knee and the steering column, and that this will cause the key to inadvertently turn from the “run” to the “accessory” or “off” position. The photographs show

that the New GM engineers understood that increasing the detent in the ignition switch would not be a total solution to the problem. They also show why New GM engineers believed that additional changes (such as the shroud) were necessary to fix the defects with the ignition switch.

199. The New GM engineers clearly understood that increasing the detent in the ignition switch alone was not a solution to the problem. But New GM concealed—and continues to conceal—from the public the full nature and extent of the defects.

200. On October 4, 2012, there was a meeting of the Red X Team during which Mr. Federico gave an update of the Cobalt airbag non-deployment investigation. According to an email from Mr. Stouffer on the same date, the “primary discussion was on what it would take to keep the SDM active if the ignition key was turned to the accessory mode.” Despite this recognition by New GM engineers that the SDM should remain active if the key is turned to the “accessory” or “off” position, New GM took no action to remedy the ignition switch defect or notify customers that the defect existed.

201. During the October 4, 2012 meeting, Mr. Stouffer and other members of the Red X Team also discussed “revising the ignition switch to increase the effort to turn the key from Run to Accessory.”

202. On October 4, 2012, Mr. Stouffer emailed Ray DeGiorgio and asked him to “develop a high level proposal on what it would take to create a new switch for service with higher efforts.” On October 5, 2012, DeGiorgio responded:

Brian,

In order to provide you with a HIGH level proposal, I need to understand what my requirements are. what is the TORQUE that you desire?

Without this information I cannot develop a proposal.

203. On October 5, Stouffer responded to DeGiorgio’s email, stating:

Ray,

As I said in my original statement, I currently don't know what the torque value needs to be. Significant work is required to determine the torque. What is requested is a high level understanding of what it would take to create a new switch.

204. DeGiorgio replied to Stouffer the following morning:

Brian,

Not knowing what my requirements are I will take a SWAG at the Torque required for a new switch. Here is my level proposal

**Assumption is 100 N cm Torque.**

- New switch design = Engineering Cost Estimate approx. \$300,000
- Lead Time = 18 – 24 months from issuance of GM Purchase Order and supplier selection.

Let me know if you have any additional questions.

205. Stouffer later admitted in a deposition that DeGiorgio's reference to "SWAG" was an acronym for "Silly Wild-Ass Guess."

206. DeGiorgio's cavalier attitude exemplifies New GM's approach to the safety-related defects that existed in the ignition switch and airbag system in the Defective Ignition Switch Vehicles. Rather than seriously addressing the safety-related defects, DeGiorgio's emails show he understood the ignition switches were contributing to the crashes and fatalities and he could not care less.

207. It is also obvious from this email exchange that Stouffer, who was a leader of the Red X Team, had no problem with DeGiorgio's cavalier and condescending response to the request that he evaluate the redesign of the ignition switches.

208. In December 2012, in Pensacola, Florida, Ebram Handy, a New GM engineer, participated in an inspection of components from Brooke Melton's Cobalt, including the ignition

switch. At that inspection, Handy, along with Mark Hood, a mechanical engineer retained by the Meltons, conducted testing on the ignition switch from Brooke Melton's vehicle, as well as a replacement ignition switch for the 2005 Cobalt.

209. At that inspection, Handy observed that the results of the testing showed that the torque performance on the ignition switch from Brooke Melton's Cobalt was well below Old GM's minimum torque performance specifications. Handy also observed that the torque performance on the replacement ignition switch was significantly higher than the torque performance on the ignition switch in Brooke Melton's Cobalt.

210. On April 29, 2013, Ray DeGiorgio, the chief design engineer for the ignition switches in these Defective Ignition Switch Vehicles, was deposed. At his deposition, Mr. DeGiorgio was questioned about his knowledge of differences in the ignition switches in early model-year Cobalts and the switches installed in later model-year Cobalts:

Q. And I'll ask the same question. You were not aware before today that GM had changed the spring – the spring on the ignition switch had been changed from '05 to the replacement switch?

MR. HOLLADAY: Object to the form. Lack of predicate and foundation. You can answer.

THE WITNESS: I was not aware of a detent plunger switch change. We certainly did not approve a detent plunger design change.

Q. Well, suppliers aren't supposed to make changes such as this without GM's approval, correct?

A. That is correct.

Q. And you are saying that no one at GM, as far as you know, was aware of this before today?

MR. HOLLADAY: Object. Lack of predicate and foundation. You can answer.

THE WITNESS: I am not aware about this change.

211. When Mr. DeGiorgio testified, he knew that he personally had authorized the ignition switch design change in 2006, but he stated unequivocally that no such change had occurred.

**3. New GM recalls 2.1 million vehicles with defective ignition switches.**

212. Under continuing pressure to produce high-ranking employees for deposition in the Melton litigation, New GM's Field Performance Review Committee and Executive Field Action Decision Committee ("Decision Committee") finally decided to order a recall of *some* vehicles with defective ignition switches on January 31, 2014.

213. Initially, the Decision Committee ordered a recall of only the Chevrolet Cobalt and Pontiac G5 for model years 2005-2007.

214. After additional analysis, the Decision Committee expanded the recall on February 24, 2014 to include the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, the Saturn Ion for model years 2003-2007, and the Saturn Sky for model year 2007.

215. Public criticism in the wake of these recalls was withering. On March 17, 2014, Mary Barra issued an internal video, which was broadcast to employees. In the video, Ms. Barra admits:

Scrutiny of the recall has expanded beyond the review by the federal regulators at NHTSA, the National Highway Traffic Safety Administration. As of now, two congressional committees have announced that they will examine the issue. And it's been reported that the Department of Justice is looking into this matter. . . . These are serious developments that shouldn't surprise anyone. After all, something went wrong with our process in this instance and terrible things happened.

216. The public backlash continued and intensified. Eventually, GM expanded the ignition switch recall yet again on March 28, 2014. This expansion covered all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Ion and Sky. The

expanded recall brought the total number of vehicles recalled for defective ignition switches to 2,191,146.

217. Several high-ranking New GM employees were summoned to testify before Congress, including Ms. Barra and executive vice president and in-house counsel Michael Milliken. Further, in an effort to counter the negative backlash, New GM announced that it had hired Anton R. Valukas to conduct an internal investigation into the decade-long concealment of the ignition switch defect.

218. As individuals came forward who had been injured and/or whose loved ones were killed in the Defective Ignition Switch Vehicles, the public criticism continued. Under intense, continuing pressure, New GM agreed in April 2014 to hire Ken Feinberg to design and administer a claims program in order to compensate certain victims who were injured or killed in the Defective Ignition Switch Vehicles. Ms. Barra explained to Congress: “[W]e will make the best decisions for our customers, recognizing that we have legal obligations and responsibilities as well as moral obligations. We are committed to our customers, and we are going to work very hard to do the right thing for our customers.”

219. New GM’s compensation of such individuals, however, was limited to the protocol set forth in the Feinberg Compensation Fund. In the courts, New GM has taken the position that any accident that occurred prior to the Old GM bankruptcy is barred by the bankruptcy Sale Order.

**4. New GM recalls over 10 million additional vehicles for ignition switch defects in June and July of 2014.**

220. Following the waves of negative publicity surrounding New GM’s recall of the first 2.1 million Defective Ignition Switch Vehicles, New GM was forced to issue a series of additional recalls for more than 10 million additional Defective Ignition Switch Vehicles, as summarized below.

221. While New GM and safety regulators received dozens of complaints of moving stalls and/or power failures in the vehicles covered by New GM's June and July 2014 recalls, New GM did nothing to remedy the situation.

222. NHTSA's website contains more than 100 complaints about vehicle stalls for the 2006-2009 Impalas alone. In one 2012 complaint, an Impala stalled in the middle of a large intersection. The owner took it to a dealer four times but could not get it repaired. The complainant stated, "I'm fearful I will be the one causing a fatal pile-up."

223. New GM admits knowing that ignition switch defects have been linked to at least three deaths and eight injuries in the vehicle model years covered by its June and July recalls. The fatal accidents occurred in 2003 and 2004 Chevrolet Impalas in which the airbags failed to deploy.

**5. June 19, 2014 Recall—Camaro Recall.**

224. On June 19, 2014, New GM recalled 464,712 model year 2010 through 2014 Chevrolet Camaro vehicles in the United States (NHTSA Recall Number 14V-346).

225. The great majority of the defective Camaros were sold or leased by New GM, though some indeterminate number of the 117,959 model year 2010 Camaros were manufactured by Old GM, and some smaller number were sold by Old GM.

226. According to the recall notice, the driver of an affected Camaro may accidentally hit the ignition key with his or her knee, unintentionally knocking the key out of the "run" position and turning off the engine. If the key is not in the "run" position, the airbags may not deploy during a collision. Additionally, when the key is moved out of the "run" position, the vehicle will experience a loss of engine power, loss of power steering, and loss of power brakes.

227. Between 2010 and 2014, NHTSA received numerous complaints of power failures in 2010-2014 Camaros. These complaints started as early as January 2010, months after New GM's formation.

228. For example, on May 3, 2010, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

WHILE DRIVING TO THE DEALERSHIP IN BROOKDALE, MN. ON FREEWAY APPROX 70MPH WHEN CAR COMPLETELY GOES DEAD. QUICKLY I PUT IT IN NEUTRAL AND TURNED IT BACK ON AND COMPLAINED TO DEALER. DRIVING IN ST CLOUD, MN AT INTOWN SPEEDS WHEN THE CAR SHUTS DOWN AGAIN. THEN IT ALSO SHUT DOWN TWICE ON ME IN BRAINERD, MN AT A SPEED OF 50MPH WHILE DRIVING NORMAL. THEN ON 3 MAY 2010 I WAS GOING AROUND A CURVE WITH 2 FRIENDS WHEN IT AGAIN SHUT DOWN AT APPROXIMATELY 60 MPH. THIS TIME WHILE ON THE CURVE I WENT INTO THE DITCH AND HIT A MAIL BOX. THUS CAUSING DAMAGE TO THE RIGHT FRONT OF THE CAR. THE CAR WAS TOWED AND IS PRESENTLY AT THE DEALERSHIP IN BRAINERD, MN. THIS CAR IS TO DANGEROUS TO DRIVE; WILL I HAVE A HEAD[-]ON COLLISION WHILE TRYING TO PASS ANOTHER CAR?

229. On October 20, 2010, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

2010 CHEVROLET CHEVY CAMARO V6, SUDDEN LOSS OF POWER, COMPLETE ELECTRICAL FAILURE, AND ENGINE SHUTDOWN WHILE DRIVING 30 MPH IN SUBDIVISION. PULLED TO SIDE OF ROAD. TURNED CAR "OFF" AND BACK ON. DROVE TO DEALER WHO SAID THEY COULD FIND NO PROBLEM AND NOTHING RECORDED IN CAR'S COMPUTER. GOOGLED RECALL OF V8 TO SHOW DEALER, BUT DEALER SAID THIS WAS UNRELATED.

230. On March 6, 2012, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

WHILE DRIVING VEHICLE FIRST SHUT OFF AT A RED LIGHT FOR NO REASON ON FEB 28 2012 SAME INCIDENT ON MARCH 1ST SHUT OFF A RED LIGHT THIRD TIME IT



WAS WHILE DRIVING 10 MPH MAKING A TURN IN A PARKING SPOT. WAS ABLE TO TURN BACK CAR ON WITH NO PROBLEMS BUT IT IS OF GREAT CONCERN NOW IF THIS SHOULD HAPPEN AT A HIGH SPEED I AM SURE CAR CAN CAUSE INJURIES TO OTHERS AS WELL AS MYSELF.

231. On October 9, 2012, New GM became aware of a complaint filed with NHTSA involving a 2012 Camaro in which the following was reported:

THE CONTACT OWNS A 2012 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING 50 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO RESTART THE VEHICLE. THE MANUFACTURER WAS CONTACTED AND HAD THE VEHICLE TOWED TO A LOCAL DEALER. THE DEALER RESET THE COMPUTER BUT THE REPAIR DID NOT REMEDY THE ISSUE. THE CONTACT TOOK THE VEHICLE BACK TO THE DEALER WHERE THE DEALER RESET THE COMPUTER A SECOND TIME. THE DEALER ALSO DROVE THE VEHICLE FOR ONE HUNDRED MILES AND COULD NOT DUPLICATE THE STALLING ISSUE. THE VEHICLE CONTINUED TO STALL SPORADICALLY. THE FAILURE MILEAGE WAS 4,200.

232. On July 3, 2013, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro in which the following was reported:

THE CONTACT OWNS A 2013 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING APPROXIMATELY 55 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT MENTIONED THAT THE FAILURE WOULD RECUR INTERMITTENTLY. THE VEHICLE WAS TAKEN TO A DEALER FOR A DIAGNOSTIC WHERE THE FAILURE WAS UNABLE TO BE REPLICATED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 1,460 AND THE CURRENT MILEAGE WAS 1,800.

233. On August 4, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

I PURCHASED MY 2010 CHEVY CAMARO 2SS, IN FEBRUARY OF 2012. IT HAD 4,400 MILES ON IT. ABOUT A MONTH OR TWO, AFTER I BOUGHT IT, IT COMPLETELY

SHUT OFF ON ME, ON A MAJOR HIGHWAY, WHILE DOING 65 MPH. I THREW IT INTO NEUTRAL AND TURNED THE KEY AND IT STARTED RIGHT BACK UP. ABOUT A MONTH AFTER THAT, I WAS DOING ABOUT 20MPH ON A BACK ROAD AND IT DID THE SAME EXACT THING. JUST RECENTLY, ABOUT 2 WEEKS AGO, I WAS IN 6TH GEAR, ON CRUISE DOING 60MPH AND I FELT THE CAR "JERK" OR BUCK" A LITTLE BIT. FOLLOWED IMMEDIATELY BY THE CAR DECELERATING. I DOWN-SHIFTED TO 4TH GEAR AND WAS GIVING IT GAS, BUT STILL WOULDN'T SPEED UP. IT FELL DOWN TO ABOUT 40MPH, BEFORE FINALLY CATCHING ITSELF AND SPEEDING BACK UP. ABOUT A MILE LATER, I GOT OFF MY EXIT AND WAS COMING DOWN TO THE STOP SIGN, WHEN ALL THE INDICATOR LIGHTS CAME ON FOR ABOUT 10 SECONDS. THEY WENT OFF AND I MADE A LEFT HAND TURN AND WENT ABOUT A MILE UP THE ROAD. AT THAT POINT, THE CAR COMPLETELY SHUT OFF DOING ABOUT 35MPH. THERE WAS HEAVY TRAFFIC, SO I PULLED OVER AND STARTED IT BACK UP. I CALLED THE CHEVY DEALERSHIP, WHERE I BOUGHT IT FROM, AND THEY HAD NO OPENINGS FOR A WEEK. SO I TOOK IT LAST WEEK TO GET IT CHECKED AND THEY FOUND NOTHING THAT COULD HAVE CAUSED IT, THEY SAY. I AM VERY UPSET, BUT VERY THANKFUL THAT MY TWO CHILDREN WERE NOT WITH ME WHEN IT HAPPENED. I AM CURRENTLY CONTEMPLATING TRADING IT IN, CUZ I AM WORRIED THAT IF IT HAPPENS AGAIN, AND MY CHILDREN ARE IN THE CAR, THAT IT MIGHT SHUT OFF IN VERY CONGESTED BUMPER TO BUMPER TRAFFIC, ON THE HIGHWAY AT NIGHT, AND A TRACTOR TRAILER IS BEHIND ME AND I CAN'T GET IT STARTED OR SOMEONE DOESN'T SEE ME CUZ MY LIGHTS WOULD BE OFF. THE THOUGHT OF THAT COMPLETELY SCARES ME.

234. On September 28, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

THE CONTACT OWNS A 2010 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE DRIVING 5 MPH AND MAKING A TURN, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO RESTART THE VEHICLE BUT THE FAILURE RECURRED. THE VEHICLE WAS TAKEN TO A DEALER WHO PERFORMED A DIAGNOSTIC AND REPLACED A COMPONENT TO CORRECT THE FAILURE. THE CONTACT WAS UNABLE TO DETERMINE THE EXACT COMPONENT HOWEVER,

THE FAILURE RECURRED WITHOUT WARNING. THE VEHICLE WAS TAKEN TO DEALER HOWEVER, NO FAILURE WAS DETERMINED. THE MANUFACTURER WAS MADE AWARE OF THE ISSUE AND AN INCIDENT RECORDER WAS INSTALLED ON THE VEHICLE TO DETERMINE ANY FUTURE FAILURES. THE FAILURE MILEAGE WAS 23,000. THE CURRENT MILEAGE WAS 24,000.

235. On October 2, 2013, New GM became aware of a complaint filed with NHTSA involving a 2010 Camaro in which the following was reported:

I REACHED OUT TO [XXX], GM CEO ON MAY 24, 2013 WITH A STRONG CONCERNS OF POWER FAILURE FOR THE 2ND TIME WHILE DRIVING THE VEHICLE; CAUSING ME NOT TO HAVE CONTROL WHILE THE VEHICLE WAS DRIVEN. THUS IT WAS ALSO NOTED THAT I ORIGINALLY REACHED OUT TO GM TO REQUEST A REPLACED VEHICLE WHILE MY VEHICLE WAS UNDER WARRANTY DUE TO THE VEHICLE LOSING POWER ON A MAJOR FREEWAY; WHICH WAS LIFE THREATENING; HOWEVER THE RESPONSE BACK FROM GM WAS A DECLINED LETTER THAT I RECEIVED ENSURING ME THAT THE VEHICLE WAS SAFE TO DRIVE. I TRAVEL MAJOR FREEWAYS AS PART OF CAREER SO HAVING A RELIABLE VEHICLE IS IMPERATIVE AS FOR I VALUE MY LIFE. [XXX], SENIOR VICE PRESIDENT OF GLOBAL QUALITY & CUSTOMER EXPERIENCE HAS NOT RETURNED MY CALLS AND NOW GM IS ALSO NOT HONORING THE WARRANTY TOO. AFTER ASSISTING ME WITH MY CAR FOR 5 MONTHS .PLEASE NOT MY 2010 CAMARO SS IS PARK AS FOR IT'S NOT SAFE TO DRIVE. GM OFFER ME A CONTRACT TO SIGN THAT WOULD GUARANTEE "NO FAULT TO GM ". I COULDN'T NOT DUE THEM SHOULD MY CAMARO HARM MYSELF OR OTHERS WHILE DRIVING IT. ADDITIONALLY, I WAS TOLD THAT GM KNOWS THERE IS A PROBLEM WITH THE CAMARO BUT CAN'T FIND THE PROBLEM. IT'S HAS BEEN NOTED THAT THE CORRECTIONS THAT I NEED TO HAVE MADE IN ORDER TO BE SAFE IN THE GM VEHICLE CANNOT BE OBTAINED AS FOR MY VEHICLE HAS BEEN KEEP CHEVY FOR SHOP 5 MONTHS.

236. On October 16, 2013, New GM became aware of a complaint filed with NHTSA concerning a 2013 Camaro, in which the following was reported:

THE CONTACT OWNS A 2013 CHEVROLET CAMARO. THE CONTACT STATED THAT WHILE MAKING A U-TURN, THE VEHICLE STALLED WITHOUT WARNING. THE VEHICLE WAS NOT TAKEN TO A DEALER FOR DIAGNOSIS OF THE FAILURE. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE APPROXIMATE FAILURE AND CURRENT MILEAGE WAS 830.

237. On April 20, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

AS I WAS TURNING THE CORNER ON TO WOODWARD AVENUE MY CAR JUST SHUT DOWN. THE CAR WENT TOTALLY BLACK AND SHUT DOWN IN THE MIDDLE OF THE TURN ON THIS VERY BUSY-MAIN THOROUGHFARE.

238. On April 30, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

WITHIN TWO WEEKS AFTER PURCHASING MY CAR IT STALLED TWICE--BOTH WHEN STOPPED AT RED LIGHTS. I TOOK CAR TO DEALERSHIP AND THEY DID A ROAD TEST BUT COULD NOT REPLICATE. ON 4/9/2014 I WAS MAKING A RIGHT HAND TURN AND THE CAR STALLED IN THE MIDDLE OF THE INTERSECTION. I RESTARTED THE CAR, DROVE TO MY OFFICE AND THE CAR STALLED WHEN TURNING INTO THE PARKING GARAGE AND AGAIN WHEN TURNING INTO THE PARKING SPACE. TOOK TO THE DEALERSHIP THE FOLLOWING DAY AND THEY KEPT FOR AN EXTENDED TEST DRIVE BUT COULD NOT REPLICATE THE PROBLEM. SINCE THERE WERE NOT ANY CODES THE CAR WAS RETURNED TO ME.

239. On May 6, 2014, New GM became aware of a complaint filed with NHTSA concerning a 2014 Camaro, in which the following was reported:

DRIVING ON CRUISE CONTROL. KNEE BUMPED KEY, ENGINE TURNED OFF AT 60 MPH. POWER STEERING AND BRAKES STILL WORKED, BUT ENGINE WAS OFF.

240. On May 9, 2014, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro, in which the following was reported:

THE CONTACT INDICATED WHILE TRAVELING 60 MPH ON A MAJOR HIGHWAY, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT WAS ABLE TO MOVE THE VEHICLE OVER TO THE SHOULDER AND AFTER SEVERAL ATTEMPTS THE VEHICLE WAS ABLE TO RESTART. THE VEHICLE WAS TO BE FURTHER INSPECTED, DIAGNOSED AND REPAIRED BY AN AUTHORIZED DEALER BUT IT WAS NOT REPAIRED. THE CONTACT WAS NOTIFIED OF NHTSA CAMPAIGN ID NUMBER: 14V346000 (ELECTRICAL SYSTEM) AFTER EXPERIENCING THE FAILURE MULTIPLE TIMES AND WAS WAITING FOR PARTS TO GET THE VEHICLE REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 28,000.

241. On May 19, 2014, New GM became aware of a complaint filed with NHTSA involving a 2013 Camaro, in which the following was reported:

WHILE DRIVING DOWN I 75 IN OCALA FLORIDA CAR STALLED IN MIDDLE OF HIGHWAY . I PULLED OVER TO SHOULDER AND HAD TO RESTART CAR. I TOOK IT IN TO A DEALER AND THEY SAID THEY COULD NOT FIND ANY THING WRONG. THEY SAID TAKE THE CAR.

242. On May 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2012 Camaro, in which the following was reported:

WHEN THE IGNITION SWITCH/ KEY IS SLIGHTLY BUMPED WITH KNEE, THE CAR SHUTS OFF. THREE TIMES NOW. DEALERSHIP NOT RESPONSIVE. TAUGHT MY TEEN DRIVERS WHAT TO DO IF THIS HAPPENS AND THIS SAVED MY DAUGHTER'S LIFE WHEN IT HAPPENED TO HER.

243. Astoundingly, the *sole* remedy provided by New GM in its recall will be to “remove the key blade from the original flip key/RKE transmitter assemblies provided with the vehicle, and provide two new keys and two key rings per key.”

244. The proposed “remedy” is insufficient, because it does not address (i) the poor placement of the ignition switch such that the keys are vulnerable to being “kneaded” by the driver;

(ii) the airbag algorithm that can render the airbags inoperable *even when the vehicles are travelling at a high speed*; and (iii) the possible need for a new switch with higher torque.

245. Indeed, on July 31, 2014, after the recall was announced, New GM became aware of a complaint filed with NHTSA involving a 2014 Camaro, in which the following was reported:

I WAS TURNING ONTO THE HIGHWAY THAT THE SPEED LIMIT IS 65 MPH FROM A SIDE ROAD. I WAITED FOR ONCOMING TRAFFIC TO PASS AND THEN PULLED OUT. AS I PULLED OUT, TURNING RIGHT, MY CAR HAD A SUDDEN LOSS OF POWER. I TRIED TO RESTART AND IT WOULD NOT RESTART. I HAD DIFFICULTY PULLING OVER TO THE SIDE OF THE ROAD DUE TO THE STEERING WHEEL BEING STIFF AND HARD TO HANDLE. AFTER I GOT TO THE SIDE OF THE ROAD, I WAS ABLE TO RESTART MY CAR. **I DID NOT BUMP THE IGNITION SWITCH WHEN THIS HAPPENED EITHER.** [Emphasis added.]

**a. June 20, 2014 recall—ignition key slot defect.**

246. On June 20, 2014, New GM recalled 3,141,731 vehicles in the United States for ignition switch, or ignition key slot, defects (NHTSA Recall Number 14V- 355). New GM announced to NHTSA and the public that the recall concerns an ignition key slot defect.

247. 2,349,095 of the vehicles subject to this recall were made by Old GM. 792,636 vehicles were made and/or sold by New GM.

248. The following vehicles were included in the June 20, 2014 recall: 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 and RS, and 2006-2008 Chevrolet Monte Carlo.

249. The recall notice states, “In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine.”

250. Further, “[i]f the key 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. Additionally, a key knocked out of the run position could cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash.”

251. New GM has received hundreds of complaints at its Technical Assistance Center in which the weight of the key chain was identified as a source of the problem.<sup>57</sup>

252. The vehicles included in this recall were built on the same platform and their defective ignition switches are likely due to weak detent plungers, just like the Cobalt and other Defective Ignition Switch Vehicles recalled in February and March of 2014.

253. New GM was aware of the ignition switch defect in these vehicles from the date of its inception on July 10, 2009, as it acquired on that date all of the knowledge possessed by Old GM given the continuity in personnel, databases, and operations from Old GM to New GM. In addition, New GM acquired additional information thereafter. The information, all of which was known to New GM, included the following facts:

a. On August 30, 2005, Old GM employee Laura Andres sent an email to Jim Zito and copied ten other Old GM employees, including Ray DeGiorgio. Ms. Andres, in her email, stated, “I picked up the vehicle from repair. No repairs were done. . . . The technician said there is nothing they can do to repair it. He said it is just the design of the switch. He said other switches, like on the trucks, have a stronger detent and don’t experience this.” (emphasis in original).

b. Ms. Andres’ email continued: “I think this is a serious safety problem, especially if this switch is on multiple programs. I’m thinking big recall. I was driving 45 mph when I hit the pothole and the car shut off and I had a car driving behind me that swerved around

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<sup>57</sup> See, e.g., GM-MDL-254300011834-35.

me. I don't like to imagine a customer driving with their kids in the back seat, on I-75 and hitting a pothole, in rush-hour traffic. I think you should seriously consider changing this part to a switch with a stronger detent."

c. Ray DeGiorgio, who reportedly designed the ignition switches installed in the 2006 Chevrolet Impala vehicles, replied to Ms. Andres' email, stating that he had recently driven a 2006 Impala and "did not experience this condition."

254. On or after July 10, 2009, senior executives and engineers at New GM knew that some of the information relayed to allay Ms. Andres' concerns was inaccurate. For example, Ray DeGiorgio knew that there had been "issues with detents being too light." Instead of relaying those "issues," Mr. DeGiorgio falsely stated that there were no such "issues."

255. New GM has tried to characterize the recall of these 3.14 million vehicles as being different than the recall for the ignition switch defect in the Cobalts and other Defective Ignition Switch Vehicles when in reality and for all practical purposes it is for exactly the same defect that creates exactly the same safety risks. New GM has attempted to label and describe the ignition key slot defect as being different in order to provide it with cover and an explanation for why it did not recall these 3.14 million vehicles much earlier, and why it is not providing a new ignition switch for the 3.14 million vehicles.

256. From 2001 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries, and deaths linked to this safety defect. The following are examples of just a few of the many reports and complaints regarding the defect.

257. On January 23, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on January 23, 2001, in which the following was reported:



COMPLETE ELECTRICAL SYSTEM AND ENGINE SHUTDOWN WHILE DRIVING. HAPPENED THREE DIFFERENT TIMES TO DATE. DEALER IS UNABLE TO DETERMINE CAUSE OF FAILURE. THIS CONDITION DEEMED TO BE EXTREMELY HAZARDOUS BY OWNER. NHTSA ID Number: 739850.

258. On June 12, 2001, Old GM became aware of a complaint filed with NHTSA involving a 2000 Cadillac Deville and an incident that occurred on June 12, 2001, in which the following was reported:

INTERMITTENTLY AT 60MPH VEHICLE WILL STALL OUT AND DIE. MOST TIMES VEHICLE WILL START UP IMMEDIATELY AFTER. DEALER HAS REPLACED MAIN CONSOLE 3 TIMES, AND ABS BRAKES. BUT, PROBLEM HAS NOT BEEN CORRECTED. MANUFACTURER HAS BEEN NOTIFIED.\*AK NHTSA ID Number: 890227.

259. On January 27, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2001 Cadillac Deville and an incident that occurred on January 27, 2003, in which the following was reported:

WHILE DRIVING AT HIGHWAY SPEED ENGINE SHUT DOWN, CAUSING AN ACCIDENT. PLEASE PROVIDE ANY ADDITIONAL INFORMATION.\*AK NHTSA ID Number: 10004759.

260. The reports regarding the defect continued to be reported to New GM. For example, on February 15, 2010, New GM became aware of a complaint filed with NHTSA involving a 2008 Buick LaCrosse and an incident that occurred on February 13, 2010, in which a driver reported:

WHILE DRIVING AT 55MPH I RAN OVER A ROAD BUMP AND MY 2008 BUICK LACROSSE SUPER SHUT OFF(STALLED). I COASTED TO THE BURM, HIT BRAKES TO A STOP. THE CAR STARTED ON THE FIRST TRY. CONTINUED MY TRIP WITH NO INCIDENCES. TOOK TO DEALER AND NO CODES SHOWED IN THEIR COMPUTER. CALLED GM CUSTOMER ASSISTANCE AND THEY GAVE ME A CASE NUMBER. NO BULLETINS. SCARY TO DRIVE.

TRAFFIC WAS LIGHT THIS TIME BUT MAY NOT BE THE NEXT TIME. \*TR. NHTSA ID Number: 10310692.

261. On April 21, 2010, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick Lucerne and an incident that occurred on March 22, 2010, in which the following was reported:

06 BUICK LUCERNE PURCHASED 12-3-09, DIES OUT COMPLETELY WHILE DRIVING AT VARIOUS SPEEDS. THE CAR HAS SHUT OFF ON THE HIGHWAY 3 TIMES WITH A CHILD IN THE CAR. IT HAS OCCURRED A TOTAL OF 7 TIMES BETWEEN 1-08-10 AND 4-17-10. THE CAR IS UNDER FACTORY WARRANTY AND HAS BEEN SERVICED 7 TIMES BY 3 DIFFERENT BUICK DEALERSHIPS. \*TR NHTSA ID Number: 10326754.

262. On June 2, 2010, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on March 1, 2010, in which the following was reported:

2007 BUICK LACROSSE SEDAN. CONSUMER STATES MAJOR SAFETY DEFECT. CONSUMER REPORTS WHILE DRIVING THE ENGINE SHUT DOWN 3 TIMES FOR NO APPARENT REASON \*TGW NHTSA ID Number: 10334834.

263. On February 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Monte Carlo and an incident that occurred on January 16, 2014, in which the following was reported:

I WAS DRIVING GOING APPROXIMATELY 45 MPH, I HIT A POT HOLE AND MY VEHICLE CUT OFF. THIS HAS HAPPENED THREE TIMES SINCE JANUARY. THE SAME THING HAPPENED THE SECOND TIME. THE LAST TIME IT OCCURRED WAS TUESDAY, FEBRUARY 18. THIS TIME I WAS ON THE EXPRESSWAY TRAVELING APPROXIMATELY 75 MPH, HIT A BUMP AND IT CUT OFF. THE CAR STARTS BACK UP WHEN I PUT IT IN NEUTRAL. \*TR NHTSA ID Number: 10565104.

264. On March 3, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Chevrolet Impala and an incident that occurred on February 29, 2012, in which the following was reported:

I WAS DRIVING MY COMPANY ASSIGNED CAR DOWN A STEEP HILL WHEN THE ENGINE STALLED WITHOUT WARNING. THIS HAS HAPPENED 5 OTHER TIMES WITH THIS VEHICLE. THIS WAS THE FIRST TIME I WAS TRAVELING FAST THOUGH. IT'S LIKE THE ENGINE JUST TURNS OFF. THE LIGHTS ARE STILL ON BUT I LOSE THE POWER STEERING AND BRAKES. IT WAS TERRIFYING AND EXTREMELY DANGEROUS. THIS PROBLEM HAPPENS COMPLETELY RANDOMLY WITH NO WARNING. IT HAS HAPPENED TO OTHERS IN MY COMPANY WITH THEIR IMPALAS. I LOOKED ONLINE AND FOUND NUMEROUS OTHER INSTANCES OF CHEVY IMPALAS OF VARIOUS MODEL YEARS DOING THE SAME THING. IT IS CURRENTLY IN THE REPAIR SHOP AND THE MECHANIC CAN'T DUPLICATE THE PROBLEM. I TOLD THEM ITS RANDOM AND OCCURS ABOUT EVERY 4 MONTHS OR SO. I AM AFRAID I WILL HAVE TO GET BACK IN THIS DEATH TRAP DUE TO MY EMPLOYER MAKING ME. PLEASE HELP- I DON'T WANT TO DIE BECAUSE CHEVROLET HAS A PROBLEM WITH THEIR ELECTRICAL SYSTEMS IN THEIR CARS. \*TR NHTSA ID Number: 10567458.

265. On March 11, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Cadillac DTS and an incident that occurred on January 27, 2013, in which the following was reported:

ENGINE STOPPED. ALL POWER EQUIPMENT CEASED TO FUNCTION. I WAS ABLE TO GET TO THE SIDE OF THE FREEWAY. PUT THE CAR IN NEUTRAL, TURNED THE KEY AND THE CAR STARTED AND CONTINUED FOR THE DURATION OF THE 200 MILE TRIP. THE SECOND TIME APPROXIMATELY THREE WEEKS AGO MY WIFE WAS DRIVING IN HEAVY CITY TRAFFIC WHEN THE SAME PROBLEM OCCURRED AND SHE LOST THE USE OF ALL POWER EQUIPMENT. SHE WAS ABLE TO PUT THE CAR IN PARK AND GET IT STARTED AGAIN WITHOUT INCIDENT. I CALLED GM COMPLAINT DEPARTMENT. THEY INSTRUCTED ME TO TAKE THE CAR TO A DEALERSHIP AND HAVE A DIAGNOSTIC TEST DONE ON IT. THIS WAS

DONE AND NOTHING WAS FOUND TO BE WRONG WITH THE VEHICLE. I AGAIN CALLED CADILLAC COMPLAINT DEPARTMENT AND OPENED A CASE. THIS TIME I WAS TOLD TO TAKE THE CAR BACK TO THE DEALERSHIP AND ASK THE SERVICE DEPARTMENT TO RECHECK IT. I INFORMED THEM I HAVE THE DIAGNOSTIC REPORT SHOWING NOTHING WRONG WAS FOUND. THEY SUGGESTED I TAKE IT BACK AND HAVE THE SERVICE PEOPLE DRIVE THE CAR. THIS DIDN'T MAKE ANY SENSE BECAUSE I DON'T KNOW WHEN AND WHERE THE PROBLEM WILL OCCUR AGAIN. WHAT WAS I TO DO FOR A CAR WHILE THE DEALERSHIP HAD MINE? I INQUIRED OF THE CADILLAC REPRESENTATIVE IF THIS CAR MAY HAVE THE SAME IGNITION AS THE CARS CURRENTLY BEING RECALLED BY GM. THEY WERE UNABLE TO ANSWER THAT QUESTION. THEY FINALLY STATED THE ONLY REMEDY WAS TO TAKE IT BACK TO THE DEALERSHIP. IF THIS PROBLEM OCCURS AGAIN SOMEONE COULD EASILY GET INJURED OR KILLED. I WOULD APPRECIATE ANY ASSISTANCE YOU CAN GIVE ME ON HOW TO RESOLVE THIS MATTER. NHTSA ID Number: 10568491.

266. On March 19, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on March 15, 2014, in which the following was reported:

WHILE DRIVING UP A LONG INCLINE ON I-10 VEHICLE BEHAVED AS IF THE IGNITION HAD BEEN TURNED OFF AND KEY REMOVED. IE: ENGINE OFF, NO LIGHTS OR ACCESSORIES, NO WARNING LIGHTS ON DASH. TRAFFIC WAS HEAVY AND MY WIFE WAS FORTUNATE TO SAFELY COAST INTO SHOULDER. INCIDENT RECORDED WITH BUICK, HAVE REFERENCE NUMBER. \*TR NHTSA ID Number: 10573586.

267. On July 12, 2014, New GM became aware of a complaint filed with NHTSA involving a 2009 Chevrolet Impala and an incident that occurred on March 19, 2010, in which the following was reported:

I HAD JUST TURNED ONTO THIS ROAD, HAD NOT EVEN GONE A MILE. NO SPEED, NO BLACK MARKS, CAR SHUT DOWN RAN OFF THE ROAD AND HIT A TREE STUMP. TOTAL THE CAR. THE STEERING WHEEL WAS BENT

ALMOST IN HALF. I HAVE PICTURES OF THE CAR. I GOT THIS CAR NEW, SO ALL MILES WE'RE PUT ON IT BY ME. I BROKE MY HIP, BACK, KNEE, DISLOCATED MY ELBOW, CRUSHED MY ANKLE AND FOOT. HAD A HEAD INJURY, A DEFLATED LUNG. I WAS IN THE HOSPITAL FOR TWO MONTHS AND A NURSING HOME FOR A MONTH. I HAVE HAD 14 SURGERIES. STILL NOT ABLE TO WORK OR DO A LOT OF THINGS FOR MY SELF. WITH THE RECALLS SHOWING THE ISSUES OF THE ENGINE SHUTTING OFF, I NEED THIS LOOKED INTO. NHTSA ID Number: 10610093.

268. Since New GM's recall announcement, the reports and complaints relating to this defect have continued to pour into New GM268.

269. For example, on August 2, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Buick LaCrosse and an incident that occurred on July 12, 2014, in which the following was reported:

WHILE TRAVELING IN THE FAST LANE ON THE GARDEN STATE PARKWAY I HIT A BUMP IN THE ROAD, THE AUTO SHUT OFF.WITH A CONCRETE DIVIDER ALONG SIDE AND AUTOS APPROACHING AT HIGH SPEED, MY WIFE AND DAUGHTER SCREAMING I MANAGED TO GET TO THE END OF THE DIVIDER WERE I COULD TURN OFF THE AUTO RESTARTED ON 1ST TRY BUT VERY SCARY. NHTSA ID Number: 10618391.

270. On August 18, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Buick LaCrosse and an incident that occurred on August 18, 2014, in which the following was reported:

TL\* THE CONTACT OWNS A 2007 BUICK LACROSSE. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 60 MPH, SHE HIT A POT HOLE AND THE VEHICLE STALLED. THE VEHICLE COASTED TO THE SHOULDER OF THE ROAD. THE VEHICLE WAS RESTARTED AND THE CONTACT WAS ABLE TO DRIVE THE VEHICLE AS NORMAL. THE CONTACT RECEIVED A RECALL NOTICE UNDER NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS NEEDED FOR THE REPAIRS WAS UNAVAILABLE. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE

FAILURE MILEAGE WAS 110,000. NHTSA ID Number:  
10626067.

271. On August 20, 2014, New GM became aware of a complaint filed with NHTSA involving a 2007 Chevrolet Impala and an incident that occurred on August 6, 2014, in which it was reported that:

TL\* THE CONTACT OWNS A 2007 CHEVROLET IMPALA. THE CONTACT STATED THAT WHILE DRIVING 25 MPH, THE VEHICLE STALLED WITHOUT WARNING. THE CONTACT RECEIVED A NOTIFICATION FOR RECALL NHTSA CAMPAIGN NUMBER: 14V355000 (ELECTRICAL SYSTEM). THE VEHICLE WAS TAKEN TO AN INDEPENDENT MECHANIC WHERE THE TECHNICIAN ADVISED THE CONTACT TO REMOVE THE KEY FOB AND ANY OTHER OBJECTS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 79,000. NHTSA ID Number: 10626659.

272. On August 27, 2014, New GM became aware of the following complaint filed with NHTSA involving a 2008 Chevrolet Impala and an incident that occurred on August 27, 2014, in which it was reported that:

TL-THE CONTACT OWNS A 2008 CHEVROLET IMPALA. THE CONTACT STATED WHILE DRIVING APPROXIMATELY 50 MPH, THE VEHICLE LOST POWER AND THE STEERING WHEEL SEIZED WITHOUT WARNING. AS A RESULT, THE CONTACT CRASHED INTO A POLE AND THE AIR BAGS FAILED TO DEPLOY. THE CONTACT SUSTAINED A CONCUSSION, SPRAINED NECK, AND WHIPLASH WHICH REQUIRED MEDICAL ATTENTION. THE POLICE WAS NOT FILED. THE VEHICLE WAS TOWED TO A TOWING COMPANY. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN ID NUMBER: 14V355000 (ELECTRICAL SYSTEM), HOWEVER THE PARTS ARE NOT AVAILABLE TO PERFORM THE REPAIRS. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 70,000. MF. NHTSA ID Number: 10628704.

273. New GM knew that this serious safety defect existed for years yet did nothing to warn the public or even attempt to correct the defect in these vehicles until late June of 2014 when New GM finally made the decision to implement a recall.

274. The “fix” that New GM plans as part of the recall is to modify the ignition key from a “slotted” key to “hole” key. This is insufficient and does not adequately address the safety risks posed by the defect. The ignition key and switch remain prone to inadvertently move from the “run” to the “accessory” position.

275. Simply changing the key slot or taking other keys and fobs off of key rings is New GM’s attempt to make consumers responsible for the safety of GM-branded vehicles and to divert its own responsibility to make GM-branded vehicles safe. New GM’s “fix” does not adequately address the inherent dangers and safety threats posed by the defect in the design.

276. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the “run” position even when the vehicle is moving at high speed. And New GM is not altering the placement of the ignition switch in an area where the driver’s knees may inadvertently cause the ignition to move out of the “run” position.

**6. July 2 and 3, 2014 recalls—unintended ignition rotation defect.**

277. On July 2, 2014, New GM recalled 554,328 vehicles in the United States for ignition switch defects (Recall Number 14V-394). The July 2 recall applied to the 2003-2014 Cadillac CTS and the 2004-2006 Cadillac SRX.

278. The recall notice explains that the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the “run” position,

turning off the engine. Further, if the key is not in the “run” position, the airbags may not deploy in the event of a collision, increasing the risk of injury.

279. On July 3, 2014, New GM recalled 6,729,742 additional vehicles in the United States for ignition switch defects (Recall No. 14V-400).

280. The following vehicles were included in this recall: 1997-2005 Chevrolet Malibu, 2000-2005 Chevrolet Impala, 2000-2005 Chevrolet Monte Carlo, 2000-2005 Pontiac Grand Am, 2004-2008 Pontiac Grand Prix, 1998-2002 Oldsmobile Intrigue, and 1999-2004 Oldsmobile Alero.

281. The recall notice states that the weight on the key and/or road conditions or some other jarring event may cause the ignition switch to move out of the “run” position, turning off the engine. If the key is not in the “run” position, the airbags may not deploy if the vehicle is involved in a collision, increasing the risk of injury.

282. In both of these recalls, New GM notified NHTSA and the public that the recall was intended to address a defect involving unintended or “inadvertent key rotation” within the ignition switch of the vehicles. Old GM manufactured 7,175,896 of the recalled vehicles. New GM manufactured and sold 108,174 of the vehicles.

283. Once again, the unintended ignition rotation defect is substantially similar to and relates directly to the other ignition switch defects, including the defects that gave rise to the initial recall of 2.1 million Cobalts and other vehicles in February and March of 2014. Like the other ignition switch defects, the unintended ignition key rotation defect poses a serious and dangerous safety risk because it can cause a vehicle to stall while in motion by causing the key in the ignition to inadvertently move from the “on” or “run” position to “off” or “accessory” position. Like the other ignition switch defects, the unintended ignition key rotation defect can result in a loss of power steering, power braking, and increase the risk of a crash. And as with



the other ignition switch defects, if a crash occurs, the airbags will not deploy because of the unintended ignition key rotation defect.

284. The unintended ignition key rotation defect involves several problems, and they are identical to the problems in the other Defective Ignition Switch Vehicles: a weak detent plunger, the low positioning of the ignition on the steering column, and the algorithm that renders the airbags inoperable when the vehicle leaves the “run” position.

285. The 2003-2006 Cadillac CTS and the 2004-2006 Cadillac SRX use the same Delphi switch and have inadequate torque for the “run”-“accessory” direction of the key rotation. This was known to Old and New GM, and was the basis for a change that was made to a stronger detent plunger for the 2007 and later model years of the SRX model. The 2007 and later CTS vehicles used a switch manufactured by Dalian Alps.

286. In 2010, New GM changed the CTS key from a “slot” to a “hole” design to “reduce an observed nuisance” of the key fob contacting the driver’s leg. But in 2012, a New GM employee reported two running stalls of a 2012 CTS that had a “hole” key and the stronger detent plunger switch. When New GM did testing in 2014 of the “slot” versus “hole” keys, it confirmed that the weaker detent plunger-equipped switches used in the older CTS and SRX could inadvertently move from “run” to “accessory” or “off” when the “vehicle goes off road or experience some other jarring event.”

287. New GM has tried to characterize the recall of these 7.3 million vehicles as being different than the ignition switch defects in the Cobalt and other vehicles that gave rise to the February and March 2014 recalls *even though* these recalls are aimed at addressing the same defects and safety risks as those that gave rise to the other ignition switch defect recalls. New GM has attempted to portray the unintended ignition key rotation defect as being different from the other ignition switch defects in order to deflect attention from the severity and

pervasiveness of the ignition switch defect and to try to provide a story and plausible explanation for why it did not recall these 7.3 million vehicles much earlier, and to avoid providing new, stronger ignition switches as a remedy.

288. Further, New GM acquired knowledge of the defects in these vehicles on the date of its inception on July 11, 2009. On that date, it acquired knowledge of the following facts:

a. In January of 2003, Old GM opened an internal investigation after it received complaints from a Michigan GM dealership that a customer had experienced a moving stall and power failure while operating his model year 2003 Pontiac Grand Am.

b. During the investigation, Old GM's Brand Quality Manager for the Grand Am visited the dealership and requested that the affected customer demonstrate the problem. The customer was able to recreate the shutdown event by driving over a speed bump at approximately 30-35 mph.

c. The customer's key ring was allegedly quite heavy. It contained approximately 50 keys and a set of brass knuckles.

d. In May 2003, Old GM issued a voicemail to dealerships describing the defective ignition switch condition experienced by the customer in the Grand Am. Old GM identified the vehicles affected by this condition as the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am.

e. Old GM did not recall these vehicles. Nor did it provide owners and/or lessees with notice of the defective condition. Instead, its voicemail directed dealerships to pay attention to the key size and mass of the customer's key ring.

f. On July 24, 2003, Old GM issued an engineering work order to increase the detent plunger force on the ignition switch for the 1999-2003 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am vehicles. Old GM engineers allegedly increased the detent

plunger force and changed the part number of the ignition switch. The new parts were installed beginning in the model year 2004 Malibu, Alero, and Grand Am vehicles.

g. Old GM issued a separate engineering work order in March 2004 to increase the detent plunger force on the ignition switch in the Pontiac Grand Prix. Old GM engineers did not change the part number for the new Pontiac Grand Prix ignition switch.

h. Then-Old GM design engineer Ray DeGiorgio signed the work order in March 2004 authorizing the part change for the Grand Prix ignition switch. Ray DeGiorgio maintained his position as design engineer with New GM.

i. On or around August 25, 2005, Laura Andres, an Old GM design engineer (who remains employed with New GM), sent an email describing ignition switch issues that she experienced while operating a 2006 Chevrolet Impala on the highway. Ms. Andres' email stated, "While driving home from work on my usual route, I was driving about 45 mph, where the road changes from paved to gravel & then back to paved, some of the gravel had worn away, and the pavement acted as a speed bump when I went over it. The car shut off. I took the car in for repairs. The technician thinks it might be the ignition detent, because in a road test in the parking lot it also shut off."

j. Old GM employee Larry S. Dickinson, Jr. forwarded Ms. Andres' email on August 25, 2005 to four Old GM employees. Mr. Dickinson asked, "Is this a condition we would expect to occur under some impacts?"

k. On August 29, 2005, Old GM employee Jim Zito forwarded the messages to Ray DeGiorgio and asked, "Do we have any history with the ignition switch as far as it being sensitive to road bumps?"

l. Mr. DeGiorgio responded the same day, stating, "To date there has never been any issues with the detents being too light."

289. From 2002 to the present, Old GM and New GM received numerous reports from consumers regarding complaints, crashes, injuries, and deaths linked to this safety defect. The following are just a handful of examples of some of the reports known to Old GM and New GM.

290. On November 22, 2002, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS involving an incident that occurred on July 1, 2002, in which it was reported that:

THE CAR STALLS AT 25 MPH TO 45 MPH, OVER 20 OCCURANCES, DEALER ATTEMPTED 3 REPAIRS. DT NHTSA ID Number: 770030.

291. On January 21, 2003, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, in which the following was reported:

WHILE DRIVING AT ANY SPEED, THE VEHICLE WILL SUDDENLY SHUT OFF. THE STEERING WHEEL AND THE BRAKE PEDAL BECOMES VERY STIFF. CONSUMER FEELS ITS VERY UNSAFE TO DRIVE. PLEASE PROVIDE ANY FURTHER INFORMATION. NHTSA ID Number: 10004288.

292. On June 30, 2003, Old GM became aware of a complaint filed with NHTSA regarding a 2001 Oldsmobile Intrigue which involved the following report:

CONSUMER NOTICED THAT WHILE TRAVELING DOWN HILL AT 40-45 MPH BRAKES FAILED, CAUSING CONSUMER TO RUN INTO THREES AND A POLE. UPON IMPACT, AIR BAGS DID NOT DEPLOY. \*AK NHTSA ID Number: 10026252.

293. On March 11, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac CTS involving an incident that occurred on March 11, 2004, in which the following was reported:

CONSUMER STATED WHILE DRIVING AT 55-MPH VEHICLE STALLED, CAUSING CONSUMER TO PULL OFF THE ROAD. DEALER INSPECTED VEHICLE SEVERAL TIMES, BUT COULD NOT DUPLICATE OR CORRECT THE PROBLEM. \*AK NHTSA ID Number: 10062993.

294. On March 11, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Oldsmobile Alero incident that occurred on July 26, 2003, in which the following was reported:

THE VEHICLE DIES. WHILE CRUISING AT ANY SPEED, THE HYDRAULIC BRAKES & STEERING FAILED DUE TO THE ENGINE DYING. THERE IS NO SET PATTERN, IT MIGHT STALL 6 TIMES IN ONE DAY, THEN TWICE THE NEXT DAY. THEN GO 4 DAYS WITH NO OCURRENCE, THEN IT WILL STALL ONCE A DAY FOR 3 DAYS. THEN GO A WEEK WITH NO OCURRENCE, THEN STALL 4 TIMES A DAY FOR 5 DAYS, ETC., ETC. IN EVERY OCURRENCE, IT TAKES APPROXIMATELY 10 MINUTES BEFORE IT WILL START BACK UP. AT HIGH SPEEDS, IT IS EXTREMELY TOO DANGEROUS TO DRIVE. WE'VE TAKEN IT TO THE DEALER, UNDER EXTENDED WARRANTY, THE REQUIRED 4 TIMES UNDER THE LEMON LAW PROCESS. THE DEALER CANNOT ASCERTAIN, NOR FIX THE PROBLEM. IT HAPPENED TO THE DEALER AT LEAST ONCE WHEN WE TOOK IT IN. I DOUBT THEY WILL ADMIT IT, HOWEVER, MY WIFE WAS WITNESS. THE CAR IS A 2003. EVEN THOUGH I BOUGHT IT IN JULY 2003, IT WAS CONSIDERED A USED CAR. GM HAS DENIED OUR CLAIM SINCE THE LEMON LAW DOES NOT APPLY TO USED CARS. THE CAR HAS BEEN PERMANENTLY PARKED SINCE NOVEMBER 2003. WE WERE FORCED TO BUY ANOTHER CAR. THE DEALER WOULD NOT TRADE. THIS HAS RESULTED IN A BADLUCK SITUATION FOR US. WE CANNOT AFFORD 2 CAR PAYMENTS / 2 INSURANCE PREMIUMS, NOR CAN WE AFFORD \$300.00 PER HOUR TO SUE GM. I STOPPED MAKING PAYMENTS IN DECEMBER 2003. I HAVE KEPT THE FINANCE COMPANY ABREAST OF THE SITUATION. THEY HAVE NOT REPOSSED AS OF YET. THEY WANT ME TO TRY TO SELL IT. CAN YOU HELP  
?\*AK NHTSA ID Number: 10061898.

295. On July 20, 2004, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, involving an incident that occurred on July 9, 2004, in which the following was reported:

THE CAR DIES AFTER TRAVELING ON HIGHWAY. IT GOES FROM 65 MPH TO 0. THE BRAKES, STEERING, AND COMPLETE POWER DIES. YOU HAVE NO CONTROL OVER THE CAR AT THIS POINT. I HAVE ALMOST BEEN HIT 5

TIMES NOW. ALSO, WHEN THE CARS DOES TURN BACK ON IT WILL ONLY GO 10 MPH AND SOMETIMES WHEN YOU TURN IT BACK ON THE RPM'S WILL GO TO THE MAX. IT SOUNDS LIKE THE CAR IS GOING TO EXPLODE. THIS CAR IS A DEATH TRAP. \*LA NHTSA ID Number: 10082289.

296. In August 2004, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on June 30, 2004, in which it was reported that:

WHILE TRAVELING AT ANY SPEED VEHICLE STALLED. WITHOUT CONSUMER HAD SEVERAL CLOSE CALLS OF BEING REAR ENDED. VEHICLE WAS SERVICED SEVERAL TIMES, BUT PROBLEM RECURRED. \*AK. NHTSA ID Number: 10089418.

297. Another report in August of 2004 which Old GM became aware of involved a 2004 Chevrolet Malibu incident that occurred on August 3, 2004, in which it was reported that:

WHEN DRIVING, THE VEHICLE TO CUT OFF. THE DEALER COULD NOT FIND ANY DEFECTS. \*JB. NHTSA ID Number: 10087966.

298. On October 23, 2004, Old GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo, in which the following was reported:

VEHICLE CONTINUOUSLY EXPERIENCED AN ELECTRICAL SYSTEM FAILURE. AS A RESULT, THERE WAS AN ELECTRICAL SHUT DOWN WHICH RESULTED IN THE ENGINE DYING/ STEERING WHEEL LOCKING UP, AND LOSS OF BRAKE POWER.\*AK NHTSA ID Number: 10044624.

299. On April 26, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2005 Pontiac Grand Prix, pertaining to an incident that occurred on December 29, 2004, in which the following was reported:

2005 PONTIAC GRAND PRIX GT SEDAN VIN #[XXX]  
PURCHASED 12/16/2004. INTERMITTENTLY VEHICLE STALLS/ LOSS OF POWER IN THE ENGINE. WHILE DRIVING THE VEHICLE IT WILL SUDDENLY JUST LOSES

POWER. YOU CONTINUE TO PRESS THE ACCELERATOR PEDAL AND THEN THE ENGINE WILL SUDDENLY TAKE BACK OFF AT A GREAT SPEED. THIS HAS HAPPENED WHILE DRIVING NORMALLY WITHOUT TRYING TO ACCELERATE AND ALSO WHILE TRYING TO ACCELERATE. THE CAR HAS LOST POWER WHILE TRYING TO MERGE IN TRAFFIC. THE CAR HAS LOST POWER WHILE TRYING TO CROSS HIGHWAYS. THE CAR HAS LOST POWER WHILE JUST DRIVING DOWN THE ROAD. GMC HAS PERFORMED THE FOLLOWING REPAIRS WITHOUT FIXING THE PROBLEM. 12/30/2004 [XXX]-MODULE, POWERTRAIN CONTROL-ENGINE REPROGRAMMING. 01/24/2005 [XXX]-SOLENOID, PRESSURE CONTROL-REPLACED. 02/04/2005 [XXX]-MODULE, PCM/VCM-REPLACED. 02/14/2005 [XXX]-PEDAL, ACCELERATOR-REPLACED. DEALERSHIP PURCHASED FROM CAPITAL BUICK-PONTIAC-GMC 225-293-3500. DEALERSHIP HAS ADVISED THAT THEY DO NOT KNOW WHAT IS WRONG WITH THE CAR. WE HAVE BEEN TOLD THAT WE HAVE TO GO DIRECT TO PONTIAC WITH THE PROBLEM. HAVE BEEN IN CONTACT WITH PONTIAC SINCE 02/15/05. PONTIAC ADVISED THAT THEY WERE GOING TO RESEARCH THE PROBLEM AND SEE IF ANY OTHER GRAND PRI WAS REPORTING LIKE PROBLEMS. SO FAR THE ONLY ADVICE FROM PONTIAC IS THEY WANT US TO COME IN AND TAKE ANOTHER GRAND PRIX OFF THE LOT AND SEE IF WE CAN GET THIS CAR TO DUPLICATE THE SAME PROBLEM. THIS DID NOT IMPRESS ME AT ALL. SO AFTER WAITING FOR 2-1/2 MONTHS FOR PONTIAC TO DO SOMETHING TO FIX THE PROBLEM, I HAVE DECIDED TO REPORT THIS TO NHTSA. \*AK \*JS INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6) NHTSA ID Number: 10118501.

300. In May 2005, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Chevrolet Malibu incident that occurred on July 18, 2004, in which it was reported that:

THE CAR CUT OFF WHILE I WAS DRIVING AND IN HEAVY TRAFFIC MORE THAN ONCE. THERE WAS NO WARNING THAT THIS WOULD HAPPEN. THE CAR WAS SERVICED BEFORE FOR THIS PROBLEM BUT IT CONTINUED TO HAPPEN. I HAVE HAD 3 RECALLS, THE HORN FUSE HAS BEEN REPLACED TWICE, AND THE BLINKER IS CURRENTLY OUT. THE STEERING COLLAR HAS ALSO BEEN REPLACED. THIS CAR WAS SUPPOSED TO BE A NEW CAR. NHTSA ID Number: 10123684.

301. On June 2, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on February 18, 2005, in which the following was reported:

2004 PONTIAC GRAND PRIX SHUTS DOWN WHILE DRIVING AND THE POWER STEERING AND BRAKING ABILITY ARE LOST.\*MR \*NM. NHTSA ID Number: 10124713.

302. On August 12, 2005, Old GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS, regarding an incident that occurred on January 3, 2005, in which it was reported that:

DT: VEHICLE LOST POWER WHEN THE CONSUMER HIT THE BRAKES. THE TRANSMISSION JOLTS AND THEN THE ENGINE SHUTS OFF. IT HAS BEEN TO THE DEALER 6 TIMES SINCE JANUARY. THE DEALER TRIED SOMETHING DIFFERENT EVERY TIME SHE TOOK IT IN. MANUFACTURER SAID SHE COULD HAVE A NEW VEHICLE IF SHE PAID FOR IT. SHE WANTED TO GET RID OF THE VEHICLE.\*AK THE CHECK ENGINE LIGHT ILLUMINATED. \*JB NHTSA ID Number: 10127580.

303. On August 26, 2005, Old GM became aware of a complaint with NHTSA regarding a 2004 Pontiac Grand Am incident that occurred on August 26, 2005, in which the following was reported:

WHILE DRIVING MY 2004 PONTIAC GRAND AM THE CAR FAILED AT 30 MPH. IT COMPLETELY SHUT OFF LEAVING ME WITH NO POWER STEERING AND NO WAY TO REGAIN CONTROL OF THE CAR UNTIL COMING TO A COMPLETE STOP TO RESTART IT. ONCE I HAD STOPPED IT DID RESTART WITHOUT INCIDENT. ONE WEEK LATER THE CAR FAILED TO START AT ALL NOT EVEN TURNING OVER. WHEN THE PROBLEM WAS DIAGNOSED AT THE GARAGE IT WAS FOUND TO BE A FAULTY "IGNITION CONTROL MODULE" IN THE CAR. AT THIS TIME THE PART WAS REPLACED ONLY TO FAIL AGAIN WITHIN 2 MONTHS TIME AGAIN WHILE I WAS DRIVING THIS TIME IN A MUCH MORE HAZARDOUS CONDITION BEING THAT I WAS ON THE HIGHWAY AND WAS TRAVELING AT 50 MPH AND HAD TO TRAVEL ACROSS TWO LANES OF



TRAFFIC TO EVEN PULL OVER TO TRY TO RESTART IT. THE CAR CONTINUED TO START AND SHUT OFF ALL THE WAY TO THE SERVICE GARAGE WHERE IT WAS AGAIN FOUND TO BE A FAULTY "IGNITION CONTROL MODULE". IN ANOTHER TWO WEEKS TIME THE CAR FAILED TO START AND WHEN DIAGNOSED THIS TIME IT WAS SAID TO HAVE "ELECTRICAL PROBLEMS" POSSIBLE THE "POWER CONTROL MODULE". AT THIS TIME THE CAR IS STILL UNDRIVEABLE AND UNSAFE FOR TRAVEL. \*JB NHTSA ID Number: 10134303.

304. On April 18, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on April 13, 2007, in which it was reported that:

TL\*THE CONTACT OWNS A 2004 CADILLAC SRX. THE ENGINE STALLED WITHOUT WARNING AND CAUSED ANOTHER VEHICLE TO CRASH INTO THE VEHICLE. THE VEHICLE WAS ABLE TO RESTART A FEW MINUTES AFTER THE CRASH. THE DEALER AND MANUFACTURER WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER HAD THE VEHICLE INSPECTED BY A CADILLAC SPECIALIST WHO WAS UNABLE TO DIAGNOSE THE FAILURE. THE DEALER UPDATED THE COMPUTER FOUR TIMES, BUT THE ENGINE CONTINUED TO STALL. THE CURRENT AND FAILURE MILEAGES WERE 48,000. NHTSA ID Number: 10188245.

305. On September 20, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2007 Cadillac CTS, in connection with an incident that occurred on January 1, 2007, in which it was reported that:

TL\*THE CONTACT OWNS A 2007 CADILLAC CTS. WHILE DRIVING 40 MPH, THE VEHICLE SHUT OFF WITHOUT WARNING. THE FAILURE OCCURRED ON FIVE SEPARATE OCCASIONS. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE. AS OF SEPTEMBER 20, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE FAILURE MILEAGE WAS 2,000 AND CURRENT MILEAGE WAS 11,998. NHTSA ID Number: 10203516.

306. On September 24, 2007, Old GM became aware of a complaint filed with NHTSA involving a 2004 Cadillac SRX, regarding an incident that occurred on January 1, 2005, in which the following was reported:

TL\*THE CONTACT OWNS A 2004 CADILLAC SRX. WHILE DRIVING 5 MPH OR GREATER, THE VEHICLE WOULD SHUT OFF WITHOUT WARNING. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND THEY REPLACED THE BATTERY. APPROXIMATELY EIGHT MONTHS LATER, THE FAILURE RECURRED. THE DEALER STATED THAT THE BATTERY CAUSED THE FAILURE AND REPLACED IT A SECOND TIME. APPROXIMATELY THREE MONTHS LATER, THE FAILURE OCCURRED AGAIN. SHE WAS ABLE TO RESTART THE VEHICLE. THE DEALER WAS UNABLE TO DUPLICATE THE FAILURE, HOWEVER, THEY REPLACED THE CRANK SHAFT SENSOR. THE FAILURE CONTINUES TO PERSIST. AS OF SEPTEMBER 24, 2007, THE DEALER HAD NOT REPAIRED THE VEHICLE. THE POWERTRAIN WAS UNKNOWN. THE FAILURE MILEAGE WAS 8,000 AND CURRENT MILEAGE WAS 70,580. NHTSA ID Number: 10203943.

307. On June 18, 2008, Old GM became aware of a complaint filed with NHTSA involving a 2006 Cadillac CTS and an incident that occurred on June 17, 2008, in which it was reported that:

TL\*THE CONTACT OWNS A 2006 CADILLAC CTS. WHILE DRIVING 60 MPH AT NIGHT, THE VEHICLE SHUT OFF AND LOST TOTAL POWER. WHEN THE FAILURE OCCURRED, THE VEHICLE CONTINUED TO ROLL AS IF IT WERE IN NEUTRAL. THERE WERE NO WARNING INDICATORS PRIOR TO THE FAILURE. THE CONTACT FEELS THAT THIS IS A SAFETY HAZARD BECAUSE IT COULD HAVE RESULTED IN A SERIOUS CRASH. THE VEHICLE WAS TAKEN TO THE DEALER TWICE FOR REPAIR FOR THE SAME FAILURE IN FEBURARY OF 2008 AND JUNE 17, 2008. THE FIRST TIME THE CAUSE OF THE FAILURE WAS IDENTIFIED AS A GLITCH WITH THE COMPUTER SWITCH THAT CONTROLS THE TRANSMISSION. AT THE SECOND VISIT, THE SHOP EXPLAINED THAT THEY COULD NOT IDENTIFY THE FAILURE. IT WOULD HAVE TO RECUR IN ORDER FOR THEM TO DIAGNOSE THE FAILURE PROPERLY. THE

CURRENT AND FAILURE MILEAGES WERE 43,000.  
NHTSA ID Number: 10231507.

308. On November 13, 2008, Old GM became aware of a complaint with NHTSA regarding a 2001 Oldsmobile Intrigue, in which the following was reported:

L\*THE CONTACT OWNS A 2001 OLDSMOBILE INTRIGUE. WHILE DRIVING 35 MPH, THE VEHICLE CONTINUOUSLY STALLS AND HESITATES. IN ADDITION, THE INSTRUMENT PANEL INDICATORS WOULD ILLUMINATE AT RANDOM. THE VEHICLE FAILED INSPECTION AND THE CRANKSHAFT SENSOR WAS REPLACED, WHICH HELPED WITH THE STALLING AND HESITATION; HOWEVER, THE CHECK ENGINE INDICATOR WAS STILL ILLUMINATED. DAYS AFTER THE CRANKSHAFT SENSOR WAS REPLACED, THE VEHICLE FAILED TO START. HOWEVER, ALL OF THE INSTRUMENT PANEL INDICATORS FLASHED ON AND OFF. AFTER NUMEROUS ATTEMPTS TO START THE VEHICLE, HE HAD IT JUMPSTARTED. THE VEHICLE WAS THEN ABLE TO START. WHILE DRIVING HOME, ALL OF THE LIGHTING FLASHED AND THE VEHICLE SUDDENLY SHUT OFF. THE VEHICLE LOST ALL ELECTRICAL POWER AND POWER STEERING ABILITY. THE CONTACT MANAGED TO PARK THE VEHICLE IN A PARKING LOT AND HAD IT TOWED THE FOLLOWING DAY TO A REPAIR SHOP. THE VEHICLE IS CURRENTLY STILL IN THE SHOP. THE VEHICLE HAS BEEN RECALLED IN CANADA AND HE BELIEVES THAT IT SHOULD ALSO BE RECALLED IN THE UNITED STATES. THE FAILURE MILEAGE WAS UNKNOWN AND THE CURRENT MILEAGE WAS 106,000. NHTSA ID Number: 10248694.

309. On December 10, 2008, Old GM became aware of a complaint filed with NHTSA regarding a 2004 Oldsmobile Alero and an incident that occurred on December 10, 2008, in which the following was reported:

I WAS DRIVING DOWN THE ROAD IN RUSH HOUR GOING APPROX. 55 MPH AND MY CAR COMPLETELY SHUT OFF, THE GAUGES SHUT DOWN, LOST POWER STEERING. HAD TO PULL OFF THE ROAD AS SAFELY AS POSSIBLE, PLACE VEHICLE IN PARK AND RESTART CAR. MY CAR HAS SHUT DOWN PREVIOUSLY TO THIS INCIDENT AND FEEL AS THOUGH IT NEEDS SERIOUS INVESTIGATION. I COULD HAVE BEEN ON THE HIGHWAY AND BEEN

KILLED. THIS ALSO HAS HAPPENED WHEN IN A SPIN OUT AS WELL THOUGH THIS PARTICULAR INCIDENT WAS RANDOM. \*TR NHTSA ID Number: 10251280.

310. On March 31, 2009, Old GM became aware a complaint filed with NHTSA regarding a 2005 Chevrolet Malibu incident that occurred on May 30, 2008, in which it was reported that:

TL\*THE CONTACT OWNS A 2005 CHEVROLET MALIBU. THE CONTACT STATED THAT THE POWER WINDOWS, LOCKS, LINKAGES, AND IGNITION SWITCH SPORADICALLY BECOME INOPERATIVE. SHE TOOK THE VEHICLE TO THE DEALER AND THEY REPLACED THE IGNITION SWITCH AT THE COST OF \$495. THE MANUFACTURER STATED THAT THEY WOULD NOT ASSUME RESPONSIBILITY FOR ANY REPAIRS BECAUSE THE VEHICLE EXCEEDED ITS MILEAGE. ALL REMEDIES AS OF MARCH 31, 2009 HAVE BEEN INSUFFICIENT IN CORRECTING THE FAILURES. THE FAILURE MILEAGE WAS 45,000 AND CURRENT MILEAGE WAS 51,000. NHTSA ID Number: 10263716.

311. The defects did not get fixed and the reports did not stop when Old GM ceased to exist. To the contrary, New GM continued receiving the same reports involving the same defects. For example, on August 11, 2010, New GM became aware of the following complaint filed with NHTSA involving a 2005 Cadillac CTS, the incident occurred on May 15, 2010, in which it was reported:

TL\*THE CONTACT OWNS A 2005 CADILLAC CTS. WHILE DRIVING 40 MPH, ALL OF THE SAFETY LIGHTS ON THE DASHBOARD ILLUMINATED WHEN THE VEHICLE STALLED. THE VEHICLE WAS TURNED BACK ON IT BEGAN TO FUNCTION NORMALLY. THE FAILURE OCCURRED TWICE. THE DEALER WAS CONTACTED AND THEY STATED THAT SHE NEEDED TO BRING IT IN TO HAVE IT DIAGNOSED AGAIN. THE DEALER PREVIOUSLY STATED THAT THEY WERE UNABLE TO DUPLICATE THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS 4100 AND THE CURRENT MILEAGE WAS 58,000. NHTSA ID Number: 10348743.

312. On March 20, 2013, New GM became aware of a complaint filed with NHTSA regarding a 2003 Chevrolet Impala incident that occurred on March 1, 2013, in which it was reported that:

CAR WILL SHUT DOWN WHILE DRIVING AND SECURITY LIGHT WILL FLASH. HAS DONE IT NUMEROUS TIMES, WORRIED IT WILL CAUSE AN ACCIDENT. THERE ARE MULTIPLE CASES OF THIS PROBLEM ON INTERNET. \*TR  
NHTSA ID Number: 10503840.

313. On February 26, 2014, New GM became aware of a complaint filed with NHTSA involving a 2004 Pontiac Grand Prix, concerning an incident that occurred on May 10, 2005, in which it was reported that:

TL – THE CONTACT OWNS A 2004 PONTIAC GRAND PRIX. THE CONTACT STATED THAT WHILE DRIVING AT VARIOUS SPEEDS AND GOING OVER A BUMP, THE VEHICLE WOULD STALL WITHOUT WARNING. THE VEHICLE WAS TAKEN TO THE DEALER. THE TECHNICIAN WAS UNABLE TO DIAGNOSE THE FAILURE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE VEHICLE WAS NOT REPAIRED. THE VIN WAS NOT AVAILABLE. THE FAILURE MILEAGE WAS 12,000 AND THE CURRENT MILEAGE WAS 82,000. KMJ  
NHTSA ID Number: 10566118.

314. On March 13, 2014, New GM became aware of a complaint filed with NHTSA involving a 2006 Pontiac Grand Prix and an incident that occurred on February 27, 2014, in which a driver reported:

I WAS DRIVING HOME FROM WORK AND WHEN I TURNED A CORNER, THE ENGINE CUT OUT. I BELIEVE IT WAS FROM THE KEY FLIPPING TO ACCESSORY. I'VE HEARD THAT THIS HAS CAUSED CRASHES THAT HAVE KILLED PEOPLE AND WOULD LIKE THIS FIXED. THIS IS THE FIRST TIME IT HAPPENED, BUT NOW I'M WORRIED EVERY TIME I DRIVE IT THAT THIS IS GOING TO HAPPEN AND I DON'T FEEL SAFE LETTING MY WIFE DRIVE THE CAR NOW. WHY ARE THE 2006 PONTIAC GRAND PRIX VEHICLES NOT PART OF THE RECALL FROM GM? \*TR  
NHTSA ID Number: 10569215.

315. On April 1, 2014, New GM became aware of a complaint filed with NHTSA involving a 2003 Cadillac CTS and an incident that occurred on January 1, 2008, in which the following was reported:

TL\* THE CONTACT OWNS A 2003 CADILLAC CTS. THE CONTACT STATED THAT THE VEHICLE EXHIBITED A RECURRING STALLING FAILURE. THE VEHICLE WAS TAKEN TO THE DEALER NUMEROUS TIMES WHERE SEVERAL UNKNOWN REPAIRS WERE PERFORMED ON THE VEHICLE BUT TO NO AVAIL. THE FAILURE MILEAGE WAS 59,730 AND THE CURRENT MILEAGE WAS 79,000. UPDATED 06/30/14 MA UPDATED 07/3/2014 \*JS  
NHTSA ID Number: 10576468.

316. On April 1, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Monte Carlo and an incident that occurred on September 16, 2013, in which the following was reported:

WHILE DRIVING AT ANY SPEED THE IGNITION SYSTEM WOULD RESET LIGHTING UP THE DISPLAY CLUSTER JUST AS IF THE KEY WAS TURNED OFF AND BACK ON. THIS WOULD CAUSE A MOMENTARY SHUTDOWN OF THE ENGINE. THE PROBLEM SEEMED TO BE MORE PREVAILANT WHILE TURNING THE WHEEL FOR A CURVE OR TURN OFF THE ROAD. THE TURN SIGNAL UNIT WAS FIRST SUSPECT SINCE IT SEEMED TO CORRELATE WITH APPLYING THE TURN SIGNAL AND TURNING THE WHEEL. THE CONDITION WORSENER TO THE IGNITION SHUTDOWN FOR LONGER PERIODS SHUTTING DOWN THE ENGINE CAUSING STEERING AND BRAKING TO BE SHUT DOWN AND FINALLY DIFFICULTY STARTING THE CAR. AFTER 2 VISITS TO A GM SERVICE CENTER THE PROBLEM WAS FOUND TO BE A FAULTY IGNITION THAT WAS REPLACED AND THE PROBLEM HAS NOT RECURRED. NHTSA ID Number: 10576201.

317. On April 8, 2014, New GM became aware of a complaint with NHTSA regarding a 2003 Chevrolet Impala and an incident that occurred on August 14, 2011 and the following was reported:

I HAVE HAD INCIDENTS SEVERAL TIMES OVER THE YEARS WHERE I WOULD HIT A BUMP IN THE ROAD AND

MY CAR WOULD COMPLETELY SHUT OFF. I HAVE ALSO HAD SEVERAL INCIDENTS WHERE I WAS TRAVELING DOWN THE EXPRESSWAY AND MY CAR TURNED OFF ON ME. I HAD TO SHIFT MY CAR INTO NEUTRAL AND RESTART IT TO CONTINUE GOING. I WAS FORTUNATE NOT TO HAVE AN ACCIDENT. NHTSA ID Number: 10578158.

318. New GM has publicly admitted that it was aware of at least seven crashes, eight injuries, and three deaths linked to this serious safety defect before it finally decided to recall these dangerously defective vehicles. However, in reality, the number of reports and complaints is much higher.

319. Notwithstanding years of notice and knowledge of the defect, New GM delayed and did not implement a recall involving this defect until July of 2014.

320. New GM's supposed recall fix does not address the defect or the safety risks that it poses, including insufficient amount of torque to resist rotation from the "run" to "accessory" position under reasonably foreseeable conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces.

321. In addition, New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the "run" position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the driver's knees may inadvertently cause the ignition to move out of the "run" position.

**7. Yet another ignition switch recall is made on September 4, 2014.**

322. On September 4, 2014, New GM recalled 46,873 MY 2011-2013 Chevrolet Caprice and 2008-2009 Pontiac G8 vehicles for yet another ignition switch defect (NHTSA Recall Number 14-V-510).

323. New GM explains that, in these Defective Ignition Switch Vehicles, “there is a risk, under certain conditions, that some drivers may bump the ignition key with their knee and unintentionally move the key away from the ‘run’ position.” New GM admits that, when this happens, “engine power, and power braking will be affected, increasing the risk of a crash.” Moreover, “[t]he timing of the key movement out of the ‘run’ position, relative to the activation of the sending algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes.”<sup>58</sup>

324. This recall is directly related to the other ignition switch recalls and involves the same safety risks and dangers. The defect poses a serious and dangerous safety risk because the key in the ignition switch can rotate and consequently cause the ignition to switch from the “on” or “run” position to the “off” or “accessory” position, which causes the loss of engine power, stalling, loss of speed control, loss of power steering, loss of power braking, and increases the risk of a crash. Moreover, as with the ignition switch torque defect, if a crash occurs, the airbags may not deploy.

325. Consistent with its pattern in the June and July recalls, New GM’s proposed remedy is to provide these Defective Ignition Switch Vehicle owners with a “revised key blade and housing assembly, in which the blade has been indexed by 90 degrees.”<sup>59</sup> Until the remedy is provided, New GM asserts, “it is very important that drivers adjust their seat and steering

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<sup>58</sup> New GM’s Part 573 Safety Recall Report, Sept. 4, 2014.



column to allow clearance between their knee and the ignition key.”<sup>60</sup> New GM sent its recall notice to NHTSA one week later, on September 4, 2014.

326. New GM’s supposed fix does not address the defect or the safety risks that the defect poses, including the apparent insufficient torque to resist rotation from the “run” to the “accessory” position under reasonably foreseeable driving conditions, and puts the burden on drivers to alter their behavior and carry their ignition keys separately from their other keys, and even from their remote fob. The real answer must include the replacement of all the switches with ones that have sufficient torque to resist foreseeable rotational forces.

327. New GM is not addressing the other design issues that create safety risks in connection with this defect. New GM is not altering the algorithm that prevents the airbags from deploying when the ignition leaves the “run” position, even when the vehicle is moving. And New GM is not altering the placement of the ignition in an area where the driver’s knee may inadvertently cause the ignition to move out of the “run” position.

328. The September 4th recall is, like the earlier defective ignition switch recalls, too little and too late.

329. Recently discovered evidence reveals that, on December 18, 2013, New GM sent an “urgent” order to its parts supplier Delphi for 500,000 ignition switches (part number 10392423). The order was highly unusual because Delphi had shipped only 11,445 ignition switches to GM the prior year, and GM was asking Delphi to start shipments immediately. By sending this emergency order, New GM implicitly admitted that its ignition switches on the relevant vehicles being driven by Arizona consumers and other consumers throughout the country were defective and constituted a safety-related concern that these vehicles were

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<sup>59</sup> New GM’s Part 573 Safety Recall Report, Sept. 4, 2014.

<sup>60</sup> *Id.*

dangerously unsafe and unreliable. New GM, however, intentionally concealed from Arizona consumers and NHTSA both its knowledge of this dangerous defect and its emergency order for half-a-million replacement parts, deliberately not alerting NHTSA for another two months, despite New GM's legal obligation to do so within five days of determining that a defect is safety-related (*see* 49 C.F.R. § 573.6).

**F. Other Safety and Important Defects Affecting Numerous GM-branded Vehicles.**

330. As if the many recalls for ignition switch defects was not enough to taint New GM's brand and put the lie to New GM's repeated statements that it values safety and reliability above all else, New GM has been forced to issue scores of other recalls this year involving myriad serious safety defects in a wide range of GM-branded vehicles—many of which defects were known to New GM for years.

331. Moreover, New GM's ongoing and systemic devaluation of safety issues has given rise to a host of new Defective Ignition Switch Vehicles created by New GM.

332. Many (but by no means all) of the serious defects revealed in New GM's never-ending series of recalls are discussed below.

**1. Other safety defects affecting the ignition in GM-branded vehicles.**

**a. Ignition lock cylinder defect in vehicles also affected by the ignition switch defect that gave rise to the first recall of 2.1 million defective ignition switch vehicles.**

333. On April 9, 2014, New GM recalled 2,191,014 GM-branded vehicles with faulty ignition lock cylinders.<sup>61</sup> Though the vehicles are the same as those affected by the ignition switch torque defect,<sup>62</sup> the lock cylinder defect is distinct.

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<sup>61</sup> New GM Letter to NHTSA dated April 9, 2014.

<sup>62</sup> Namely, MY 2005-2010 Chevrolet Cobalts, 2006-2011 Chevrolet HHRs, 2007-2010 Pontiac G5s, 2003-2007 Saturn Ions, and 2007-2010 Saturn Skys. *See id.*

334. In these vehicles, faulty ignition lock cylinders can allow removal of the ignition key while the engine 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. That could cause a crash and injury to the vehicle’s occupants or pedestrians. Some of the vehicles with faulty ignition lock cylinders may fail to conform to Federal Motor Vehicle Safety Standard number 114, “*Theft Prevention and Rollaway Prevention*.”<sup>63</sup>

335. The available evidence is that New GM was aware of this “key pullout defect” from the date of its inception on July 11, 2009.

**b. Ignition lock cylinder defect affecting over 200,000 additional GM-branded vehicles.**

336. On August 7, 2014, New GM recalled 202,155 MY 2002-2004 Saturn Vue vehicles.<sup>64</sup> In the affected vehicles, the ignition key can be removed when the vehicle is not in the “off” position.<sup>65</sup> If this happens, the vehicle can roll away, increasing the risk for a crash and occupant or pedestrian injuries.<sup>66</sup>

337. Following New GM’s April 9, 2014 recall announcement regarding ignition switch defects, New GM reviewed field and warranty data for potential instances of ignition cylinders that permit the operator to remove the ignition key when the key is not in the “off” position in other vehicles outside of those already recalled.<sup>67</sup> New GM identified 152 reports of

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<sup>63</sup> New GM Notice to NHTSA dated April 9, 2014, at 1.

<sup>64</sup> See August 7, 2014 Letter from New GM to NHTSA.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

vehicle roll away and/or ignition keys being removed when the key is not in the “off” position in the 2002-2004 MY Saturn Vue vehicles.<sup>68</sup>

**2. Defects affecting the occupant safety restraint system in GM-branded vehicles.**

**a. Safety defects of the airbag systems of GM-branded vehicles.**

**(1) Wiring harness defect.**

338. On March 17, 2014, New GM recalled nearly 1.2 million vehicles, including the model year 2008-2013 Buick Enclave, 2009-2013 Chevrolet Traverse, 2008-2013 GMC Acadia, and 2008-2010 Saturn Outlook, for a dangerous defect involving airbags and seatbelt pretensioners.

339. The affected vehicles were sold with defective wiring harnesses. Increased resistance in the wiring harnesses of driver and passenger seat-mounted, side-impact airbag in the affected vehicles may cause the side impact airbags, front center airbags, and seat belt pretensioners to not deploy in a crash. The vehicles’ failure to deploy airbags and pretensioners in a crash increases the risk of injury and death to the drivers and front-seat passengers.

340. Once again, the available evidence shows that New GM knew of the dangerous airbag defect long before it took anything approaching the requisite remedial action.

**(2) Driver-side airbag shorting-bar defect.**

341. On June 5, 2014, New GM issued a safety recall of 38,636 MY 2012 Chevrolet Cruze, 2012 Chevrolet Camaro, 2012 Chevrolet Sonic, and 2012 Buick Verano vehicles with a driver’s airbag shorting bar defect.

342. In the affected vehicles, the driver side frontal airbag has a shorting bar which may intermittently contact the airbag terminals. If the bar and terminals are contacting each other at the time of a crash, the airbag will not deploy, increasing the driver’s risk of injury. New

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<sup>68</sup> *Id.*

GM admits awareness of one crash with an injury where the relevant diagnostic trouble code was found at the time the vehicle was repaired. New GM is aware of other crashes involving these vehicles where airbags did not deploy but claims not to know if they were related to this defect.

343. New GM knew about the driver's airbag shorting bar defect in 2012. In fact, New GM conducted two previous recalls in connection with the shorting bar defect condition involving 7,116 vehicles—one on October 31, 2012, and one on January 24, 2013.<sup>69</sup> Yet it would take New GM nearly two years to finally order a broader recall.

**(3) Driver-side airbag inflator defect.**

344. On June 25, 2014, New GM recalled 29,019 MY 2013-2014 Chevrolet Cruze vehicles with a driver-side airbag inflator defect.

345. In the affected vehicles, the driver's front airbag inflator may have been manufactured with an incorrect part. In the event of a crash necessitating deployment of the driver-side airbag, the airbag's inflator may rupture and the airbag may not inflate. The rupture could cause metal fragments to strike and injure the vehicle's occupants. Additionally, if the airbag does not inflate, the driver will be at increased risk of injury.<sup>70</sup>

**(4) Roof-rail airbag defect.**

346. On June 18, 2014, New GM recalled 16,932 MY 2011 Cadillac CTS vehicles with a roof-rail airbag defect.

347. In the affected vehicles, vibrations from the drive shaft may cause the vehicle's roll over sensor to command the roof rail airbags to deploy. If the roof rail airbags deploy unexpectedly, there is an increased risk of crash and injury to the occupants.<sup>71</sup>

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<sup>69</sup> See New GM's Letters to NHTSA dated October 31, 2012 and January 24, 2013, respectively.

<sup>70</sup> See New GM's Letter to NHTSA dated June 25, 2014.

<sup>71</sup> See June 18, 2014 New GM Letter to NHTSA.

348. Yet again, the available evidence shows that New GM was aware of this defect for years before finally taking steps to remedy it in June of 2014.

**(5) Passenger-side airbag defect.**

349. On May 16, 2014, GM recalled 1,953 MY 2015 Cadillac Escalade and Escalade ESV vehicles with a passenger-side airbag defect.

350. The affected vehicles do not conform to Federal Motor Vehicle Safety Standard number 208, "Occupant Crash Protection." In these vehicles, the airbag module is secured to a chute adhered to the backside of the instrument panel with an insufficiently heated infrared weld. As a result, the front passenger-side airbag will only partially deploy in the event of crash, and this will increase the risk of occupant injury.<sup>72</sup>

**(6) Sport seat side-impact airbag defect.**

351. On June 18, 2014, New GM issued a safety recall for 712 MY 2014 Chevrolet Corvette vehicles with a sport seat side-impact airbag defect.

352. The affected vehicles do not meet a Technical Working Group Side Airbag Injury Assessment Reference Value specifications for protecting unbelted, out-of-position young children from injury. In a crash necessitating side impact airbag deployment, an unbelted, out-of-position three-year-old child may be at an increased risk of neck injury.

**(7) Passenger-side airbag inflator defect.**

353. On June 5, 2014, New GM recalled 61 MY 2013 Chevrolet Spark and 2013 Buick Encore vehicles with a passenger side airbag inflator defect.

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<sup>72</sup> See May 16, 2014 Letter from New GM to NHTSA.

354. In the affected vehicles, because of an improper weld, the front passenger airbag end cap could separate from the airbag inflator. This can prevent the airbag from deploying properly, and creates an increased risk of injury to the front passenger.<sup>73</sup>

**(8) Front passenger airbag defect.**

355. On March 17, 2014, New GM issued a noncompliance recall of 303,013 MY 2009-2014 GMC Savana vehicles with a passenger-side instrument panel defect.<sup>74</sup>

356. In the affected vehicles, in certain frontal impact collisions below the airbag deployment threshold, the panel covering the airbag may not sufficiently absorb the impact of the collision. These vehicles therefore do not meet the requirements of Federal Motor Vehicle Safety Standard number 201, "Occupant Protection in Interior Impact."<sup>75</sup>

357. The defect apparently arose in early 2009, when the passenger-side airbag housing was changed from steel to plastic.<sup>76</sup> Inexplicably, New GM did not act to remedy this defect until March of 2014.

**b. Safety defects of the seat belt systems in GM-branded vehicles.**

**(1) Seat belt connector cable defect.**

358. On May 20, 2014, New GM issued a safety recall for nearly 1.4 million model year 2009-2014 Buick Enclave, 2009-2014 Chevrolet Traverse, 2009-2014 GMC Acadia, and 2009-2010 Saturn Outlook vehicles with a dangerous safety belt defect.

359. In the affected vehicles, "[t]he flexible steel cable that connects the safety belt to the vehicle at the outside of the front outside of the front outboard seating positions can fatigue

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<sup>73</sup> See June 5, 2014 Letter from New GM to NHTSA.

<sup>74</sup> See March 31, 2014 Letter from New GM to NHTSA.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

and separate over time as a result of occupant movement into the seat. In a crash, a separated cable could increase the risk of injury to the occupant.”<sup>77</sup>

360. New GM waited more than two years after learning about this defect before disclosing it or remedying it.<sup>78</sup>

**(2) Seat belt retractor defect.**

361. On June 11, 2014, New GM recalled 28,789 MY 2004-2011 Saab 9-3 Convertible vehicles with a seat belt retractor defect.

362. In the affected vehicles, the driver’s side front seat belt retractor may break, causing the seat belt webbing spooled out by the user not to retract.<sup>79</sup> In the event of a crash, a seat belt that has not retracted may not properly restrain the seat occupant, increasing the risk of injury to the driver.<sup>80</sup>

363. By September of 2009 New GM was aware of an issue with seat belt retractors in MY 2004 Saab 9-3 vehicles, but waited until June of 2014 before taking steps to fully resolve the issue in all affected vehicles.

**(3) Frontal lap-belt pretensioner defect.**

364. On August 7, 2014, New GM recalled 48,059 MY 2013 Cadillac ATS and 2013 Buick Encore vehicles with a defect in the front lap-belt pretensioners.<sup>81</sup>

365. In the affected vehicles, the driver and passenger lap-belt pretensioner cables may not lock in a retracted position; that allows the seat belts to extend when pulled upon.<sup>82</sup> If the

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<sup>77</sup> See New GM Notice to NHTSA dated May 19, 2014, at 1.

<sup>78</sup> See New GM Notice to NHTSA dated May 30, 2014, at 1-3.

<sup>79</sup> See New GM’s June 11, 2013 Letter to NHTSA.

<sup>80</sup> See *id.*

<sup>81</sup> See August 7, 2014 Letter from New GM to NHTSA.

<sup>82</sup> *Id.*



seat belts do not remain locked in the retracted position, the seat occupant may not be adequately restrained in a crash, increasing the risk of injury.<sup>83</sup>

**3. Safety defects affecting seats in GM-branded vehicles.**

366. On July 22, 2014, New GM issued a safety recall of 414,333 MY 2010-2012 Chevrolet Equinox, MY 2011-2012 Chevrolet Camaro, MY 2010-2012 Cadillac SRX, MY 2010-2012 GMC Terrain, MY 2011-2012 Buick Regal, and MY 2011-2012 Buick LaCrosse vehicles with a power height adjustable seats defect.<sup>84</sup>

367. In the affected vehicles, the bolt that secures the height adjuster in the driver and front passenger seats may become loose or fall out. If the bolt falls out, the seat will drop suddenly to the lowest vertical position. The sudden drop can affect the driver's ability to safely operate the vehicle, and can increase the risk of injury to the driver and the front-seat passenger if there is an accident. New GM admits to knowledge of at least one crash caused by this defect.<sup>85</sup>

368. New GM was aware of this defect by July 10, 2013 when the crash occurred, and by July 22, 2013, New GM was aware that the crash was caused when the bolt on the height adjuster fell out.<sup>86</sup>

369. Yet New GM waited another year before issuing a safety recall.

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<sup>83</sup> *Id.*

<sup>84</sup> *See* July 22, 2014 Letter from New GM to NHTSA.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

**4. Safety defects affecting the brakes in GM-branded vehicles.**

**a. Brake light defect.**

370. On May 14, 2014, New GM issued a safety recall of approximately 2.4 million model year 2004-2012 Chevrolet Malibu, 2004-2007 Malibu Maxx, 2005-2010 Pontiac G6, and 2007-2010 Saturn Aura vehicles with a dangerous brake light defect.

371. In the affected vehicles, the brake lamps may fail to illuminate when the brakes are applied or illuminate when the brakes are not engaged; the same defect can disable cruise control, traction control, electronic stability control, and panic brake assist operation, thereby increasing the risk of collisions and injuries.<sup>87</sup>

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

**b. Brake booster pump defect.**

373. On March 17, 2014, New GM issued a safety recall of 63,903 MY 2013-2014 Cadillac XTS vehicles with a brake booster pump defect.

374. In the affected vehicles, a cavity plug on the brake boost pump connector may dislodge and allow corrosion of the brake booster pump relay connector. This can have an adverse impact on the vehicle's brakes and increase the risk of collision. This same defect can also cause a fire in the vehicle resulting from the electrical shore in the relay connector.

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<sup>87</sup> See New GM Notification Campaign No. 14V-252 dated May 28, 2014, at 1.

**c. Hydraulic boost assist defect.**

375. On May 13, 2014, New GM recalled 140,067 model year 2014 Chevrolet Malibu vehicles with a hydraulic brake boost assist defect.<sup>88</sup>

376. In the affected vehicles, the “hydraulic boost assist” may be disabled; when that happens, slowing or stopping the vehicle requires harder brake pedal force, and the vehicle will travel a greater distance before stopping. Therefore, these vehicles do not comply with Federal Motor Vehicle Safety Standard number 135, “Light Vehicle Brake Systems,” and are at increased risk of collision.<sup>89</sup>

**d. Brake rotor defect.**

377. On May 7, 2014, New GM recalled 8,208 MY 2014 Chevrolet Malibu and Buick LaCrosse vehicles with a brake rotor defect.

378. In the affected vehicles, New GM may have accidentally installed rear brake rotors on the front brakes. The rear rotors are thinner than the front rotors, and the use of rear rotors in the front of the vehicle may result in a front brake pad detaching from the caliper. The detachment of a brake pad from the caliper can cause a sudden reduction in braking which lengthens the distance required to stop the vehicle and increases the risk of a crash.

**e. Reduced brake performance defect.**

379. On July 28, 2014, New GM recalled 1,968 MY 2009-2010 Chevrolet Aveo and 2009 Pontiac G3 vehicles.<sup>90</sup> Affected vehicles may contain brake fluid which does not protect against corrosion of the valves inside the anti-lock brake system module, affecting the closing

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<sup>88</sup> See May 13, 2014 Letter from New GM to NHTSA.

<sup>89</sup> *Id.*

<sup>90</sup> See July 28, 2014 Letter from New GM to NHTSA.

motion of the valves.<sup>91</sup> If the anti-lock brake system valve corrodes it may result in longer brake pedal travel or reduced performance, increasing the risk of a vehicle crash.<sup>92</sup>

380. New GM was aware of this defect as far back as August 2012, but waited two years before issuing a recall.<sup>93</sup>

**f. Parking brake defect.**

381. On September 20, 2014, GM recalled more than 221,000 MY 2014-15 Chevrolet Impala and 2013-15 model Cadillac XTS vehicles because of a parking-brake defect.

382. In the affected vehicles, the brake pads can stay partly engaged, which can lead to “excessive brake heat that may result in a fire,” according to documents posted on the NHTSA website.

**5. Safety defects affecting the steering in GM-branded vehicles.**

**a. Sudden power-steering failure defect.**

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

384. The affected vehicles are MY 2004-2006 and 2008-2009 Chevrolet Malibu, 2004-2006 Chevrolet Malibu Maxx, 2009-2010 Chevrolet HHR, 2010 Chevrolet Cobalt, 2005-2006 and 2008-2009 Pontiac G6, 2004-2007 Saturn Ion, and 2008-2009 Saturn Aura vehicles.

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

385. As with the ignition switch defects and many of the other defects, New GM was aware of the power steering defect long before it took anything approaching full remedial action.

**b. Power steering hose clamp defect.**

386. On June 18, 2014, New GM issued a safety recall of 57,192 MY 2015 Chevrolet Silverado 2500/3500 HD and 2015 GMC Sierra 2500/3500 HD vehicles with a power steering hose clamp defect.

387. In the affected vehicles, the power steering hose clamp may disconnect from the power steering pump or gear, causing a loss of power steering fluid. A loss of power steering fluid can result in a loss of power steering assist and power brake assist, increasing the risk of a crash.

**c. Power steering control module defect.**

388. On July 22, 2014, New GM recalled 57,242 MY 2014 Chevrolet Impala vehicles with a Power Steering Control Module defect.

389. Drivers of the affected vehicles may experience reduced or no power steering assist at start-up or while driving due to a poor electrical ground connection to the Power Steering Control Module. If power steering is lost, the vehicle will revert to manual steering mode. Manual steering requires greater driver effort and increases the risk of accident. New GM acknowledges one crash related to this condition.

**d. Lower control arm ball joint defect.**

390. On July 18, 2014, New GM issued a safety recall of 1,919 MY 2014-2015 Chevrolet Spark vehicles with a lower control arm ball joint defect.

391. The affected vehicles were assembled with a lower control arm bolt not fastened to specification. This can cause the separation of the lower control arm from the steering

knuckle while the vehicle is being driven, and result in the loss of steering control. The loss of steering control in turn creates a risk of accident.<sup>94</sup>

**e. Steering tie-rod defect.**

392. On May 13, 2014, New GM issued a safety recall of 477 MY 2014 Chevrolet Silverado, 2014 GMC Sierra, and 2015 Chevrolet Tahoe vehicles with a steering tie-rod defect.

393. In the affected vehicles, the tie-rod threaded attachment may not be properly tightened to the steering gear rack. An improperly tightened tie-rod attachment may allow the tie-rod to separate from the steering rack and greatly increases the risk of a vehicle crash.<sup>95</sup>

**f. Joint fastener torque defect.**

394. On June 30, 2014, New GM issued a safety recall of 106 MY 2014 Chevrolet Camaro, 2014 Chevrolet Impala, 2014 Buick Regal, and 2014 Cadillac XTS vehicles with a joint fastener torque defect.

395. In the affected vehicles, joint fasteners were not properly torqued to specification at the assembly plant. As a result of improper torque, the fasteners may “back out” and cause a “loss of steering,” increasing the risk of a crash.<sup>96</sup>

**6. Safety defects affecting the powertrain in GM-branded vehicles.**

**a. Transmission shift cable defect affecting 1.1 million Chevrolet and Pontiac vehicles.**

396. On May 19, 2014, New GM issued a safety recall for more than 1.1 million MY 2007-2008 Chevrolet Saturn, 2004-2008 Chevrolet Malibu, 2004-2007 Chevrolet Malibu Maxx, and 2005-2008 Pontiac G6 vehicles with dangerously defective transmission shift cables.

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<sup>94</sup> See July 18, 2014 Letter from New GM to NHTSA.

<sup>95</sup> See May 27, 2014 Letter from New GM to NHTSA.

<sup>96</sup> See July 2, 2014 Letter from New GM to NHTSA.

397. In the affected vehicles, the shift cable may fracture at any time, preventing the driver from switching gears or placing the transmission in the “park” position. According to New GM, “[i]f the driver cannot place the vehicle in park, and exits the vehicle without applying the park brake, the vehicle could roll away and a crash could occur without prior warning.”<sup>97</sup>

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

**b. Transmission shift cable defect affecting Cadillac vehicles.**

399. On June 18, 2014, New GM issued a safety recall of 90,750 MY 2013-2014 Cadillac ATS and 2014 Cadillac CTS vehicles with a transmission shift cable defect.

400. In the affected vehicles, the transmission shift cable may detach from either the bracket on the transmission shifter or the bracket on the transmission. If the cable detaches while the vehicle is being driven, the transmission gear selection may not match the indicated gear and the vehicle may move in an unintended or unexpected direction, increasing the risk of a crash. Furthermore, when the driver goes to stop and park the vehicle, the transmission may not be in “PARK” even though the driver has selected the “PARK” position. If the vehicle is not in the “PARK” position, there is a risk the vehicle will roll away as the driver and other occupants exit the vehicle or anytime thereafter. A vehicle rollaway causes a risk of injury to exiting occupants and bystanders.

**c. Transmission oil cooler line defect.**

401. On March 31, 2014, New GM issued a safety recall of 489,936 MY 2014 Chevy Silverado, 2014 GMC Sierra, 2014 GMC Yukon, 2014 GMC Yukon XL, 2015 Chevy Tahoe, and 2015 Chevy Suburban vehicles with a transmission oil cooler line defect.

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<sup>97</sup> See New GM letter to NHTSA Re: NHTSA Campaign No. 14V-224 dated May 22, 2014, at 1.

402. In the affected vehicles, the transmission oil cooler lines may not be securely seated in the fitting. This can cause transmission oil to leak from the fitting, where it can contact a hot surface and cause a vehicle fire.

**d. Transfer case control module software defect.**

403. On June 26, 2014, New GM issued a safety recall of 392,459 MY 2014-2015 Chevrolet Silverado, 2015 Chevrolet Tahoe, 2015 Chevrolet Suburban, 2014-2015 GMC Sierra, 2015 GMC Yukon, and 2015 GMC Yukon XL vehicles with a transfer case control module software defect.

404. In the affected vehicles, the transfer case may electronically switch to neutral without input from the driver. If the transfer case switches to neutral while the vehicle is parked and the parking brake is not in use, the vehicle may roll away and cause injury to bystanders. If the transfer case switches to neutral while the vehicle is being driven, the vehicle will lose drive power, increasing the risk of a crash.

**e. Acceleration-lag defect.**

405. On April 24, 2014, New GM issued a safety recall of 50,571 MY 2013 Cadillac SRX vehicles with an acceleration-lag defect.

406. In the affected vehicles, there may be a three to four-second lag in acceleration due to faulty transmission control module programming. That can increase the risk of a crash.

**f. Transmission turbine shaft fracture defect.**

407. On June 11, 2014, New GM recalled 21,567 MY 2012 Chevrolet Sonic vehicles equipped with a 6 Speed Automatic Transmission and a 1.8L Four Cylinder Engine suffering from a turbine shaft fracture defect.

408. In the affected vehicles, the transmission turbine shaft may fracture. If the transmission turbine shaft fracture occurs during vehicle operation in first or second gear, the



vehicle will not upshift to the third through sixth gears, limiting the vehicle's speed. If the fracture occurs during operation in third through sixth gear, the vehicle will coast until it slows enough to downshift to first or second gear, increasing the risk of a crash.<sup>98</sup>

**g. Automatic transmission shift cable adjuster.**

409. On February 20, 2014, New GM issued a noncompliance recall of 352 MY 2014 Buick Enclave, Buick LaCrosse, Buick Regal, Buick Verano, Chevrolet Cruze, Chevrolet Impala, Chevrolet Malibu, Chevrolet Traverse, and GMC Acadia vehicles with defective automatic transmission shift cable adjusters.<sup>99</sup>

410. In the affected vehicles, one end of the transmission shift cable adjuster body has four legs that snap over a ball stud on the transmission shift lever. One or more of these legs may have been fractured during installation. If any of the legs are fractured, the transmission shift cable adjuster may disengage from the transmission shift lever. When that happens, the driver may be unable to shift gears, and the indicated gear position may not be accurate. If the adjuster is disengaged when the driver attempts to stop and park the vehicle, the driver may be able to shift the lever to the "PARK" position but the vehicle transmission may not be in the "PARK" gear position. That creates the risk that the vehicle will roll away as the driver and other occupants exit the vehicle, or anytime thereafter.<sup>100</sup>

**7. Other serious defects affecting GM-branded vehicles.**

**a. Power management mode software defect.**

411. On January 13, 2014, New GM issued a safety recall of 324,970 MY 2014 Chevy Silverado and GMC Sierra Vehicles with a Power Management Mode software defect.<sup>101</sup>

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<sup>98</sup> See June 11, 2014 Letter from New GM to NHTSA.

<sup>99</sup> See February 20, 2014 Letter from New GM to NHTSA.

<sup>100</sup> *Id.*

<sup>101</sup> See New GM Letter to NHTSA dated January 23, 2014.

412. In the affected vehicles, the exhaust components can overheat, melt nearby plastic parts, and cause an engine fire. GM acknowledges that the Power Management Mode software defect is responsible for at least six fires in the affected vehicles.<sup>102</sup>

**b. Light control module defect.**

413. On May 16, 2014, New GM issued a safety recall of 217,578 model year 2004-2008 Chevrolet Aveo vehicles with a light control module defect.<sup>103</sup>

414. In the vehicles, heat generated within the daytime running lamp module in the center console in the instrument panel may melt the module and cause a vehicle fire.<sup>104</sup> New GM first became aware of this issue when two Suzuki Forenza vehicles suffered interior fires in March of 2012. An investigation conducted by GM North America found evidence that the fires emanated from the connection of the wiring at the module.<sup>105</sup>

415. New GM took no remedial action at this time, but waited until May of 2014 to issue a safety recall.

**c. Electrical short in driver's door module defect.**

416. On June 30, 2014, New GM issued a safety recall of 181,984 model year 2005-2007 Chevrolet Trailblazer, 2006 Chevrolet Trailblazer EXT, 2005-2007 Buick Rainier, 2005-2007 GMC Envoy, 2006 GMC Envoy XL, 2005-2007 Isuzu Ascender, and 2005-2007 Saab 9-7x vehicles with a defect that can cause an electrical short in the driver's door module.<sup>106</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> *See* May 30, 2014 Letter from New GM to NHTSA.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *See* July 2, 2014 Letter from New GM to NHTSA.

417. In the affected vehicles, an electrical short in the driver's door module may occur that can disable the power door lock and window switches and overheat the module. The overheated module can then cause a fire in the affected vehicles.

**d. Front axle shaft defect.**

418. On March 28, 2014, New GM issued a safety recall of 174,046 model year 2013-2014 Chevrolet Cruze vehicles with dangerous front axle shaft defect.<sup>107</sup>

419. In the affected vehicles, the right front axle shaft may fracture and separate. If this happens while the vehicle is being driven, the vehicle will lose power and coast to a halt. If a vehicle with a fractured shaft is parked and the parking brake is not applied, the vehicle may move unexpectedly and cause accident and injury.<sup>108</sup>

420. New GM admits to knowledge of "several dozen" half-shaft fractures through its warranty data.<sup>109</sup> These incidents should have been prevented, since New GM was aware of the problem by September of 2013.

**e. Seat hook weld defect.**

421. On July 22, 2014, New GM recalled 124,007 model year 2014 Chevrolet SS, 2014 Chevrolet Caprice, 2014 Chevrolet Caprice PPC, 2014 Chevrolet Silverado 1500, 2015 Chevrolet Silverado 2500/3500 HD, 2013-2014 Buick Encore, 2013-2014 Cadillac ATS, 2014 Cadillac CTS, 2014 Cadillac ELR, 2014 GMC Sierra 1500, and 2015 GMC Sierra 2500/3500 HD vehicles with a seat hook weld defect.<sup>110</sup>

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<sup>107</sup> See March 28, 2014 Letter from New GM to NHTSA.

<sup>108</sup> *Id.*

<sup>109</sup> "GM recalls 172,000 Chevrolet Cruze Sedans over front axle half-shaft," *Bloomberg*, March 31, 2014.

<sup>110</sup> See July 22, 2014 Letter from New GM to NHTSA.

422. In the affected vehicles, as the result of an incomplete weld on the seat hook bracket assembly, in a “high load” situation, “the hook may separate from the seat track, increasing the risk of occupant injury in a crash.”<sup>111</sup>

**f. Front turn signal bulb defect.**

423. On July 21, 2014, New GM recalled 120,426 model year 2013 Chevrolet Malibu and 2011-2013 Buick Regal vehicles with a front turn signal bulb defect.

424. In the affected vehicles, the driver will see a rapidly flashing turn signal arrow in the instrument cluster if both bulbs in one turn signal are burned out; but if only one bulb on either side burns out, there will be no signal to the driver. The failure to properly warn the driver that a turn signal is inoperable increases the risk of accident.

425. New GM first learned of the defect on September 6, 2012, but did not issue a recall until July of 2014.

**g. Low-beam headlight defect.**

426. On May 14, 2014, New GM issued a safety recall of 103,158 MY 2005-2007 Chevrolet Corvette vehicles with a low-beam headlight defect.

427. In the affected vehicles, the underhood bussed electrical center housing can expand and cause the headlamp low beam relay control circuit wire to bend. When the wire is repeatedly bent, it can fracture and cause a loss of low-beam headlamp illumination. The loss of illumination decreases the driver’s visibility and the vehicle’s conspicuity to other motorists, increasing the risk of a crash.

**h. Radio chime defect.**

428. On June 5, 2014, New GM issued a noncompliance recall of 57,512 MY 2014 Chevrolet Silverado LD, 2015 Chevrolet Silverado HD, 2015 Chevrolet Suburban, 2015

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<sup>111</sup> *Id.*

Chevrolet Tahoe, 2014 GMC Sierra LD, and 2015 GMC Sierra HD vehicles with a radio chime defect.

429. In the affected vehicles, the radios may become inoperative; when that happens, there is no audible chime to notify the driver if the door is opened with the key in the ignition and no audible seat belt warning indicating that the seat belts are not buckled. These vehicles fail to comply with the requirements of FMVSS numbers 114, "Theft Protection and Rollaway Prevention," and 208, "Occupant Crash Protection." Without an audible indicator, the driver may not be aware that the driver's door is open while the key is in the ignition, and that creates a risk of a vehicle rollaway. Additionally, there will be no reminder that the driver's or front seat passenger's seat belt is not buckled, which increases the risk of injury in a crash.

**i. Fuel gauge defect.**

430. On April 29, 2014, New GM issued a safety recall of 51,460 MY 2014 Chevrolet Traverse, GMC Acadia, and Buick Enclave vehicles with a fuel gauge defect.

431. In the affected vehicles, the engine control module software may cause inaccurate fuel gauge readings. An inaccurate fuel gauge may result in the vehicle unexpectedly running out of fuel and stalling, and thereby increases the risk of accident.

**j. Windshield wiper system defect.**

432. On May 14, 2014, New GM recalled 19,225 MY 2014 Cadillac CTS vehicles with a windshield wiper system defect.

433. In the affected vehicles, a defect leaves the windshield wiper system prone to failure; though the windshield wipers systems are particularly prone to failure after a vehicle jump start occurs while the wipers are on and restricted by snow and ice, "an unstable voltage in

the vehicle can reproduce this condition without an external jump start.” Inoperative windshield wipers can decrease the driver’s visibility and increase the risk of a crash.<sup>112</sup>

**k. Console bin door latch defect.**

434. On August 7, 2014, New GM issued a safety recall of 14,940 MY 2014-2015 Chevrolet Impala vehicles with a console bin door latch defect.<sup>113</sup>

435. In the affected vehicles, the inertia latch on the front console bin compartment door may not engage in the event of a rear collision and the front console compartment door may open, increasing the risk of occupant injury.<sup>114</sup> These vehicles fail to comply with the requirements of FMVSS No. 201, “Occupant Protection in Interior Impact.”<sup>115</sup>

**l. Driver door wiring splice defect.**

436. On June 11, 2014, New GM recalled 14,765 MY 2014 Buick LaCrosse vehicles with a driver door wiring splice defect.

437. In the affected vehicles, a wiring splice in the driver’s door may corrode and break, resulting in the absence of an audible chime to notify the driver if the door is opened while the key is in the ignition. Additionally, the Retained Accessory Power module may stay active for ten minutes allowing the operation of the passenger windows, rear windows, and sunroof. As such, these vehicles fail to comply with the requirements of FMVSS numbers 114, “Theft Protection and Rollaway Prevention,” and 118, “Power-Operated Window, Partition, and Roof Panel Systems.” Without an audible indicator, the driver may not be aware that the driver’s door is open while the key is in the ignition, increasing the risk of a vehicle rollaway. If the passenger windows, rear windows, and sunroof can function when the vehicle is turned off and

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<sup>112</sup> See May 28, 2014 Letter to NHTSA.

<sup>113</sup> See August 7, 2014 Letter from New GM to NHTSA.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

the driver is not in the vehicle, there is an increased risk of injury if an unsupervised occupant operates the power closures.

**m. Overloaded feed defect.**

438. On July 2, 2014, New GM recalled 9,371 MY 2007-2011 Chevrolet Silverado and 2007-2011 GMC Sierra HD vehicles with an overloaded feed defect.

439. In the affected vehicles, an overload in the feed may cause the underhood fusible link to melt due to electrical overload, resulting in potential smoke or flames that could damage the electrical center cover and/or the nearby wiring harness conduit.

440. New GM was aware of this defect for at least two years before taking action to remedy it through a recall.

**n. Windshield wiper module assembly defect.**

441. On June 26, 2014, New GM recalled 4,794 MY 2013-2014 Chevrolet Caprice and 2014 Chevrolet SS vehicles with a windshield wiper module assembly defect.

442. In the affected vehicles, the motor gear teeth may become stripped and the wipers inoperable. Inoperable wipers increase the risk of accident in inclement conditions.

**o. Engine block heater power cord insulation defect.**

443. On July 2, 2014, New GM issued a safety recall of 2,990 MY 2013-2014 Chevrolet Cruze, 2012-2014 Chevrolet Sonic, 2013-2014 Buick Encore, and 2013-2014 Buick Verano vehicles with an engine block heater power cord insulation defect.

444. In the affected vehicles the insulation on the engine block heater cord can be damaged, exposing the wires. Exposed wires increase the risk of electrical shock and personal injury if the cord is handled while plugged in.

**p. Rear shock absorber defect.**

445. On June 27, 2014, New GM issued a safety recall of 1,939 MY 2014 Chevrolet Corvette vehicles with a rear shock absorber defect.

446. In the affected vehicles, an insufficient weld in the rear shocks can cause the shock absorber tube to separate from the shock absorber bracket. That separation may cause a sudden change in vehicle handling behavior that can startle drivers and increase the risk of a crash.<sup>116</sup>

**q. Electronic stability control defect.**

447. On March 26, 2014, New GM issued a safety recall for 656 MY 2014 Cadillac ELR vehicles with an electronic stability control defect.

448. In the affected vehicles, the electronic stability control system software may inhibit certain diagnostics and fail to alert the driver that the electronic stability control system is partially or fully disabled. Therefore, these vehicles fail to conform to FMVSS number 126, “Electronic Stability Control Systems.” A driver who is not alerted to an electronic stability control system malfunction may continue driving with a disabled system. That may result in the loss of directional control, greatly increasing the risk of a crash.<sup>117</sup>

**r. Unsecured floor mat defect.**

449. On June 18, 2014, New GM issued a safety recall of 184 MY 2014 Chevrolet Silverado LD and 2014 GMC Sierra LD vehicles with an unsecured floor mat defect.

450. The affected vehicles built with the optional vinyl flooring option and equipped with the optional All-Weather Floor Mats do not have the retention features necessary to

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<sup>116</sup> See June 26, 2014 Letter from New GM to NHTSA.

<sup>117</sup> See March 26, 2014 Letter from New GM to NHTSA.



properly secure the floor mat on the driver's side. The driver's floor mat can shift such that it interferes with the accelerator pedal, and thus increases the risk of a crash.<sup>118</sup>

**s. Fuse block defect.**

451. On May 23, 2014, New GM issued a safety recall of 58 MY 2015 Chevrolet Silverado HD and GMC Sierra HD vehicles with a fuse block defect.

452. In the affected vehicles, the retention clips that attach the fuse block to the vehicle body can become loose allowing the fuse block to move out of position. When this occurs, exposed conductors in the fuse block may contact the mounting studs or other metallic components, which in turn causes a "short to ground" event. That can result in an arcing condition, igniting nearby combustible materials and starting an engine fire.<sup>119</sup>

**t. Diesel transfer pump defect.**

453. On April 24, 2014, New GM issued a safety recall of 51 MY 2015 GMC Sierra HD and 2015 Chevrolet Silverado HD vehicles.

454. In the affected vehicles, the fuel pipe tube nuts on both sides of the diesel fuel transfer pump may not be tightened to the properly torque. That can result in a diesel fuel leak, which can cause a vehicle fire.<sup>120</sup>

**u. Rear suspension toe adjuster link defect.**

455. On September 17, 2014, New GM issued a safety recall for 290,241 MY 2010-2015 Cadillac SRX and 2011-2012 Saab 9-4x vehicles with a rear suspension toe adjuster link defect that can cause vehicles to sway or wander on the road.<sup>121</sup>

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<sup>118</sup> See June 18, 2014 Letter from New GM to NHTSA.

<sup>119</sup> See May 30, 2014 Letter from New GM to NHTSA.

<sup>120</sup> See April 24, 2014 Letter from New GM to NHTSA.

<sup>121</sup> See New GM's Sept. 17, 2014 Part 573 Safety Report.

456. According to New GM, in the affected vehicles, “the jam nut in the rear suspension toe adjuster link may not be torqued to the proper specification. A loose toe adjuster link can cause the vehicle to sway or wander at highway speed, activate the vehicle’s electronic stability control system, and cause excessive wear to the threads in the link...If the threads in the link become worn, the link may separate.”<sup>122</sup> If the link separates, that “would create sudden vehicle instability, increasing the risk of a crash.”<sup>123</sup>

457. Once again, New GM should have picked up on this defect years earlier. In fact, in 2011, New GM conducted a safety recall of Cadillac CTS vehicles with a similar rear suspension toe adjuster link defect.<sup>124</sup>

**v. Hood latch defect**

458. On September 23, 2014, New GM recalled 89,294 MY 2013-2015 Chevrolet Spark vehicles with a hood latch defect.<sup>125</sup>

459. According to New GM, the affected vehicles “were manufactured with a secondary hood latch that may prematurely corrode at the latch pivot causing the striker to get stuck out of position and preventing the striker from properly engaging the hood latch.”<sup>126</sup> If this happens, “the vehicle’s hood may open unexpectedly,” and that will “likely” impair the driver’s vision and increase the risk of a collision.<sup>127</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See New GM’s September 23, 2014 Part 573 Safety Recall Report.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

**w. Electrical short defect.**

460. On October 2, 2014, New GM announced a recall of 117,652 MY 2013-2014 Chevrolet Tahoe, 2013-2014 Chevrolet Suburban, 2013-2014 GMC Yukon, 2013-2014 GMC Yukon, 2013-2014 Cadillac Escalade, 2013-2014 Cadillac CTS, 2014 Chevrolet Traverse, 2014 GMC Acadia, 2014 Buick Enclave, 2014 Chevrolet Express, 2014 GMC Savana, 2014 Chevrolet Silverado, and 2014 GMC Sierra vehicles with a defect that can cause an electrical short.<sup>128</sup>

461. In the affected vehicles, due to a defect in the chassis control module, metal slivers can cause an electrical short that results in the vehicle stalling or not starting.<sup>129</sup> This creates a serious risk of accident.

**G. New GM's Deception In Connection With the Recalls Has Harmed Arizona Consumers Who Own or Lease GM-Branded Vehicles.**

462. New GM was well aware that vehicle recalls, especially untimely ones, can taint its brand image and the value of its vehicles. In its 2010 Form 10-K submitted to the SEC, New GM admitted that “Product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business.”<sup>130</sup>

463. Unfortunately for owners of GM-branded vehicles, New GM was correct. It is difficult to find a brand whose reputation has taken as great a beating as has the New GM brand starting in February 2014 when the first ignition switch recall occurred.

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<sup>128</sup> See “GM recalls 117,651 vehicles for potential electrical short issue,” Reuters (Oct. 2, 2014).

<sup>129</sup> *Id.*

<sup>130</sup> General Motors 2010 Form 10-K, p. 31, available at <https://www.sec.gov/Archives/edgar/data/1467858/000119312510078119/dlOk.htm#toc857334>.

464. In fact, the public outcry has been significant in response to the ongoing revelations of the massive number of defects New GM concealed, and the massive number of defective vehicles New GM has sold. The following are illustrative examples of the almost constant beating the New GM brand has taken ever since the first ignition switch recall was announced on July 13, 2014.

465. After the announcement the first ignition switch recall the media was highly critical of New GM. For example, a CBS February 27, 2014, news report headlined:

*By AIMEE PICCHI / MONEYWATCH / February 27, 2014, 1:42 PM*

## **Did GM wait too long to issue its recall?**

466. The CBS report had a video link:<sup>131</sup>



*Play* VIDEO

### **13 deaths now linked to GM faulty ignition switches, recall expanded**

467. On March 13, 2014 a CNN report was entitled:

## **Feds demand answers from GM on recall defect**

*By Mike M. Ahlers, CNN*

*updated 7:51 AM EDT, Thu March 13, 2014*

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<sup>131</sup> <http://www.cbsnews.com/news/did-general-motors-wait-too-long-to-issue-its-recall/>.

468. On March 16, 2014, Reuters reported as follows:

## **Owners of recalled GM cars feel angry, vindicated**

(Reuters) – As details emerge about how General Motors Co dealt with faulty ignition switches in some of its models, car owners are increasingly angry after learning that the automaker knowingly allowed them to drive defective vehicles.

Saturn Ion owner Nancy Bowman of Washington, Michigan, said she is outraged that GM allowed her to drive a “death trap.” She said her car had so many ignition problems she was afraid to resell it to an innocent buyer.

She bought the 2004 model car new and still drives it after extensive repairs and multiple run-ins with a Saturn dealer she called dismissive.

“Five times the car died right out from under me after hitting a bump in the road,” she wrote in a 2013 posting on a complaint website, arfc.org, that says it sends information to the National Highway Traffic Safety Administration (NHTSA).

Every time I brought it in they said it was an isolated incident. Couldn't find the problem, so they acted like I was an idiot.

469. On March 24, 2014, the NEW YORK TIMES issued an article entitled:

**BUSINESS DAY**

### ***General Motors Mised Grieving Families on a Lethal Flaw***

By HILARY STOUT, BILL VLASIC, DANIELLE IVORY and REBECCA R. RUIZ MARCH 24, 2014

470. It contained a troublesome account of New GM's conduct:

It was nearly five years ago that any doubts were laid to rest among engineers at General Motors about a dangerous and faulty ignition switch. At a meeting on May 15, 2009, they learned that data in the black boxes of Chevrolet Cobalts confirmed a potentially fatal defect existed in hundreds of thousands of cars.

But in the months and years that followed, as a trove of internal documents and studies mounted, G.M. told the families of accident victims and other customers that it did not have enough evidence of any defect in their cars, interviews, letters and legal documents show. Last month, G.M. recalled 1.6 million Cobalts and other

small cars, saying that if the switch was bumped or weighed down it could shut off the engine's power and disable air bags.

In one case, G.M. threatened to come after the family of an accident victim for reimbursement of legal fees if the family did not withdraw its lawsuit. In another instance, it dismissed a family with a terse, formulaic letter, saying there was no basis for claims.

\* \* \*

Since the engineers' meeting in May 2009, at least 23 fatal crashes have involved the recalled models, resulting in 26 deaths. G.M. reported the accidents to the government under a system called Early Warning Reporting, which requires automakers to disclose claims they receive blaming vehicle defects for serious injuries or deaths.

A New York Times review of 19 of those accidents – where victims were identified through interviews with survivors, family members, lawyers and law enforcement officials – found that G.M. pushed back against families in at least two of the accidents, and reached settlements that required the victims to keep the discussions confidential.

\* \* \*

In other instances, G.M. ignored repeated calls, families said. “We did call G.M.,” said Leslie Dueno, whose 18-year-old son, Christopher Hamberg, was killed on June 12, 2009 – not quite a month after the critical May 15 meeting of G.M. engineers about the ignition data – driving his 2007 Cobalt home before dawn in Houston. He lost control at 45 miles per hour and hit a curb, then a tree, the police report said. “Nobody ever called me. They never followed up. Ever.”

Last month's recalls of the Cobalt and five other models encompassed model years 2003 through 2007. G.M. faces numerous investigations, including one by the Justice Department looking into the company's disclosures in its 2009 bankruptcy filing as well as what it told regulators.

“We are conducting an unsparing, comprehensive review of the circumstances leading to the ignition switch recall,” G.M. said in a statement on Monday. “As part of that review we are examining previous claims and our response to them. If anything changes as a result of our review, we will promptly bring that to the attention of regulators.”

G.M. has said it has evidence of 12 deaths tied to the switch problem, but it has declined to give details other than to say that they all occurred in 2009 or earlier. It says it has no conclusive evidence of more recent deaths tied to the switch.

\* \* \*

It was unclear how many of the 26 deaths since the 2009 meeting were related to the faulty ignition, but some appeared to fit patterns that reflected the problem, such as an inexplicable loss of control or air bags that did not deploy. In some cases, the drivers had put themselves at risk, including having high blood-alcohol levels or texting.

Still, by the time Benjamin Hair, 20, crashed into a tree in Charlottesville, Va., on Dec. 13, 2009, while driving a Pontiac G5 home, G.M. had conducted five internal studies about the ignition problem, its records indicate.

...

Consumer complaints and claims came to the company in a variety of ways – through lawsuits, calls, letters and emails, warranty claims, or insurance claims. G.M.'s legal staff was the recipient of lawsuits, insurance information, accident reports and any other litigation-related paperwork. But warranty claims and customer calls were routed through the sales and service division – a vast bureaucracy that occupies most of one tower at G.M.'s headquarters in Detroit. Because the legal staff reports to the chief executive, and the sales department to the head of G.M. North America, it is unclear whether they share information related to a specific car, like the Cobalt.

471. NPR ran a story on March 31, 2014:

[news > business](#)

## Timeline: A History Of GM's Ignition Switch Defect

by TANYA BASU

March 31, 2014 4:33 PM ET

472. The NPR story raised questions about New GM's candor:

NPR looked into the timeline of events that led to the recall. It's long and winding, and it presents many questions about how GM handled the situation: How long did the company know of the problem? Why did the company not inform federal safety officials of the problem sooner? Why weren't recalls done sooner? And did GM continue to manufacture models knowing of the defect?

473. On May 11, 2014, the CHICAGO TRIBUNE ran an article entitled:

*GM ranked worst automaker by U.S. suppliers: survey*

DETROIT (Reuters) – General Motors Co, already locked in a public relations crisis because of a deadly ignition defect that has triggered the recall of 2.6 million vehicles, has a new perception problem on its hands.

The U.S. company is now considered the worst big automaker to deal with, according to a new survey of top suppliers to the car industry in the United States.

Those so-called “Tier 1” suppliers say GM is now their least favorite big customer, according to the rankings, less popular even than Chrysler, the unit of Fiat Chrysler Automobiles FIA.MI, which since 2008 had consistently earned that dubious distinction.

Suppliers gave GM low marks on all kinds of key measures, including its overall trustworthiness, its communication skills, and its protection of intellectual property.

474. On May 25, 2014, an article reported on a 2.4 million vehicle recall:

## **When Will GM's Recall Mess End?**

**General Motors** (NYSE: GM) on Tuesday said it is recalling about 2.4 million additional vehicles in four separate recalls for a variety of problems, including faulty seat belts and gearshift troubles.

This announcement came on the heels of another set of GM recalls, announced last Thursday, covering 2.7 million vehicles. Including the four recalls announced on Tuesday, GM has issued a total of 30 recalls in the U.S. so far in 2014, encompassing about 13.8 million vehicles.

That's a stupendous number.<sup>[132]</sup>

475. On May 26, 2014, the NEW YORK TIMES ran an article:

**BUSINESS DAY**

## ***13 Deaths, Untold Heartache, From G.M. Defect***

By REBECCA R. RUIZ, DANIELLE IVORY and HILARY STOUT MAY 26, 2014

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<sup>132</sup> <http://www.fool.com/investing/general/2014/05/25/when-will-gms-recall-mess-end.aspx>.



476. The article once again pointed blame at GM:

BEN WHEELER, Tex. – For most of the last decade, Candice Anderson has carried unspeakable guilt over the death of her boyfriend. He was killed in 2004 in a car accident here, and she was at the wheel. At one point, Ms. Anderson, who had a trace of Xanax in her blood, even faced a manslaughter charge. She was 21.

All these years, Ms. Anderson – now engaged and a mother – has been a devoted visitor to his grave. She tidies it every season, sweeping away leaves and setting down blue daisies with gold glitter for his birthday, miniature lit trees for Christmas, stones with etched sayings for the anniversary of their accident.

“It’s torn me up,” Ms. Anderson said of the death of Gene Mikale Erickson. “I’ve always wondered, was it really my fault?”

Last week, she learned it was not.

\* \* \*

Inside G.M., the nation’s largest automaker, some of the 13 victims appear on charts and graphs with a date and a single word: “fatal.”

477. News of New GM’s misconduct and of the recalls made the front page of every major newspaper and was the lead story on every major television news program in the country.

478. The congressional hearings where New GM executives were subject to harsh questioning and criticism were widely reported in every type of media.

479. In June 2014 New GM recalled another 8.2 million vehicles and again these recalls received widespread attention in the press. The stories often included charts and graphs depicting the ever-growing list of vehicles recalled:

## **GM to recall 8.2 million more vehicles over ignition-switch defect**

*POSTED AT 3:21 PM ON JUNE 30, 2014*

The recall blues continue at GM, as does the scope of their previously hidden ignition-switch defect. The world’s largest automaker added 8.45 million more vehicles to its list, with some

models going back to 1997. This puts GM over the 28-million mark for cars recalled on a global basis in 2014, and over 26 million domestic.<sup>[133]</sup>

480. The coverage did not simply die down as often happens. On July 15, 2014, the NEW YORK TIMES ran an article entitled, “Documents Show General Motors Kept Silent on Fatal Crashes.”

481. By August 2, 2014, the press was reporting that used GM-branded vehicles were losing value:

THE DALLAS MORNING NEWS

August 2, 2014 Saturday

1 Edition

**SECTION:** BRIEFING; Pg. 10

**LENGTH:** 80 words

**HEADLINE:** GM vehicles’ resale values are taking a hit as safety recalls mount

**BODY:**

Although General Motors’ sales remained solid in the midst of its recent record recalls, some vehicles experienced significant drops in their resale values.

In an analysis of more than 11 million used cars for sale between March and June of this year, iSeeCars.com found that the resale values of the main vehicles in GM’s recalls dropped 14 percent from the same period last year.

482. An August 5, 2014 article also reported that used GM-branded vehicles were suffering loss in value due to the recalls:<sup>134</sup>

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<sup>133</sup> <http://hotair.com/archives/2014/06/30/gm-to-recall-8-2-million-more-vehicles-over-ignition-switch-defect-8-45-million-overall/>.

<sup>134</sup> Doron Levin, FORTUNE MAGAZINE, August 5, 2014.

AUTOS GM

## Used GM cars affected by recall getting hurt in the marketplace

by Doron Levin @FortuneMagazine AUGUST 5, 2014, 2:25 PM EDT

Ignition recall caused resale values to take a hit—some Pontiac, Saturn and Chevy models were most affected.

General Motors Co. GM -0.41% has been fortunate to avoid a collapse of new-vehicle sales since the ignition-switch safety crisis blew up in January, engulfing the automaker in litigation, a federal criminal probe and Congressional inquiries.

Used GM vehicles – models affected by the recall – meanwhile have taken a substantial hit in value, according to a study by iSeeCars.com, an online search engine. GM's new-vehicles sales are up 3.5% in the U.S. through July in a market that has risen 5% in terms of unit sales.

(Holders of GM stock have gotten whacked as well since January, the value of shares falling nearly 18%, compared with a S&P 500 Index that has risen 4% during the period.)

The operators of the search engine said they created an algorithm to determine the market value of six GM cars affected by the recall, based on asking prices of used vehicles on dealer lots from March to June 2013, compared to a year later. The change in value also was compared to the dropping value of all used cars in the U.S., which has been occurring for the past few months. The sample size was 11 million cars.

The average price of the recalled GM models dropped 14% from March to June 2014, compared to a year earlier and adjusted for inflation. The drop in value of all similar models was 6.7% during the same period.

Phong Ly, chief executive and co-founder of iSeeCars.com said “recalls are playing a role in motivating sellers to sell their used cars and at a lower price point than they otherwise would.” His company provides free information to car shoppers and sells sales leads to dealers.

483. The crisis that affected the GM Brand was so significant that New GM stock has been battered. A September 22, 2014 report observed:<sup>135</sup>

## GM Falls Deeper Into The Abyss

Sep. 22, 2014 7:55 AM ET | About: General Motors Company (GM)

### Summary

- GM has been in a rut since the ignition switch recalls.
- More and more, GM is coming off as a perpetually troubled business.
- We continue to avoid General Motors stock.

We previously wrote about GM (NYSE:GM) and placed a \$31 price target on it here. Our basic argument was that GM was going to have trouble presenting itself into the mainstream as a reputable brand to buy after the ignition switch recall.

Late Sunday, it was announced that GM was recalling 222,500 vehicles due to brake pad malfunction. This number towers over the amount of normal recalls that come during the course of business. It's also involving vehicles that were made from 2013 to 2015, a clear indicator that these vehicles (manufactured by the post-bankruptcy GM) should have had a renewed focus of safety on them from the beginning.

484. New GM's stock price hit a 52-week low on October 10, 2014.

485. New GM's unprecedented concealment of a large number of serious defects, and its dangerously irresponsible approach to safety, quality, and reliability issues, has caused damage to Arizona consumers who own or lease GM-branded vehicles acquired on or after July 11, 2009.

486. A vehicle made by a reputable manufacturer of safe, high quality, and reliable vehicles who stands behind its vehicles after they are sold is worth more than an otherwise

---

<sup>135</sup> See <http://seekingalpha.com/article/2511545-gm-falls-deeper-into-the-abyss>.

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

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

488. Purchasers and lessees of GM-branded vehicles on or after the July 11, 2009, inception of New GM paid more for the vehicles than they would have had New GM disclosed the many defects it had a duty to disclose in GM-branded vehicles, and disclosed that the company's culture and business model was such that it did not produce safe, high quality, and reliable vehicles. Because New GM concealed the defects and the fact that it was a disreputable brand that valued cost-cutting over safety, Arizona consumers did not receive the benefit of their bargain. And the value of all their vehicles has diminished as the result of New GM's deceptive conduct.

489. On information and belief, an estimate of the diminished value in GM-branded vehicles not subject to the ignition switch recall is illustrated by way of example as follows for a few Model Year 2013 vehicles:

GMC	Terrain	September Diminished Value: \$1,052
GMC	Sierra 1500	September Diminished Value: \$325
Buick	Lacrosse	September Diminished Value: \$954
Chevrolet	Suburban	September Diminished Value: \$854
Cadillac	CTS	September Diminished Value: \$867
Cadillac	XTS	September Diminished Value: \$1,722

490. Another example is the diminished value of illustrative 2011 models:

GMC	Terrain	September Diminished Value: \$891
Buick	Lacrosse	September Diminished Value: \$1,017

491. GM-branded vehicles not involved in the ignition switch recall experienced declines in value when the ignition switch recalls occurred due to the impact on the perception of buyers concerning New GM's promises of safety and reliability. As news of New GM's culture of deceit grew, so did diminished value. The following estimates are examples:

	Diminished Value as of 03/2014	Diminished Value as of 09/2014
2008 Cadillac STS	\$249	\$1,243
2008 GMC Acadia	\$730	\$1,011
2010 GMC Terrain	\$403	\$912

492. GM-branded vehicles subject to the ignition switch recall also have suffered diminished value by way of example:

	Diminished Value as of 03/2014	Diminished Value as of 09/2014
2008 Cobalt	\$256	\$357
2008 HHR	\$162	\$477
2009 Sky	\$173	\$429

493. If New GM had timely disclosed the many defects as required by the TREAD Act, and the Arizona Consumer Fraud Act as detailed below, Arizona consumers' GM-branded vehicles would be considerably more valuable than they are now and/or Arizona consumers would have paid less than they did. Because of New GM's now highly publicized campaign of deception, and its belated, piecemeal and ever-expanding recalls, so much stigma has attached to

the New GM brand that no rational consumer would pay what otherwise would have been fair market value for their GM-branded vehicles purchased on or after July 11, 2009.

#### IV. CLAIM FOR RELIEF

##### ARIZONA CONSUMER FRAUD ACT (A.R.S. § 44-1521, et seq.)

494. The State realleges and incorporates by reference all paragraphs as though fully set forth herein.

495. New GM is a “person” within the meaning of A.R.S. § 44-1521(6).

496. GM-branded vehicles sold or leased on or after July 11, 2009 are “merchandise” within the meaning of A.R.S. § 44-1521(5).

497. The Arizona Consumer Fraud Act provides that “[t]he act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.” A.R.S. § 44-1522(A).

498. In the course of its business, New GM systematically devalued safety and concealed a plethora of defects in GM-branded vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful practices by employing deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises, misrepresentations, or concealment, suppression or omission of material facts with intent that others rely upon such concealment, suppression or omission, in connection with the sale and lease of GM-branded vehicles on or after July 11, 2009.

499. From the date of its inception on July 11, 2009, New GM knew of many serious defects affecting many models and years of GM-branded vehicles, both because of the

knowledge of Old GM personnel who remained at New GM, and continuous reports, investigations, and notifications from regulatory authorities. New GM became aware of other serious defects and systemic safety issues years ago, but concealed all of that information until recently.

500. New GM was also aware that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured and the failure to promptly disclose and remedy defects in all GM-branded vehicles. New GM concealed this information as well.

501. By failing to disclose and by actively concealing the many defects in GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself as a reputable manufacturer that valued safety and stood behind its vehicles after they were sold, New GM engaged in deceptive and unlawful business practices in violation of the Arizona Consumer Fraud Act.

502. In the course of New GM's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the many safety issues and serious defects discussed above. New GM compounded the deception by repeatedly asserting that its vehicles were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued safety and stood behind its vehicles once they are on the road.

503. New GM's unlawful, unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Arizona consumers, about the true safety and reliability of GM-branded vehicles, the quality of the New GM brand, the devaluing of safety at New GM, and the true value of GM-branded vehicles sold or leased on or after July 11, 2009.



504. New GM intentionally and knowingly misrepresented material facts regarding GM-branded vehicles with an intent to mislead Arizona consumers.

505. New GM knew or should have known that its conduct was of the nature prohibited by and violative of the Arizona Consumer Fraud Act.

506. As alleged above, New GM made material statements about the safety and reliability of GM-branded vehicles that were either false or misleading.

507. New GM owed purchasers of New GM vehicles a duty to disclose the true safety and reliability of GM-branded vehicles and the devaluing of safety at New GM, because

New GM:

- a. Possessed exclusive knowledge that it valued cost-cutting over safety, selected parts from the cheapest supplier regardless of quality, and actively discouraged employees from finding and flagging known safety defects, and that this approach would necessarily cause the existence of more defects in the vehicles it designed and manufactured;
- b. Intentionally concealed the foregoing from the public, including Arizona residents; and/or
- c. Made incomplete representations about the safety and reliability of GM-branded vehicles generally, and the ignition switch in particular, while purposefully withholding material facts from the public, including Arizona residents, that contradicted these representations.

508. Because New GM fraudulently concealed the many defects in GM-branded vehicles, resulting in a raft of negative publicity once the defects finally began to be disclosed, the value of GM-branded vehicles sold on or after July 11, 2009, has greatly diminished. In light of the stigma attached to those vehicles by New GM's conduct, they are now worth significantly less than they otherwise would be.

509. New GM's systemic devaluation of safety and its concealment of a plethora of defects in GM-branded vehicles were material to Arizona residents. A vehicle made by a

reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

510. New GM's violations present a continuing risk to owners of GM-branded vehicles, as well as to the general public. New GM's unlawful acts and practices complained of herein affect the public interest.

511. While engaging in the unlawful acts and practices alleged in this Complaint, New GM was at all times acting willfully as defined by A.R.S. § 44-1531.

**PRAYER FOR RELIEF**

WHEREFORE, the State respectfully requests the Court to enter Judgment against New GM as follows:

A. Enter an injunction against New GM permanently prohibiting it, and all others acting directly or indirectly on its behalf, from continuing and engaging in the unlawful acts and practices as alleged in this Complaint and from doing any acts in furtherance of such unlawful acts and practices, pursuant to A.R.S. § 44-1528(A)(1);

B. Order New GM to disgorge any profits, gains, gross receipts, or other benefit obtained by means of any unlawful act or practice as alleged in this Complaint, pursuant to A.R.S. § 44-1528(A)(3);

C. Order New GM to pay to the State a civil penalty of not more than \$10,000 for each willful violation of the Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

D. Order New GM to pay the State its costs of investigation and prosecution of this matter, including its reasonable attorneys' fees, pursuant to A.R.S. § 44-1534; and

E. Award the State such further relief the Court deems just and proper under the circumstances.

DATED: Novemer 19, 2014

THOMAS C. HORNE  
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# Exhibit B

**ELECTRONICALLY FILED**  
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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **IN AND FOR THE COUNTY OF ORANGE – COMPLEX LITIGATION DIVISION**

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

26 Plaintiff,

27 v.

28 GENERAL MOTORS LLC

Defendant.

Case No. 30-2014-00731038-CU-BT-CXC

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

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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 a law enforcement action which primarily seeks to protect the public safety  
6 and welfare, brought by a governmental unit in the exercise of and to enforce its police power. *City*  
7 *& Cnty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1124-1125 (9th Cir. 2006). The action  
8 is brought by Tony Rackauckas, District Attorney of the County of Orange, under California  
9 Business and Professions Code sections 17200 *et seq.*, the Unfair Competition Law (“UCL”), and  
10 17500 *et seq.*, the False Advertising Law (“FAL”), and involves sales, leases, or other wrongful  
11 conduct or injuries occurring in California. The defendant is General Motors LLC (“Defendant” or  
12 “GM”), which is based in Detroit, Michigan.

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

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

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

1           5.       The systematic concealment of known defects was deliberate, as GM followed a  
2 consistent pattern of endless “investigation” and delay each time it became aware of a given defect.  
3 In fact, recently revealed documents show that GM valued cost-cutting over safety, trained its  
4 personnel to *never* use the words “defect,” “stall,” or other words suggesting that any GM-branded  
5 vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and  
6 discouraged employees from acting to address safety issues.

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

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

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

19           9.       GM has recently been forced to disclose that it had been concealing a large number  
20 of known safety defects in GM-branded vehicles ever since its inception in 2009, and that other  
21 defects arose on its watch due in large measure to GM’s focus on cost-cutting over safety, its  
22 discouragement of raising safety issues and its training of employees to avoid using language such  
23 as “stalls,” “defect” or “safety issue” in order to avoid attracting the attention of regulators. As a  
24 result, GM has been forced to recall over 17 million vehicles in some 40 recalls covering 35  
25 separate defects during the first five and a half months of this year –20 times more than during the  
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27           <sup>1</sup> 49 U.S.C. §§ 30101-30170.

28           <sup>2</sup> 49 U.S.C. § 30118(c)(1) & (2).

<sup>3</sup> 49 U.S.C. § 30118(b)(2)(A) & (B).

1 same period in 2013. The cumulative negative effect on the value of the vehicles sold by GM has  
2 been both foreseeable and significant.

3 10. The highest-profile defect concealed by GM concerns the ignition switches in more  
4 than 1.5 million vehicles sold by GM's predecessor (the "ignition switch defect"). The ignition  
5 switch defect can cause the affected vehicles' ignition switches to inadvertently move from the  
6 "run" position to the "accessory" or "off" position during ordinary driving conditions, resulting in a  
7 loss of power, vehicle speed control, and braking, as well as a failure of the vehicle's airbags to  
8 deploy. GM continued to use defective ignition switches in "repairs" of vehicles it sold after July  
9 10, 2009.

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

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

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

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

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

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

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

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

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

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

24           21. This case arises from GM’s breach of its obligations and duties, including but not  
25 limited to: (i) its concealment of, and failure to disclose that, as a result of a spate of safety defects,  
26 over 17 million Defective Vehicles were on the road nationwide – and many hundreds of thousands  
27 in California; (ii) its failure to disclose the defects despite its TREAD Act obligations; (iii) its  
28 failure to disclose that it devalued safety and systemically encouraged the concealment of known

1 defects; (iv) its continued use of defective ignition switches as replacement parts; (v) its sale of  
2 used “GM certified” vehicles that were actually plagued with a variety of known safety defects;  
3 and (vi) its repeated and false statements that its vehicles were safe and reliable, and that it stood  
4 behind its vehicles after they were purchased.

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

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

15 24. GM’s failure to disclose the many defects, as well as advertising and promotion  
16 concerning GM’s record of building “safe” cars of high quality, violated California law.

17 **II. PLAINTIFF’S AUTHORITY**

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

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**III. DEFENDANT**

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

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

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

**IV. JURISDICTION AND VENUE**

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

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

**V. FACTUAL BACKGROUND**

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

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

32. Even more disturbingly, the available evidence shows a common pattern: From its inception in 2009, GM knew about an ever-growing list of serious safety defects in millions of

1 GM-branded vehicles, but concealed them from consumers and regulators in order to boost sales  
2 and avoid the cost and publicity of recalls.

3 33. GM inherited from Old GM a company that valued cost-cutting over safety, actively  
4 discouraged its personnel from taking a “hard line” on safety issues, avoided using “hot” words  
5 like “stall” that might attract the attention of NHTSA and suggest that a recall was required, and  
6 trained its employees to avoid the use of words such as “defect” that might flag the existence of a  
7 safety issue. GM did nothing to change these practices.

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

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

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

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

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

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

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

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

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

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

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

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

27                           So this is exactly why we're asking General Motors this question, to  
28 understand is it truly a power issue or is there something embedded  
in their [software] algorithm that is causing this, something that  
should have been there in their algorithm.<sup>5</sup>

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



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

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

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

10          45.     For example, the Old GM Design Research Engineer who was responsible for the  
11 rollout of the defective ignition switch in 2003 was Ray DeGiorgio. Mr. DeGiorgio continued to  
12 serve as an engineer at GM until April 2014 when he was suspended as a result of his involvement in  
13 the defective ignition switch problem. Later in 2014, in the wake of the GM Report,<sup>6</sup> Mr. DeGiorgio  
14 was fired.

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

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

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26           <sup>6</sup> 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           <sup>7</sup> GM Report/Complaint re “Electrical Concern” opened July 31, 2001, GMHEC000001980-90.

28           <sup>8</sup> *Id.* at GMHEC000001986.

<sup>9</sup> *Id.* at GMHEC000001981, 1986.

1 48. Similarly, Gary Altman was Old GM's program-engineering manager for the  
2 Cobalt, which is one of the models with the defective ignition switches and hit the market in MY  
3 2005. He remained as an engineer at GM until he was suspended on April 10, 2014, by GM for his  
4 role in the ignition switch problem and then fired in the wake of the GM Report.

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

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

11 51. The PRTS concluded in 2005 that:

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

- 14 1. A low torque detent in the ignition switch and
- 15 2. A low position of the lock module in the column.<sup>10</sup>

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

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

27 \_\_\_\_\_  
<sup>10</sup> Feb. 1, 2005 PRTS at GMHEC000001733.

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

1 54. Incredibly, GM now claims that it and Old GM did not view vehicle stalling and the  
2 loss of power steering as a “safety issue,” but only as a “customer convenience” issue.<sup>12</sup> GM bases  
3 this claim on the equally incredible assertion that, at least for some period of time, it was not aware  
4 that when the ignition switch moves to the “accessory” position, the airbags become inoperable –  
5 even though Old GM itself designed the airbags to not deploy under that circumstance.<sup>13</sup>

6 55. Even crediting GM’s claim that some at the Company were unaware of the rather  
7 obvious connection between the defective ignition switches and airbag non-deployment, a stall and  
8 loss of power steering and power brakes is a serious safety issue under any objective view. GM  
9 *itself* recognized in 2010 that a loss of power steering *standing alone* was grounds for a safety  
10 recall, as it did a recall on such grounds.

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

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

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

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24 <sup>12</sup> GM Report at 2.

25 <sup>13</sup> *Id.*

26 <sup>14</sup> GM Report at 92-93.

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

28 <sup>16</sup> *Id.*

<sup>17</sup> Delphi Briefing, Mar. 27, 2014.

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

6           60. At a May 15, 2009 meeting, Old GM engineers (soon to be GM engineers) learned  
7 that data in the black boxes of Chevrolet Cobalts showed that the dangerous ignition switch defects  
8 existed in hundreds of thousands of Defective Vehicles. But still GM did not reveal the defect to  
9 NHTSA, Plaintiff, or consumers.

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

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

18           63. In July 2011, GM legal staff and engineers met regarding an investigation of crashes  
19 in which the air bags did not deploy. The next month, in August 2011, GM initiated a Field  
20 Performance Evaluation (“FPE”) to analyze multiple frontal impact crashes involving MY 2005-  
21 2007 Chevrolet Cobalt vehicles and 2007 Pontiac G5 vehicles, as well as a review of information  
22 related to the Ion, HHR, and Solstice vehicles, and airbag non-deployment.<sup>20</sup>

23           64. GM continued to conceal and deny what it privately knew – that the ignition  
24 switches were defective. For example, in May 2012, GM engineers tested the torque of the  
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26 \_\_\_\_\_  
<sup>18</sup> GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 2.

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

<sup>20</sup> GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 2.

1 ignition switches in numerous Old GM vehicles.<sup>21</sup> The results from the GM testing showed that  
2 the majority of the vehicles tested from the 2003 to 2007 model/years had torque performance at or  
3 below 10 Newton centimeters (“Ncm”), which was below the original design specifications  
4 required by GM.<sup>22</sup> Around the same time, high ranking GM personnel continued to internally  
5 review the history of the ignition switch issue.<sup>23</sup>

6 65. In September 2012, GM had a GM Red X Team Engineer (a special engineer  
7 assigned to find the root cause of an engineering design defect) examine the changes between the  
8 2007 and 2008 Chevrolet Cobalt models following reported crashes where the airbags failed to  
9 deploy and the ignition switch was found in the “off” or “accessory” position.<sup>24</sup>

10 66. The next month, in October of 2012, Design Research Engineer Ray DeGiorgio (the  
11 lead engineer on the defective ignition switch) sent an email to Brian Stouffer of GM regarding the  
12 “2005-7 Cobalt and Ignition Switch Effort,” stating: “If we replaced switches on ALL the model  
13 years, i.e., 2005, 2006, 2007 the piece price would be about \$10.00 per switch.”<sup>25</sup>

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

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

20 69. Notwithstanding what GM actually knew and privately acknowledged,<sup>27</sup> its public  
21 statements and position in litigation was radically different. For example, in May 2013, Brian  
22 Stouffer testified in deposition in a personal injury action (*Melton v. General Motors*) that the Ncm

23 <sup>21</sup> GMHEC000221427; *see also* Mar. 11, 2014 Ltr. to NHTSA, attached chronology.

24 <sup>22</sup> *Id.*

25 <sup>23</sup> GMHEC000221438.

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

27 <sup>25</sup> GMHEC000221539.

28 <sup>26</sup> GM Mar. 11, 2014 Ltr. to NHTSA, attached chronology at 4.

<sup>27</sup> *See* GMHEC000221427.

1 performance (a measurement of the strength of the ignition switch) was *not* substantially different  
2 as between the early (*e.g.*, 2005) and later model year (*e.g.*, 2008) Chevrolet Cobalt vehicles.<sup>28</sup>

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

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

7 ...

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

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

15 ...

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

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

21 ...

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

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

...

<sup>28</sup> 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 A: That is correct, but also – it was not intended – *the intent was to*  
2 *make the transition to go from run to off with relative ease.*<sup>29</sup>

3 71. Brian Stouffer, in an email to Delphi regarding the ignition switch in the Chevy  
4 Cobalt, acknowledged that the ignition switch in early Cobalt vehicles – although bearing the same  
5 part number – was different than the ignition switch in later Cobalt vehicles.<sup>30</sup> Mr. Stouffer  
6 claimed that “[t]he discovery of the plunger and spring change was made aware to GM during a  
7 [sic] course of a lawsuit (*Melton v. GM*).”<sup>31</sup> Delphi personnel responded that GM had authorized  
8 the change back in 2006 but the part number had remained the same.<sup>32</sup>

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

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

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

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

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

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

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

25  
26 <sup>29</sup> GMHEC000138906 (emphasis added).

27 <sup>30</sup> GMHEC000003197.

28 <sup>31</sup> *Id.* See also GMHEC000003156-3180.

<sup>32</sup> See GMHEC000003192-93.

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

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

8 **2. The power steering defect.**

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

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

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

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

21 85. Documents released by NHTSA show that GM waited years to recall nearly  
22 335,000 Saturn Ions for power steering failure – despite receiving nearly 4,800 consumer  
23 complaints and more than 30,000 claims for warranty repairs. That translates to a complaint rate of  
24 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent. By way of  
25  
26  
27

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



1 comparison, NHTSA has described as “high” a complaint rate of 250 complaints per 100,000  
2 vehicles.<sup>34</sup> Here, the rate translates to 1430 complaints per 100,000 vehicles.

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

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

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

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

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

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

21 **3. Airbag defect.**<sup>35</sup>

22 92. From 2007 until at least 2013, nearly 1.2 million GM-branded vehicles in the United  
23 States were sold with defective wiring harnesses. Increased resistance in the wiring harnesses of  
24 driver and passenger seat-mounted, side-impact air bag (“SIAB”) in the affected vehicles may  
25 cause the SIABs, front center airbags, and seat belt pretensioners to not deploy in a crash. The

26 \_\_\_\_\_  
27 <sup>34</sup> See [http://www-odi.nhtsa.dot.gov/cars/problems/defect/-  
results.cfm?action\\_number=EA06002&SearchType=QuickSearch&summary=true](http://www-odi.nhtsa.dot.gov/cars/problems/defect/-results.cfm?action_number=EA06002&SearchType=QuickSearch&summary=true).

28 <sup>35</sup> 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 vehicles' failure to deploy airbags and pretensioners in a crash increases the risk of injury and  
2 death to the drivers and front-seat passengers.

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

5 94. As the wiring harness connectors in the SIABs corrode or loosen over time,  
6 resistance will increase. The airbag sensing system will interpret this increase in resistance as a  
7 fault, which then triggers illumination of the "SERVICE AIR BAG" message on the vehicle's  
8 dashboard. This message may be intermittent at first and the airbags and pretensioners will still  
9 deploy. But over time, the resistance can build to the point where the SIABs, pretensioners, and  
10 front center airbags will not deploy in the event of a collision.<sup>36</sup>

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

13 96. In June 2008, Old GM noticed increased warranty claims for airbag service on  
14 certain of its vehicles and determined it was due to increased resistance in airbag wiring. After  
15 analysis of the tin connectors in September 2008, Old GM determined that corrosion and wear to  
16 the connectors was causing the increased resistance in the airbag wiring. It released a technical  
17 service bulletin on November 25, 2008, for 2008-2009 Buick Enclaves, 2009 Chevy Traverse,  
18 2008-2009 GMC Acadia, and 2008-2009 Saturn Outlook models, instructing dealers to repair the  
19 defect by using Nyogel grease, securing the connectors, and adding slack to the line. Old GM also  
20 began the transition back to gold-plated terminals in certain vehicles. At that point, Old GM  
21 suspended all investigation into the defective airbag wiring and took no further action.<sup>37</sup>

22 97. In November 2009, GM learned of similar reports of increased airbag service  
23 messages in 2010 Chevy Malibu and 2010 Pontiac G6 vehicles. After investigation, GM  
24 concluded that corrosion and wear in the same tin connector was the root of the airbag problems in  
25 the Malibu and G6 models.<sup>38</sup>

26  
27 <sup>36</sup> See GM Notice to NHTSA dated March 17, 2014, at 1.

<sup>37</sup> See GM Notification Campaign No. 14V-118 dated March 31, 2014, at 1-2.

28 <sup>38</sup> See *id.*, at 2.

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

6           99.     From February to May 2010, GM revisited the data on vehicles with faulty harness  
7 wiring issues, and noted another spike in the volume of the airbag service warranty claims. This  
8 led GM to conclude that the November 2008 bulletin was “not entirely effective in correcting the  
9 [wiring defect present in the vehicles].” On November 23, 2010, GM issued another Customer  
10 Satisfaction Bulletin for certain 2008 Buick Enclave, 2008 Saturn Outlook, and 2008 GMC Acadia  
11 models built from October 2007 to March 2008, instructing dealers to secure SIAB harnesses and  
12 re-route or replace the SIAB connectors.<sup>40</sup>

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

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

23           102.    The defect was still uncured, however, because in 2013 GM again marked an  
24 increase in service repairs and buyback activity due to illuminated airbag service lights. On  
25

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26           <sup>39</sup> See *id.*

27           <sup>40</sup> See *id.*, at 3.

28           <sup>41</sup> See *id.*

<sup>42</sup> See *id.*, at 4.

1 October 4, 2013, GM opened an investigation into airbag connector issues in 2011-2013 Buick  
2 Enclave, Chevy Traverse, and GMC Acadia models. The investigation revealed an increase in  
3 warranty claims for vehicles built in late 2011 and early 2012.<sup>43</sup>

4 103. On February 10, 2014, GM concluded that corrosion and crimping issues were again  
5 the root cause of the airbag problems.<sup>44</sup>

6 104. GM initially planned to issue a less-urgent Customer Satisfaction Program to  
7 address the airbag flaw in the 2010-2013 vehicles. But it wasn't until a call with NHTSA on  
8 March 14, 2014, that GM finally issued a full-blown safety recall on the vehicles with the faulty  
9 harness wiring – years after it first learned of the defective airbag connectors, after four  
10 investigations into the defect, and after issuing at least six service bulletins on the topic. The recall  
11 as first approved covered only 912,000 vehicles, but on March 16, 2014, it was increased to cover  
12 approximately 1.2 million vehicles.<sup>45</sup>

13 105. On March 17, 2014, GM issued a recall for 1,176,407 vehicles potentially afflicted  
14 with the defective airbag system. The recall instructs dealers to remove driver and passenger SIAB  
15 connectors and splice and solder the wires together.<sup>46</sup>

16 **4. The brake light defect.**

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

22 107. Once again, GM knew of the dangerous brake light defect for years before it took  
23 anything approaching the requisite remedial action. In fact, although the brake light defect has  
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25 <sup>43</sup> *See id.*

26 <sup>44</sup> *See id.*, at 5.

27 <sup>45</sup> *See id.*

28 <sup>46</sup> *See id.*

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

1 caused at least 13 crashes since 2008, GM did not recall all 2.4 million vehicles with the defect  
2 until May 2014.

3 108. The vehicles with the brake light defect include the 2004-2012 Chevrolet Malibu,  
4 the 2004-2007 Malibu Maxx, the 2005-2010 Pontiac G6, and the 2007-2010 Saturn Aura.<sup>48</sup>

5 109. According to GM, the brake defect originates in the Body Control Module (BCM)  
6 connection system. “Increased resistance can develop in the [BCM] connection system and result  
7 in voltage fluctuations or intermittency in the Brake Apply Sensor (BAS) circuit that can cause  
8 service brakes lamp malfunction.”<sup>49</sup> The result is brake lamps that may illuminate when the brakes  
9 are not being applied and may not illuminate when the brakes are being applied. <sup>50</sup>

10 110. The same defect can also cause the vehicle to get stuck in cruise control if it is  
11 engaged, or cause cruise control to not engage, and may also disable the traction control, electronic  
12 stability control, and panic-braking assist features.<sup>51</sup>

13 111. GM now acknowledges that the brake light defect “may increase the risk of a  
14 crash.”<sup>52</sup>

15 112. As early as September 2008, NHTSA opened an investigation for model year 2005-  
16 2007 Pontiac G6 vehicles involving allegations that the brake lights may turn on when the driver  
17 had not depressed the brake pedal and may turn on when the brake pedal was depressed.<sup>53</sup>

18 113. During its investigation of the brake light defect in 2008, Old GM found elevated  
19 warranty claims for the brake light defect for MY 2005 and 2006 vehicles built in January 2005,  
20 and found “fretting corrosion in the BCM C2 connector was the root cause” of the problem.<sup>54</sup> Old  
21 GM and its part supplier Delphi decided that applying dielectric grease to the BCM C2 connector  
22  
23

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24 <sup>48</sup> *Id.*

25 <sup>49</sup> *Id.*

26 <sup>50</sup> *Id.*

27 <sup>51</sup> *Id.*

28 <sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *Id.*

1 would be “an effective countermeasure to the fretting corrosion.”<sup>55</sup> Beginning in November of  
2 2008, the company began applying dielectric grease in its vehicle assembly plants.<sup>56</sup>

3 114. On December 4, 2008, Old GM issued a TSB recommending the application of  
4 dielectric grease to the BCM C2 connector for the MY 2005-2009, Pontiac G6, 2004-2007  
5 Chevrolet Malibu/Malibu Maxx and 2008 Malibu Classic and 2007-2009 Saturn Aura vehicles.<sup>57</sup>  
6 One month later, in January 2009, Old GM recalled only a small subset of the vehicles with the  
7 brake light defect – 8,000 MY 2005-2006 Pontiac G6 vehicles built during the month of January,  
8 2005.<sup>58</sup>

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

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

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

17 118. In February of 2013, NHTSA opened a “Recall Query” in the face of 324  
18 complaints “that the brake lights do not operate properly” in Pontiac G6, Malibu and Aura vehicles  
19 that had not yet been recalled.<sup>61</sup>

20 119. In response, GM asserts that it “investigated these occurrences looking for root  
21 causes that could be additional contributors to the previously identified fretting corrosion,” but that  
22  
23

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24 <sup>55</sup> *Id.*

25 <sup>56</sup> *Id.* at 3.

26 <sup>57</sup> *Id.* at 2.

27 <sup>58</sup> *Id.*

28 <sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 3.

1 it continued to believe that “fretting corrosion in the BCM C2 connector” was the “root cause” of  
2 the brake light defect.<sup>62</sup>

3 120. In June of 2013, NHTSA upgraded its “Recall Query” concerning brake light  
4 problems to an “Engineering Analysis.”<sup>63</sup>

5 121. In August 2013, GM found an elevated warranty rate for BCM C2 connectors in  
6 vehicles built *after* Old GM had begun applying dielectric grease to BCM C2 connectors at its  
7 assembly plants in November of 2008.<sup>64</sup> In November of 2013, GM concluded that “the amount of  
8 dielectric grease applied in the assembly plant starting November 2008 was insufficient....”<sup>65</sup>

9 122. Finally, in March of 2014, “GM engineering teams began conducting analysis and  
10 physical testing to measure the effectiveness of potential countermeasures to address fretting  
11 corrosion. As a result, GM determined that additional remedies were needed to address fretting  
12 corrosion.”<sup>66</sup>

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

15 124. According to GM, “Dealers are to attach the wiring harness to the BCM with a  
16 spacer, apply dielectric lubricant to both the BCM CR and harness connector, and on the BAS and  
17 harness connector, and relearn the brake pedal home position.”<sup>67</sup>

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

21 **5. Shift cable defect**

22 126. From 2004 through 2010, more than 1.1 million GM-branded vehicles were sold  
23 throughout the United States with a dangerously defective transmission shift cable. The shift cable

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24 <sup>62</sup> *Id.*

25 <sup>63</sup> *Id.*

26 <sup>64</sup> *Id.*

27 <sup>65</sup> *Id.*

28 <sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.*

1 may fracture at any time, preventing the driver from switching gears or placing the transmission in  
2 the “park” position. According to GM, “[i]f the driver cannot place the vehicle in park, and exits  
3 the vehicle without applying the park brake, the vehicle could roll away and a crash could occur  
4 without prior warning.”<sup>68</sup>

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

7 128. In May of 2011, NHTSA informed GM that it had opened an investigation into  
8 failed transmission cables in 2007 model year Saturn Aura vehicles. In response, GM noted “a  
9 cable failure model in which a tear to the conduit jacket could allow moisture to corrode the  
10 interior steel wires, resulting in degradation of shift cable performance, and eventually, a possible  
11 shift cable failure.”<sup>69</sup>

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

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

21 131. In March 2012, NHTSA sent GM an Engineering Assessment request to investigate  
22 transmission shift cable failures in 2007-2008 MY Auras, Pontiac G6s, and Chevrolet Malibus.<sup>71</sup>

23 132. In responding to the Engineering Assessment request, GM for the first time “noticed  
24 elevated warranty rates in vehicles built with Kongsberg shift cables.” Similar to their predecessor  
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26 <sup>68</sup> See GM letter to NHTSA Re: NHTSA Campaign No. 14V-224 dated May 22, 2014, at 1.

27 <sup>69</sup> *Id.* at 2.

28 <sup>70</sup> *Id.*

<sup>71</sup> *Id.*



1 vehicles built with Leggett & Platt shift cables, in the vehicles built with Kongsberg shift cables  
2 “the tabs on the transmission shift cable end may fracture and separate without warning, resulting  
3 in failure of the transmission shift cable and possible unintended vehicle movement.”<sup>72</sup>

4 133. Finally, on September 13, 2012, the Executive Field Action Decision Committee  
5 decided to conduct a safety recall. This initial recall was limited to 2008-2010 MY Saturn Aura,  
6 Pontiac G6, and Chevrolet Malibu vehicles with 4-speed transmission built with Kongsberg shifter  
7 cables, as well as 2007-2008 MY Saturn Aura and 2005-2007 MY Pontiac G6 vehicles with 4-  
8 speed transmissions which may have been serviced with Kongsberg shift cables.<sup>73</sup>

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

10 135. In March of 2013, NHTSA sent GM a second Engineering Assessment concerning  
11 allegations of failure of the transmission shift cables on all 2007-2008 MY Saturn Aura, Chevrolet  
12 Malibu, and Pontiac G6 vehicles.<sup>74</sup>

13 136. GM continued its standard process of “investigation” and delay. But by May 9,  
14 2014, GM was forced to concede that “the same cable failure mode found with the Saturn Aura 4-  
15 speed transmission” was present in a wide population of vehicles.<sup>75</sup>

16 137. Finally, on May 19, 2014, GM’s Executive Field Actions Decision Committee  
17 decided to conduct a safety recall of more than 1.1 million vehicles with the defective shift cable  
18 issue, including the following models and years (as of May 23, 2014): MY 2007-2008 Chevrolet  
19 Saturn; MY 2004-2008 Chevrolet Malibu; MY 2004-2007 Chevrolet Malibu Maxx; and MY 2005-  
20 2008 Pontiac G6.

21 **6. Safety belt defect.**

22 138. Between the years 2008-2014, more than 1.4 million GM-branded vehicles were  
23 sold with a dangerous safety belt defect. According to GM, “[t]he flexible steel cable that connects  
24 the safety belt to the vehicle at the outside of the front outside of the front outboard seating  
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26 <sup>72</sup> *Id.*

27 <sup>73</sup> *Id.*

28 <sup>74</sup> *Id.*

<sup>75</sup> *Id.*

1 positions can fatigue and separate over time as a result of occupant movement into the seat. In a  
2 crash, a separated cable could increase the risk of injury to the occupant.”<sup>76</sup>

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

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

8 141. On May 19, 2014, GM’s Executive Field Action Decision Committee decided to  
9 conduct a recall of the following models and years in connection with the safety belt defect: MY  
10 2009-2014 Buick Enclave; MY 2009-2014 Chevrolet Traverse; MY 2009-2014 GMC Acadia; and  
11 MY 2009-2010 Saturn Outlook.

12 **7. Ignition lock cylinder defect.**

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

16 143. In these vehicles, faulty ignition lock cylinders can allow removal of the ignition  
17 key while the engine is not in the “Off” position. If the ignition key is removed when the ignition  
18 is not in the “Off” position, unintended vehicle motion may occur. That could cause a vehicle  
19 crash and injury to the vehicle’s occupants or pedestrians. As a result, some of the vehicles with  
20 faulty ignition lock cylinders may fail to conform to Federal Motor Vehicle Safety Standard  
21 number 114, “*Theft Prevention and Rollaway Prevention*.”<sup>79</sup>

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

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25  
26 <sup>76</sup> See GM Notice to NHTSA dated May 19, 2014, at 1.

27 <sup>77</sup> See GM Notice to NHTSA dated April 9, 2014.

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

<sup>79</sup> GM Notice to NHTSA dated April 9, 2014, at 1.

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

2           145. On June 13, 2014, GM recalled more than 500,000 MY 2010-2014 Chevrolet  
3 Camaros because a driver's knee can bump the key fob out of the "run" position and cause the  
4 vehicle to lose power. This issue that has led to at least three crashes. GM said it learned of the  
5 issue which primarily affects drivers who sit close to the steering wheel, during internal testing it  
6 conducted following its massive ignition switch recall earlier this year. GM knows of three crashes  
7 that resulted in four minor injuries attributed to this defect.

8           **9. The ignition key defect.**

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

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

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

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

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

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

27           151. The nine defects discussed above – and the resultant 12 recalls – are but a subset of  
28 the 40 recalls ordered by GM in connection with 35 separate defects during the first five and one-

1 half months of 2014. The additional 26 defects are briefly summarized in the following  
2 paragraphs.

3 152. **Transmission oil cooler line defect:** On March 31, 2014, GM recalled 489,936  
4 MY 2014 Chevy Silverado, 2014 GMC Sierra, 2014 GMC Yukon, 2014 GMC Yukon XL, 2015  
5 Chevy Tahoe, and 2015 Chevy Suburban vehicles. These vehicles may have transmission oil  
6 cooler lines that are not securely seated in the fitting. This can cause transmission oil to leak from  
7 the fitting, where it can contact a hot surface and cause a vehicle fire.

8 153. **Power management mode software defect:** On January 13, 2014, GM recalled  
9 324,970 MY 2014 Chevy Silverado and GMC Sierra Vehicles. When these vehicles are idling in  
10 cold temperatures, the exhaust components can overheat, melt nearby plastic parts, and cause an  
11 engine fire.

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

17 155. **Light control module defect:** On May 16, 2014, GM recalled 218,214 MY 2004-  
18 2008 Chevrolet Aveo (subcompact) and 2004-2008 Chevrolet Optra (subcompact) vehicles. In  
19 these vehicles, heat generated within the light control module in the center console in the  
20 instrument panel may melt the module and cause a vehicle fire.

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

26 157. **Brake boost defect:** On May 13, 2014, GM recalled 140,067 MY 2014 Chevrolet  
27 Malibu vehicles. The "hydraulic boost assist" in these vehicles may be disabled; when that  
28 happens, slowing or stopping the vehicle requires harder brake pedal force, and the vehicle will

1 travel a greater distance before stopping. Therefore, these vehicles do not comply with Federal  
2 Motor Vehicle Safety Standard number 135, "Light Vehicle Brake Systems," and are at increased  
3 risk of collision.

4 158. **Low beam headlight defect:** On May 14, 2014, GM recalled 103,158 MY 2005-  
5 2007 Chevrolet Corvette vehicles. In these vehicles, the underhood bussed electrical center  
6 (UBEC) housing can expand and cause the headlamp low beam relay control circuit wire to bend.  
7 When the wire is repeatedly bent, it can fracture and cause a loss of low beam headlamp  
8 illumination. The loss of illumination decreases the driver's visibility and the vehicle's conspicuity  
9 to other motorists, increasing the risk of a crash.

10 159. **Vacuum line brake booster defect:** On March 17, 2014, GM recalled 63,903 MY  
11 2013-2014 Cadillac XTS vehicles. In these vehicles, a cavity plug on the brake boost pump  
12 connector may dislodge and allow corrosion of the brake booster pump relay connector. This can  
13 have an adverse impact on the vehicle's brakes.

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

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

21 162. **Flexible flat cable airbag defect:** On April 9, 2014, GM recalled 23,247 MY  
22 2009-2010 Pontiac Vibe vehicles. These vehicles are susceptible to a failure in the Flexible Flat  
23 Cable ("FFC") in the spiral cable assemble connecting the driver's airbag module. When the FFC  
24 fails, connectivity to the driver's airbag module is lost and the airbag is deactivated. The resultant  
25 failure of the driver's airbag to deploy increases the risk of injury to the driver in the event of a  
26 crash.

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

4           164.    **Brake rotor defect:** On May 7, 2014, GM recalled 8,208 MY 2014 Chevrolet  
5 Malibu and Buick LaCrosse vehicles. In these vehicles, GM may have accidentally installed rear  
6 brake rotors on the front brakes. The rear rotors are thinner than the front rotors, and the use of  
7 rear rotors in the front of the vehicle may result in a front brake pad detaching from the caliper.  
8 The detachment of a break pad from the caliper can cause a sudden reduction in braking which  
9 lengthens the distance required to stop the vehicle and increases the risk of a crash.

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

16           166.    **Electronic stability control defect:** On March 26, 2014, GM recalled 656 MY  
17 2014 Cadillac ELR vehicles. In these vehicles, the electronic stability control (ESC) system  
18 software may inhibit certain ESC diagnostics and fail to alert the driver that the ESC system is  
19 partially or fully disabled. Therefore, these vehicles fail to conform to Federal Motor Vehicle  
20 Safety Standard number 126, “Electronic Stability Control Systems.” A driver who is not alerted  
21 to an ESC system malfunction may continue driving with a disabled ESC system. That may result  
22 in the loss of directional control, greatly increasing the risk of a crash.

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

28

1           168. **Automatic transmission shift cable adjuster:** On February 20, 2014, GM recalled  
2 352 MY 2014 Buick Enclave, Buick LaCrosse, Buick Regal, Verano, Chevrolet Cruze, Chevrolet  
3 Impala, Chevrolet Malibu, Chevrolet Traverse, and GMC Acadia vehicles. In these vehicles, the  
4 transmission shift cable adjuster may disengage from the transmission shift lever. When that  
5 happens, the driver may be unable to shift gears, and the indicated gear position may not be  
6 accurate. If the adjuster is disengaged when the driver attempts to stop and park the vehicle, the  
7 driver may be able to shift the lever to the “PARK” position but the vehicle transmission may not  
8 be in the “PARK” gear position. That creates the risk that the vehicle will roll away as the driver  
9 and other occupants exit the vehicle, or anytime thereafter.

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

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

20           171. **Base radio defect:** On June 5, 2014, GM recalled 57,512 MY 2014 Chevrolet  
21 Silverado LD, 2014 GMC Sierra LD and model year 2015 Silverado HD, Tahoe and Suburban and  
22 2015 GMC Sierra HD and Yukon and Yukon XL vehicles because the base radio may not work.  
23 The faulty base radio prevents audible warnings if the key is in the ignition when the driver’s door  
24 is open, and audible chimes when a front seat belt is not buckled. Vehicles with the base radio  
25 defect are out of compliance with motor vehicle safety standards covering theft protection,  
26 rollaway protection and occupant crash protection.

27           172. **Shorting bar defect:** On June 5, 2014, GM recalled 31,520 MY 2012 Buick  
28 Verano and Chevrolet Camaro, Cruze, and Sonic compact cars for a defect in which the shorting

1 bar inside the dual stage driver's air bag may occasionally contact the air bag terminals. If contact  
2 occurs, the air bag warning light will illuminate. If the car and terminals are contacting each other  
3 in a crash, the air bag will not deploy. GM admits awareness of one crash with an injury where the  
4 relevant diagnostic trouble code was found at the time the vehicle was repaired. GM is aware of  
5 other crashes where air bags did not deploy but it does not know if they were related to this  
6 condition. GM conducted two previous recalls for this condition involving 7,116 of these vehicles  
7 with no confirmed crashes in which this issue was involved.

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

13 174. **Sensing and Diagnostic Model ("SDM") defect:** On June 5, 2014, GM recalled  
14 33 model year 2014 Chevrolet Corvettes in the U.S. because an internal short-circuit in the sensing  
15 and diagnostic module (SDM) could disable frontal air bags, safety belt pretensioners and the  
16 Automatic Occupancy Sensing module.

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

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

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

25 178. In light of GM's history of concealing known defects, there is little reason to think  
26 that either GM's recalls have fully addressed the 35 recently revealed defects or that GM has  
27 addressed each defect of which it is or should be aware.  
28



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

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

6 180. GM made very clear to its personnel that cost-cutting was more important than  
7 safety, deprived its personnel of necessary resources for spotting and remedying defects, trained its  
8 employees not to reveal known defects, and rebuked those who attempted to “push hard” on safety  
9 issues.

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

12 182. One GM engineer stated that emphasis on cost control at GM “permeates the fabric  
13 of the whole culture.”<sup>82</sup>

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

18 184. GM's focus on cost-cutting created major disincentives to personnel who might  
19 wish to address safety issues. For example, those responsible for a vehicle were responsible for its  
20 costs, but if they wanted to make a change that incurred cost and affected other vehicles, they also  
21 became responsible for the costs incurred in the other vehicles.<sup>84</sup>

22 185. As another cost-cutting measure, parts were sourced to the lowest bidder, even if  
23 they were not the highest quality parts.<sup>85</sup>

24 \_\_\_\_\_  
25 <sup>80</sup> GM Report at 249.

26 <sup>81</sup> GM Report at 250.

27 <sup>82</sup> GM Report at 250.

28 <sup>83</sup> GM Report at 250.

<sup>84</sup> GM Report at 250.

<sup>85</sup> GM Report at 251.

1 186. Because of GM's focus on cost-cutting, GM Engineers did not believe they had  
2 extra funds to spend on product improvements.<sup>86</sup>

3 187. GM's focus on cost-cutting also made it harder for GM personnel to discover safety  
4 defects, as in the case of the "TREAD Reporting team."

5 188. GM used its TREAD database (known as "TREAD") to store the data required to be  
6 reported quarterly to NHTSA under the TREAD Act.<sup>87</sup> From the date of its inception in 2009,  
7 TREAD has been the principal database used by GM to track incidents related to its vehicles.<sup>88</sup>

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

13 190. In or around 2007-08, Old GM reduced the TREAD Reporting team from eight to  
14 three employees, and the monthly data mining process pared down.<sup>90</sup> In 2010, GM restored two  
15 people to the team, but they did not participate in the TREAD database searches.<sup>91</sup> Moreover, until  
16 2014, the TREAD Reporting team did not have sufficient resources to obtain any of the advanced  
17 data mining software programs available in the industry to better identify and understand potential  
18 defects.<sup>92</sup>

19 191. By starving the TREAD Reporting team of the resources it needed to identify  
20 potential safety issues, GM helped to insure that safety issues would not come to light.  
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22  
23

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24 <sup>86</sup> GM Report at 251.

25 <sup>87</sup> GM Report at 306.

26 <sup>88</sup> GM Report at 306.

27 <sup>89</sup> GM Report at 307.

28 <sup>90</sup> GM Report at 307.

<sup>91</sup> GM Report at 307-308.

<sup>92</sup> GM Report at 208.

1 192. “[T]here was resistance or reluctance to raise issues or concerns in the GM culture.”  
2 The culture, atmosphere and supervisor response at GM “discouraged individuals from raising  
3 safety concerns.”<sup>93</sup>

4 193. GM CEO Mary Barra experienced instances where GM engineers were “unwilling  
5 to identify issues out of concern that it would delay the launch” of a vehicle.<sup>94</sup>

6 194. GM supervisors warned employees to “never put anything above the company” and  
7 “never put the company at risk.”<sup>95</sup>

8 195. GM “pushed back” on describing matters as safety issues and, as a result, “GM  
9 personnel failed to raise significant issues to key decision-makers.”<sup>96</sup>

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

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

19 198. Many GM employees “did not take notes at all at critical safety meetings because  
20 they believed GM lawyers did not want such notes taken.”<sup>100</sup>

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23 <sup>93</sup> GM Report at 252.

24 <sup>94</sup> GM Report at 252.

25 <sup>95</sup> GM Report at 252-253.

26 <sup>96</sup> GM Report at 253.

27 <sup>97</sup> GM Report at 92.

28 <sup>98</sup> GM Report at 93.

<sup>99</sup> GM Report at 93.

<sup>100</sup> GM Report at 254.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24  
25 <sup>101</sup> GM Report at 255.

26 <sup>102</sup> GM Report at 256.

27 <sup>103</sup> GM Report at 259-260.

28 <sup>104</sup> GM Report at 260-261.

<sup>105</sup> GM Report at 263.

<sup>106</sup> GM Report at 264.

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

3 212. GM's unprecedented concealment of a large number of serious defects, and its  
4 irresponsible approach to safety issues, has caused damage to consumers in Orange County and  
5 throughout California.

6 213. A vehicle made by a reputable manufacturer of safe and reliable vehicles who  
7 stands behind its vehicles after they are sold is worth more than an otherwise similar vehicle made  
8 by a disreputable manufacturer known for selling defective vehicles and for concealing and failing  
9 to remedy serious defects after the vehicles are sold.

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

13 215. Purchasers and lessees of new and used GM-branded vehicles after the July 10,  
14 2009, inception of GM paid more for the vehicles than they would have had GM disclosed the  
15 many defects it had a duty to disclose in GM-branded vehicles. Because GM concealed the defects  
16 and the fact that it was a disreputable brand that valued cost-cutting over safety, these consumers  
17 did not receive the benefit of their bargain. And the value of all their vehicles has diminished as  
18 the result of GM's deceptive conduct.

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

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

27 217. The National Traffic and Motor Vehicle Safety Act of 1966 (the "Safety Act")  
28 requires manufacturers of motor vehicles and motor vehicle equipment to submit certain  
information to the National Highway Traffic Safety Administration (NHTSA) in order "to reduce

1 traffic accidents and deaths and injuries resulting from traffic accidents.” 49 U.S.C. § 30101 *et*  
2 *seq.*

3 218. Under the Safety Act, the manufacturer of a vehicle has a duty to notify dealers and  
4 purchasers of a safety defect and remedy the defect without charge. 49 U.S.C. § 30118. In  
5 November 2000, Congress enacted the Transportation Recall Enhancement, Accountability and  
6 Documentation (TREAD) Act, 49 U.S.C. §§ 30101-30170, which amended the Safety Act and  
7 directed the Secretary of Transportation to promulgate regulation expanding the scope of the  
8 information that manufacturers are required to submit to NHTSA.

9 219. The Safety Act requires manufacturers to inform NHTSA within five days of  
10 discovering a defect. 49 CFR § 573.6 provides that a manufacturer “shall furnish a report to the  
11 NHTSA for each defect in his vehicles or in his items of original or replacement equipment that he  
12 or the Administrator determines to be related to motor vehicle safety, and for each noncompliance  
13 with a motor vehicle safety standard in such vehicles or items of equipment which either he or the  
14 Administrator determines to exist,” and that such reports must include, among other  
15 things: identification of the vehicles or items of motor vehicle equipment potentially containing  
16 the defect or noncompliance, including a description of the manufacturer’s basis for its  
17 determination of the recall population and a description of how the vehicles or items of equipment  
18 to be recalled differ from similar vehicles or items of equipment that the manufacturer has not  
19 included in the recall; in the case of passenger cars, the identification shall be by the make, line,  
20 model year, the inclusive dates (month and year) of manufacture, and any other information  
21 necessary to describe the vehicles; a description of the defect or noncompliance, including both a  
22 brief summary and a detailed description, with graphic aids as necessary, of the nature and physical  
23 location (if applicable) of the defect or noncompliance; a chronology of all principal events that  
24 were the basis for the determination that the defect related to motor vehicle safety, including a  
25 summary of all warranty claims, field or service reports, and other information, with their dates of  
26 receipt; a description of the manufacturer’s program for remedying the defect or noncompliance;  
27 and a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the  
28

1 problem addressed by the recall within a reasonable time in advance of the manufacturer's  
2 notification of owners, purchasers and dealers.

3 220. Manufacturers are also required to submit "early warning reporting" (EWR) data  
4 and information that may assist the agency in identifying safety defects in motor vehicles or motor  
5 vehicle equipment. *See* 49 U.S.C. § 30166(m)(3)(B). The data submitted to NHTSA under the  
6 EWR regulation includes: production numbers (cumulative total of vehicles or items of equipment  
7 manufactured in the year); incidents involving death or injury based on claims and notices received  
8 by the manufacturer; claims relating to property damage received by the manufacturer; warranty  
9 claims paid by the manufacturer (generally for repairs on relatively new products) pursuant to a  
10 warranty program (in the tire industry these are warranty adjustment claims); consumer complaints  
11 (a communication by a consumer to the manufacturer that expresses dissatisfaction with the  
12 manufacturer's product or performance of its product or an alleged defect); and field reports  
13 (prepared by the manufacturer's employees or representatives concerning failure, malfunction, lack  
14 of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

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



1 manufacturer sold or offered for sale in the United States that are identical or substantially similar  
2 to the motor vehicles covered by the foreign recall or campaign.

3 222. 49 CFR § 579.21 requires manufacturers to provide NHTSA quarterly field reports  
4 related to the current and nine preceding model years regarding various systems, including, but not  
5 limited to, vehicle speed control. The field reports must contain, among other things: a report on  
6 each incident involving one or more deaths or injuries occurring in the United States that is  
7 identified in a claim against and received by the manufacturer or in a notice received by the  
8 manufacturer which notice alleges or proves that the death or injury was caused by a possible  
9 defect in the manufacturer's vehicle, together with each incident involving one or more deaths  
10 occurring in a foreign country that is identified in a claim against and received by the manufacturer  
11 involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle  
12 that the manufacturer has offered for sale in the United States, and any assessment of an alleged  
13 failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of  
14 motor vehicle equipment (including any part thereof) that is originated by an employee or  
15 representative of the manufacturer and that the manufacturer received during a reporting period.

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

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

1 **E. GM’s Misrepresentations and Deceptive, False, Untrue and Misleading Advertising,**  
2 **Marketing and Public Statements**

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

9 226. During this time period, GM falsely assured California consumers in various written  
10 and broadcast statements that its cars were safe and reliable, and concealed and suppressed the true  
11 facts concerning the many defects in millions of GM-branded vehicles, and GM’s policies that led  
12 to both the manufacture of an inordinate number of vehicles with safety defects and the subsequent  
13 concealment of those defects once the vehicles are on the road. To this day, GM continues to  
14 conceal and suppress information about the safety and reliability of its vehicles.

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

21 228. GM has consistently marketed its vehicles as “safe” and proclaimed that safety is  
22 one of its highest priorities.

23 229. It told consumers that it built the world’s best vehicles:

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

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

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

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

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

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

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4  
5 The new General Motors has one clear vision: to design, build and sell the world's  
6 best vehicles. Our new business model revolves around this vision, focusing on fewer  
7 brands, compelling vehicle design, innovative technology, improved manufacturing  
8 productivity and streamlined, more efficient inventory processes. The end result  
9 is products that delight customers and generate higher volumes and margins—  
10 and ultimately deliver more cash to invest in our future vehicles.

11  
12 A New Vision,  
13 a New Business Model

14  
15 Our vision is simple, straightforward and clear; to  
16 design, build and sell the world's best vehicles. That  
17 doesn't mean just making our vehicles better than  
18 the ones they replace. We have set a higher standard  
19 for the new GM—and that means building the best.

20 Our vision comes to life in a continuous cycle that  
21 starts, ends and begins again with great vehicle  
22 designs. To accelerate the momentum we've already  
23 created, we reduced our North American portfolio  
24 from eight brands to four: Chevrolet, Buick, Cadillac  
25 and GMC. Worldwide, we're aggressively developing  
26 and leveraging global vehicle architectures to  
27 maximize our talent and resources and achieve  
28 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 improve-  
ment 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 re-  
sidual 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 Cruze

Global success is no surprise for the new Chevrolet Cruze, which is sold in more than 80 countries around the world. In addition to a 42 mpg Eco model (sold in North America), Cruze's globally influenced design is complemented by its exceptional quietness, high quality and attention to detail not matched by the competition.



### Buick Regal

The sport-injected Buick Regal is the brand's latest addition, attracting a whole new demographic for the Buick brand. The newly designed Buick lineup, which saw 52 percent volume growth in 2010 in the United States alone, is appealing to a broader spectrum of buyers.



### 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.

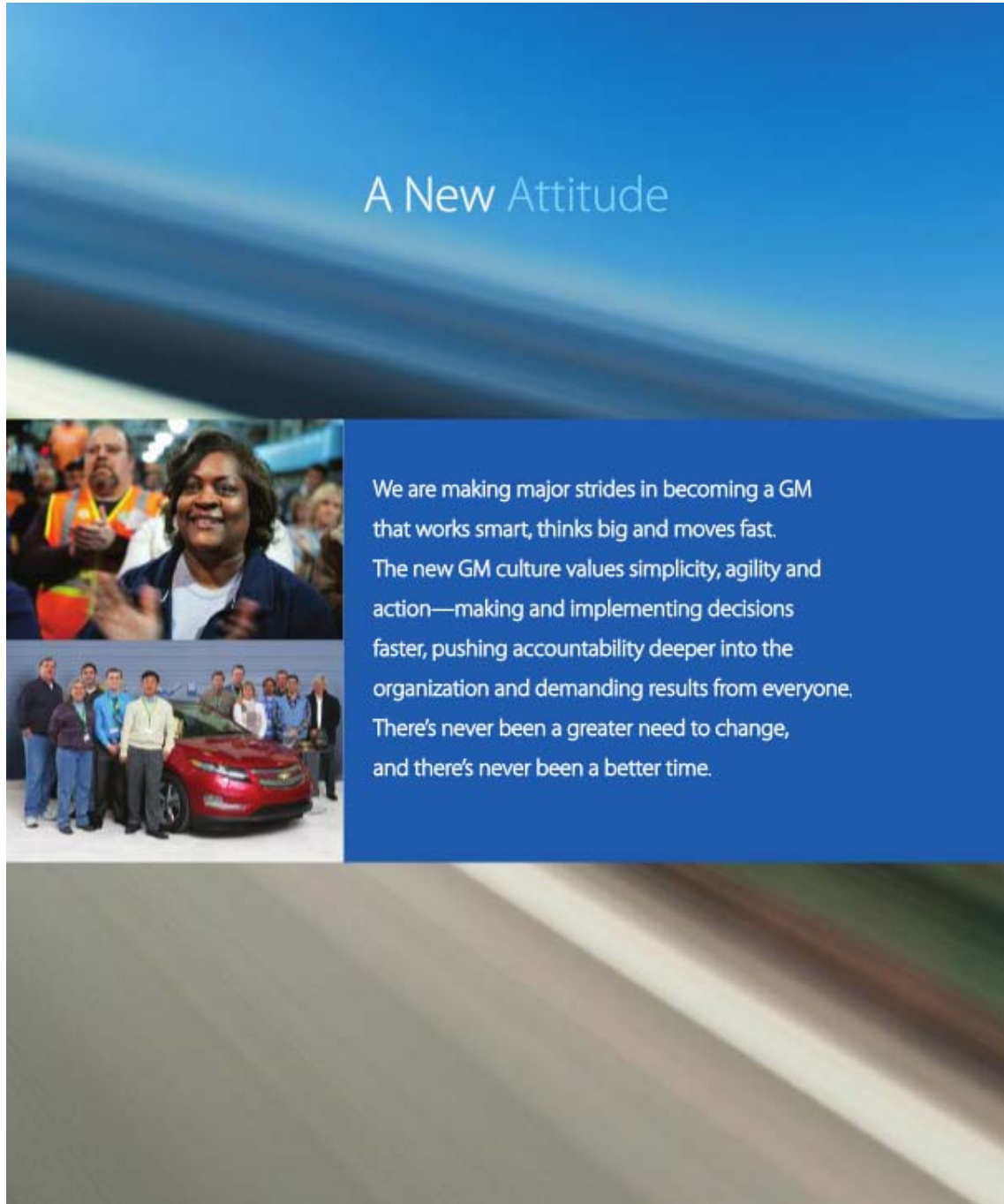


**Cadillac SRX**

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.

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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

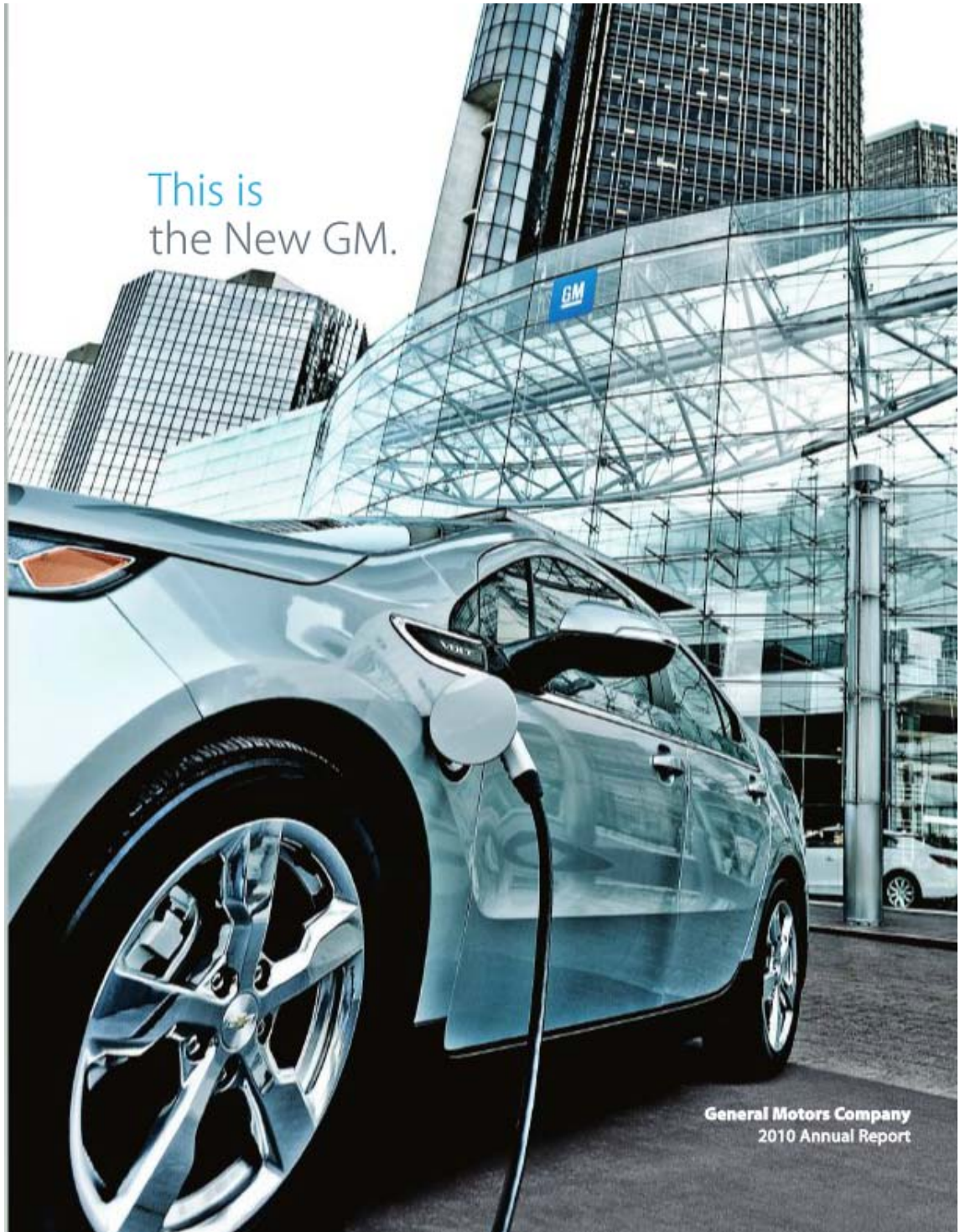
Clarity of purpose and consistency of execution are the cornerstones  
of our product strategy, and two brands will drive our global growth.  
They are Chevrolet, which embodies the qualities of value,  
reliability, performance and expressive design; and Cadillac, which  
creates luxury vehicles that 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:



1  
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  
vehicle helps GM proactively design and test features that help keep  
you safe and enjoy the drive. 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.

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."  
28

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**

17  
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.  
28

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 First Amended Complaint were material and likely to deceive a reasonable  
24 consumer.

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

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,  
28



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.

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1 Dated: July 1, 2014

Respectfully submitted,

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

----- X  
IN RE: : Chapter 11  
: :  
MOTORS LIQUIDATION COMPANY, *et al.*, : No. 09-50026 (REG)  
f/k/a GENERAL MOTORS CORP., *et al.*, :  
: (Jointly Administered)  
Debtors. :  
----- X

**STATE OF ARIZONA’S “NO STRIKE” PLEADING**

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The State of Arizona *ex rel.* Mark Brnovich, the Attorney General, submits this No Strike Pleading in accordance with paragraph 12(c) of this Court’s Judgment dated June 1, 2015. For the reasons stated herein, the State submits that the Sale Order neither does, nor properly could, enjoin any of the claims or allegations in the *Arizona* action.<sup>1</sup>

## I. INTRODUCTION

The *Arizona* action is a law enforcement action for civil penalties and injunctive relief against General Motors LLC (“New GM”) that brings legal claims based exclusively on New GM’s independent violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* The *Arizona* action seeks to hold New GM liable for only its own acts and omissions after this Court approved the 363 Transaction<sup>2</sup> and New GM began operations on July 10, 2009. The *Arizona* action does not seek to recover damages to consumers resulting from the actions or conduct of General Motors Corporation (“Old GM”) and therefore is not subject to this Court’s Sale Order bar on claims against New GM arising from or related to the conduct of Old GM. Accordingly, under the logic of this Court’s Decision, the *Arizona* action consists exclusively of Independent Claims, and should be permitted to proceed without amendment.

Plaintiff alleges that New GM is liable for civil penalties as a result of its post-July 10, 2009 conduct due to its decisions to (i) conceal the existence of the many known defects

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<sup>1</sup> The “*Arizona* action” is *State of Arizona v. General Motors LLC*, No. CV2014-014090 (Maricopa County Superior Court, Arizona), and a copy of the Complaint is attached as Exhibit A.

<sup>2</sup> The term “363 Transaction” refers to the sale of Old GM’s assets to New GM pursuant to 11 U.S.C. § 363, as effectuated by this Court’s July 5, 2009 Sale Order. Capitalized terms used but not defined herein shall have the meanings ascribed to them in this Court’s *Decision on Motion to Enforce Sale Order*, entered on April 15, 2015, (“Decision”), and reported as *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296 (Bankr. S.D.N.Y. Apr. 15, 2015).

plaguing an astounding number of models and years of GM-branded vehicles;<sup>3</sup> (ii) maintain a corporate culture that valued cost-cutting over safety and actively discouraged New GM personnel from flagging or addressing safety issues; and (iii) falsely market its brand and its vehicles as safe and reliable. *See, e.g.*, ¶¶ 8-10.<sup>4</sup> The State’s claim for violations of the Arizona Consumer Fraud Act targets New GM’s conduct in creating safety defects, concealing known safety defects, and falsely marketing its vehicles as safe and reliable. ¶¶ 494-511.

Simply put, the State’s claims arose after the 363 Transaction, and are based solely on the post-Sale conduct of New GM. The State’s legal claims are therefore Independent Claims under the logic of this Court’s Decision. In fact, the claims do not fall properly within the category of claims barred or released by the Sale Order. Moreover, as a matter of law, the Sale Order cannot bar claims based solely on the conduct of the non-debtor New GM that did not arise until *after* the 363 Transaction. There is no precedent for providing immunity for future wrongdoing to a purchaser in a 363 transaction—no matter how much more enticing that would make the offer of sale—and no court has the subject matter jurisdiction to grant such immunity. Accordingly, the State’s claims are not subject to the injunction in the Sale Order.

The State is not alone in its belief that New GM violated the law. Indeed, New GM has conceded as much by entering into a Consent Order with the National Highway Safety Administration (“NHTSA”), in which it “admits that it violated the Safety Act by failing to provide notice to NHTSA [of the ignition switch defects] ... within five working days as

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<sup>3</sup> The term “GM vehicles” (or “GM-branded vehicles”) is used in the Complaint as a generic term for GM vehicles—regardless of whether they were sold by Old GM or New GM. In either case, the *Arizona* action seeks to impose liability only on New GM for its own, post-Sale Order conduct.

<sup>4</sup> References preceded by “¶” are to the paragraphs of the *Arizona* Complaint, attached hereto as Ex. A.

required by” the Act and applicable regulations.<sup>5</sup> The Department of Justice has also reportedly found evidence of criminal wrongdoing by New GM in connection with its cover-up of the ignition switch defect.<sup>6</sup> Surely New GM can be held liable for its own violations of Arizona law.

Finally, this Court should reject New GM’s argument that the mere mention of Old GM or pre-bankruptcy events somehow renders the *Arizona* Complaint improper (in whole or in part). By its own terms, the Sale Order enjoins legal “*claims,*” or causes of action—and not factual allegations. In fact, the pre-Sale conduct alleged in the Complaint involved Old GM personnel that New GM employed in the same or similar capacities. Hence, just as employees’ knowledge acquired in the scope of their employment was imputed to Old GM under Arizona law, it was also imputed to New GM because New GM elected to employ them. When New GM chose to maintain dozens of Old GM employees who were aware of the Ignition Switch Defect and “relatively senior in position,”<sup>7</sup> those employees carried that knowledge into New GM. The *Arizona* Complaint concerns, in part, New GM’s failure to act on that knowledge, and its failure to act on additional information it learned. The State’s legal claims arise solely from New GM’s

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<sup>5</sup> See Consent Order at 4 (available at <http://www.nhtsa.gov/staticfiles/communications/pdf/May-16-2014-TQ14-001-Consent-Order.pdf>). The “Safety Act” refers to the National Traffic Vehicle and Motor Vehicle Safety Act, 49 U.S.C. § 30101, *et seq.*, as amended by the Transportation Recall, Enhancement, Accountability and Documentation Act (the “TREAD Act”). In Section 6.15 of the Sale Agreement through which it acquired substantially all of the assets and assumed certain responsibilities of Old GM, New GM agreed to abide by all Safety Act obligations with respect to vehicles and parts manufactured by Old GM.

<sup>6</sup> See, e.g., “*G.M. Inquiry Said to Find Criminal Wrongdoing,*” N.Y. Times (May 22, 2015) (available at [http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?\\_r=0](http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?_r=0)); *GM CEO Says She’s Been Interviewed in Ignition Switch Probe*, Associated Press (June 10, 2015) (available at <http://www.latimes.com/business/la-fi-hy-gm-barra-20150609-story.html>).

<sup>7</sup> *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*111 n.154.

conduct, and the propriety of the action should not turn on whether or how often the term “Old GM” appears in the Complaint or on whether the New GM employees with knowledge of dangerous defects had previously worked for Old GM.

In sum, the *Arizona* action has been delayed long enough and should now proceed in Arizona state court.<sup>8</sup>

## II. BACKGROUND

### A. The State’s claims target only New GM’s post-Sale misconduct.

The State commenced the *Arizona* action against New GM on November 19, 2014, seeking an injunction, civil penalties and profit disgorgement from New GM as a remedy for New GM’s misleading misrepresentations to Arizona consumers concerning the safety and reliability of certain of its vehicles, the integrity of the New GM brand, and New GM’s alleged concealment of defects in certain GM-branded vehicles or parts.

As the Complaint alleges, after the 363 Transaction, “New GM repeatedly proclaimed that it was a company committed to innovation, safety and maintaining a strong brand.” ¶ 6, ¶¶ 35-78. New GM made these misrepresentations in order “to boost vehicle sales while knowing

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<sup>8</sup> The State is mindful of this Court’s admonition that “the No Strike Pleading shall not reargue issues that were already decided by the Decision and Judgment.” Judgment, ¶ 12(c). But the State also notes the Court’s statement in the Decision that, apart from the claims of the Pre-Closing Accident Plaintiffs,” the “matters now before the Court” and addressed by the Decision “involves only *economic losses* allegedly sustained with respect to Old GM vehicles or parts.” *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296 at \*7 n.4 (emphasis in original); *see also id.* at \*11 n.8 (noting that briefs were filed on behalf of personal injury and “Economic Loss Plaintiffs” only). The State’s claims, of course, do not seek “economic losses” of any sort, let alone “losses sustained with respect to Old GM vehicles or parts.” Instead, the State’s law enforcement claims seek civil penalties, profit disgorgement and injunctive relief based solely on New GM’s post-Sale acts and omissions. The State does not believe that this Court has yet decided the issues addressed herein given the unique circumstances of the *Arizona* action and the arguments asserted herein.

that millions of GM-branded vehicles, across numerous models and years, were plagued with serious and concealed safety defects.” ¶ 79.

In reality, New GM failed to disclose, and affirmatively concealed, both its own systemic devaluation of safety<sup>9</sup> and a staggering and ever-growing number of safety defects in GM-branded vehicles. ¶ 115. The Complaint further alleges that New GM’s systematic concealment of safety defects was deliberate:

The available evidence shows a consistent pattern: New GM learned about a particular defect, and, often only at the prodding of regulatory authorities, “investigated” the defect and decided upon a “root cause.” New GM then took minimal action—such as issuing a carefully-worded “Technical Service Bulletin” to its dealers, or even recalling a limited number of the vehicles with the defect. All the while, the true nature and scope of the defects were kept under wraps, vehicles affected by the defects remained on the road, New GM continued to create new defects in new vehicles, and New GM enticed consumers to purchase its vehicles by touting the safety, quality, and reliability of its vehicles, and presenting itself as a manufacturer that stands behind its products. [¶ 122.]

Now the truth has come out, as (i) New GM was forced to disclose scores of serious defects in a series of recalls affecting over 27 million GM-branded vehicles (*see* ¶¶ 64-461 (describing many of the defects, and explaining that New GM was aware of them prior to 2014 but chose to conceal them)); (ii) information about New GM’s systemic de-valuation of safety and active discouragement of personnel who might otherwise flag safety issues has been publicized in a report by Anton Valukas commissioned by New GM (*see* ¶¶ 82-112); and (iii) in a Consent Order with NHTSA, New GM admitted that it had violated its legal obligations to promptly disclose the existence of known safety defects (¶ 85). As a result of the revelation of

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<sup>9</sup> *See, e.g.*, ¶¶ 82-114.

New GM's fraudulent omissions and misrepresentations, and New GM's extreme mishandling of safety issues, the value of *all* GM-branded vehicles sold after New GM's inception has diminished. ¶¶ 10, 23.

**B. The State claims that New GM independently violated the Arizona Consumer Fraud Act.**

The State's Complaint asserts only claims against New GM solely for its post-Sale violations of the Arizona Consumer Fraud Act. The Complaint alleges that "New GM's false representations and/or omissions concerning the safety and reliability of its vehicles, and its concealment of a plethora of known safety defects plaguing its vehicles and its brand, caused Arizona residents to purchase GM-branded vehicles under false pretenses." ¶ 22. The Complaint asserts that this conduct of New GM violated A.R.S. § 44-1522(A), which declares unlawful:

The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

See ¶¶ 497-498. As the Complaint makes clear, the unlawful practices at issue are those committed by New GM "in connection with the sale and lease of GM-branded vehicles on or after July 11, 2009." *Id.* ¶ 498; *see also id.* ¶ 503. The claims necessarily arise exclusively from the alleged acts and omissions of New GM, and did not accrue until after the Sale Order.

Likewise, in the Prayer for Relief, all the remedies are targeted at New GM's conduct, as the State seeks (A) to enjoin New GM from engaging in *its own* unlawful acts and practices as alleged in the Complaint; (B) an Order that New GM disgorge its profits or gains from *its own*

unlawful practices; and (C) an Order that New GM pay penalties for each of *its own* willful violations of the Consumer Fraud Act. Ultimately, there are two possible results in the Arizona Action: (i) New GM is found to have itself used deceptive, fraudulent and/or unfair acts or practices in violation of the Arizona Consumer Fraud Act, and is therefore subject to civil penalties (if its acts are found willful), disgorgement of its wrongful gains and injunctive relief; or (ii) New GM is found not to have violated the Arizona Consumer Fraud Act, and New GM therefore prevails. The *Arizona* Complaint simply cannot be read as an effort to hold New GM liable for the conduct of Old GM—under a successor liability theory, a “transferee” theory, or any other theory.

### III. ARGUMENT

#### A. **On its face, the Sale Order does not bar the State’s claims based on New GM’s violations of its own independent legal duties.**

The Sale Order has no application to the State’s claims against New GM for New GM’s post-Sale violations of Arizona’s Consumer Fraud Act. The claims do not attempt to hold New GM liable for the conduct of Old GM. Under the plain language of the Sale Order, and the logic of this Court’s Decision, the State’s claims against the non-debtor New GM are Independent Claims that should proceed in Arizona state court without further impediment.

New GM has argued that it is has no liability for at least certain of the State’s claims under paragraph 46 of the Sale Order, which reads as follows:

Except for the Assumed Liabilities expressly set forth in the [Sale Agreement], ... *[New GM] ... shall [not] have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against [Old GM] . . . prior to the Closing Date. . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any*

*kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity ... and products . . . liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.* [Emphasis added.]

The State’s claims did not arise prior to the Closing Date of the 363 Transaction, as the conduct of New GM about which the State complains had not yet occurred. Nor do the claims “relate[] to the **production** of vehicles prior to the Closing Date”—the State does not seek to hold New GM liable for the “production” of any vehicles prior to the Sale date, but rather for its own post-Sale misconduct. Finally, the State’s claims were never “assertable against Old GM,” as they are based on the conduct of New GM and did not arise until **after** Old GM ceased to exist.

Paragraph 46 cannot be read to bar the State’s claims.

New GM also claims immunity from some or all of the State’s claims based on the injunction in the Sale Order, but that injunction cannot be read to bar the State’s claims. Under the injunction:

[A]ll persons and entities ... holding liens, claims, encumbrances, and other **interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets** (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), **arising under or in any way relating to, [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons’ or entities’ liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.**

Sale Order, ¶ 8 (emphasis added).



Once again, the State does not assert any claims based on successor or transferee liability, and its legal claims neither “arise under” nor are “related to” the conduct of Old GM. While the Complaint contains factual allegations pre-dating the existence of Old GM, the State’s legal claims arise solely from New GM’s own post-Sale misconduct. The injunction cannot be read as providing New GM with immunity for its future misconduct, and has no application to the State’s claims.

**B. The Bankruptcy Court did not have jurisdiction to provide New GM with immunity for its own post-Sale violations of its own independent legal obligations.**

If the Sale Order had purported to enjoin claims against New GM for its own post-Sale conduct, such an injunction would extend beyond the jurisdiction of the bankruptcy court. Subject matter jurisdiction in a bankruptcy proceeding over third-party claims (such as the non-derivative claims of the State) can extend only to actions affecting the *res* of the bankruptcy estate. *In re Johns-Manville Corp.*, 517 F.3d 52, 66-68 (2d Cir. 2008), *rev’d on other grounds sub nom., Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009) (holding that, despite a “common nucleus of operative facts involving” the debtor and the insurer, bankruptcy order enjoining actions unrelated to the *res* of the estate are outside the scope of the bankruptcy court’s injunction power). The Sale Order cannot properly bar the *Arizona* action.

While a bankruptcy court assuredly has jurisdiction to interpret and enforce its own 363 transaction orders, that ancillary jurisdiction exists only to the extent that the court has the jurisdiction to enter the 363 transaction order itself. *See Zerand-Bernal Grp. v. Cox*, 23 F.3d 159, 164 (7th Cir. 1994) (affirming the bankruptcy court’s holding that it “lacked jurisdiction” to enjoin a post-363 transaction claim against a non-debtor: “[T]he fact that the bankruptcy court, in the order approving the bankruptcy sale and later in the plan of reorganization, purported

expressly to assume jurisdiction ... could not confer jurisdiction. A court cannot write its own jurisdictional ticket.”); *see also In re Johns-Manville Corp.*, 517 F.3d at 65 n.22 (“The ancillary jurisdiction courts possess to enforce their own orders ‘is itself limited by the jurisdictional limits of the order sought to be enforced.’”).

This Court did not have subject matter jurisdiction to protect the non-debtor New GM by limiting the rights of the State to bring suit against New GM for New GM’s own post-Sale misconduct in breach of New GM’s own independent legal duties. Subject matter jurisdiction of bankruptcy courts is limited to “civil proceedings arising under Title 11, or arising in or related to cases under Title 11.” 28 U.S.C. § 1334(b). Because the State’s claims are based solely on the non-debtor New GM’s post-sale conduct, the claims cannot be said to “arise in” or “under” Title 11. *See Zerand-Bernal Grp*, 23 F.3d at 162 (“arising under” jurisdiction “is limited to questions that arise during the bankruptcy proceeding and concern the administration of the bankrupt estate, such as whether to discharge a debtor”). And the State’s claims are not “related to” Title 11, since the outcome of the *Arizona* action can have no conceivable effect on the bankrupt estate. *See In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992); *see also In re Quigley Co., Inc.*, 676 F.3d 45, 61-62 (2d Cir. 2012) (bankruptcy court lacks jurisdiction to enjoin a claim against a third party where such claim would not have an effect on the *res* of the bankruptcy estate), *cert. denied*, 133 S. Ct. 2849 (2013).

This Court should reject any argument that New GM should get immunity for its own post-Sale misconduct because immunity for the non-debtor increases the value of the estate. That a broad injunction against future claims against a purchaser might result in a buyer paying a higher price for assets in a 363 transaction is pure speculation, and in any event cannot confer

jurisdiction over future claims against the purchaser arising from its independent misconduct. *See Zerand-Bernal Grp.*, 23 F.3d at 164 (rejecting the argument that bankruptcy courts may immunize a purchaser from state or federal law in the interests of increasing the value of a debtor’s assets). As the *Zerand-Bernal Grp.* court reasoned, the argument that “the price received in a bankruptcy sale will be lower if a court is free to disregard a condition in the sale agreement enjoining claims against the purchaser based on the seller’s misconduct” should be rejected because it “proves too much”:

It implies, what no one believes, that by virtue of the arising-under jurisdiction a bankruptcy court enjoys a blanket power to enjoin all future lawsuits against a buyer at a bankruptcy sale in order to maximize the sale price; more, that the court could in effect immunize such buyers from all state and federal laws that might reduce the value of the assets bought from the bankrupt[.]<sup>[10]</sup>

There is no sound reason to encourage non-debtors to pay a purchase price in a 363 transaction that reflects a belief that they are forever immunized from liability for breaches of their *own* independent legal duties.

Thus, as the Second Circuit reiterated in *In re Johns-Manville Corp.*, 600 F.3d 135, 153 (2d Cir. 2010), bankruptcy courts do not have jurisdiction to enjoin “claims against non-debtor third parties” where those claims are based on the non-derivative misconduct of the non-debtor and the claims do not impact the bankruptcy estate. *See also, e.g., In re 1031 Tax Grp., LLC*, 2011 U.S. Dist. LEXIS 33755, at \*7 (S.D.N.Y. Mar. 29, 2011) (“federal courts are without jurisdiction to enjoin actions against third-parties not in bankruptcy when those actions are premised upon an ‘independent legal duty’”). Here, again, the State’s law enforcement claims

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<sup>10</sup> *Zerand-Bernal Grp.*, 23 F.3d at 163 (citation omitted).

are based on New GM's fraudulent concealment of the scores of defects plaguing GM-branded vehicles; New GM's culture, which systematically devalued safety; and New GM's misrepresentations concerning the safety and reliability of GM-branded vehicles—all in violation of New GM's independent legal duties. A Bankruptcy Court simply does not have jurisdiction to enjoin such claims.

Accordingly, to the extent New GM claims that the Sale Order bars the claims in the *Arizona* Complaint, New GM asks this Court to exercise jurisdiction that it does not have.

**C. The fact the *Arizona* Complaint contains factual allegations about Old GM does not mean that the claims in the Complaint are based on the conduct, cars or parts of Old GM.**

**1. The Sale Order enjoins legal “claims,” *not* factual allegations.**

New GM has advanced the facile argument that any factual allegations concerning Old GM and events that occurred prior to the bankruptcy automatically are improper under the Sale Order. But this Court has at least implicitly rejected that argument by holding that the Economic Loss Plaintiffs can assert “claims involving Old GM vehicles and parts so long as they were basing their claims *solely on New GM conduct*, and not based on any kind of successor liability or any other act by Old GM.” *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*22. It is hard to envision how such a legal claim could be pled without at least mentioning that the vehicle at issues was manufactured by Old GM. It simply cannot be that the mere mention of Old GM is improper.

Indeed, the Sale Order and Sale Agreement speak of legal “claims” being enjoined, *not* allegations. *See supra* at 7-8 (discussing relevant provisions of Sale Order and Sale Agreement). So it is not enough for New GM to simply point to the mention of Old GM (or pre-Sale events) in the Complaint. Rather, New GM must explain how it is that the State's assertion of law

enforcement claims against New GM for its own alleged violations of the Arizona Consumer Fraud Act are somehow claims based on the conduct of Old GM. Because New GM has not and cannot do so, the mention of Old GM cars and past events cannot be said to run afoul of the Sale Order or the Sale Agreement.

**2. The Complaint's factual allegations concerning pre-bankruptcy events are proper, since (a) New GM has knowledge of pre-bankruptcy information because its employees had knowledge of that information; and (b) pre-bankruptcy events provide context for New GM's alleged misconduct.**

As New GM ignores in challenging the propriety of the *Arizona* action under the Sale Order, the law in Arizona and elsewhere broadly imputes an employee's knowledge to its corporate employer where, as here, the employees are acting in the scope of their employment. Significantly, each of the 24 Old GM employees that this Court found to be aware of the Ignition Switch Defect remained at New GM because New GM chose to keep them. As there is no reason to suppose those employees lost their knowledge of the defects on the day Old GM became New GM, their knowledge is imputed to New GM, as is the knowledge of all other New GM employees acting within the scope of their employment. To impute the knowledge of those employees to New GM is not a successor liability claim. If New GM hadn't elected to retain Old GM's employees, the knowledge of those employees would not be imputed to New GM. And if New GM or those employees had acted appropriately upon their hiring by New GM to address (rather than conceal) the known problems, New GM would not have liability.

New GM's knowledge of the Ignition Switch Defect and a host of other defects is, of course, highly relevant to the State's claims against New GM. Moreover, because of New GM's continuing obligations under the Safety Act, the Company was under a duty to (i) continue to monitor all GM vehicles that were on the road, and (ii) maintain the many records it was required

to generate in connection with actual or potential safety issues. Because of this, the actual number of New GM personnel with knowledge of the defects and safety issues in Old GM vehicles is far greater than the 24 found by this Court. The State’s claims against New GM are properly premised, in part, on the knowledge of the dozens of personnel that New GM employed who were aware of the defects and safety issues in Old GM vehicles. That fact accounts for nearly all of the allegations in the *Arizona* Complaint that concern events that pre-date the existence of New GM. The few remaining allegations concerning pre-bankruptcy facts are in the Complaint to provide context. None of those allegations can possibly be used to hold New GM liable for the actions of Old GM.

**a. An employee’s knowledge of facts learned in the scope of her employment is broadly imputed to the corporate employer.**

Knowledge of the ignition switch defects and other pre-bankruptcy defects was wide-reaching and extensive within Old GM—and therefore New GM—including among Old GM’s in-house counsel, management, and lead design engineers (most or all of whom stayed on at New GM). Under Arizona agency principles, the knowledge of these employees and counsel is imputed to Old GM because knowledge acquired by an agent in the scope of her employment is imputed to the principal. *S Dev. Co. v. Pima Capital Mgmt.* 31 P.3d 123, 133 (Ariz. Ct. App. 2001); *Manley v. Ticor Title Ins. Co. of Cal.*, , 816 P.2d 225, 229 (1991) (same); *Fridena v. Evans*, 622 P.2d 463, 466 (Ariz. 1980) (“a corporation is bound by the knowledge acquired by, or notice given to, its agents or officers which is within the scope of their authority and which is in reference to a matter to which their authority extends”); *Cameron v. Shuttleworth*, 251 P.2d 659, 661 (Ariz. 1952) (“A person has notice of a fact if he or his agent knows the fact, has reason to know it, should know it, or has been given a notification of it” (citing RESTATEMENT (FIRST)

OF AGENCY § 9 (1933)). The law on these issues is substantially the same across the law of Michigan (where New GM is based), Delaware (where it was incorporated), and New York (most frequently analyzed before the Bankruptcy Court), and therefore the law applicable in all of these potentially relevant jurisdictions is also discussed herein.<sup>11</sup>

As discussed *infra* at 16-18, knowledge of the Ignition Switch Defect was widespread and communicated throughout New GM. But even if that were not the case, employees' knowledge acquired within the scope of their employment is imputed to the corporation even if it is never communicated. *Cameron v. Shuttleworth*, 251 P.2d at 662 (finding notice imputed to principal even where agent does not relay the notice to principal); *see also Kirschner v. KPMG LLP*, 938 N.E.2d 941, 950-51 (N.Y. 2010) (applying legal presumption that agents communicate information to principals).<sup>12</sup> The employee's knowledge will be imputed to his employer even if employees fail to properly report their knowledge to senior management because of negligence, omissions, or general organizational incompetence. *S Dev. Co.*, 31 P.3d at 133-34 (holding general rule of imputed knowledge applies even in negligent nondisclosure or fraud case because focus is defendant's improper actions in light of the knowledge he possesses). Courts impose a

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<sup>11</sup> *N.Y. Marine & Gen. Ins. Co. v. Tradeline L.L.C.*, 266 F.3d 112, 122 (2d Cir. 2001); *Allard v. Arthur Andersen & Co. (USA)*, 924 F. Supp. 488, 494-95 (S.D.N.Y. 1996) (applying New York and Michigan law to impute the knowledge and conduct of corporate officials acting within the scope of their employment); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962) (“[E]ach party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.”) (citation omitted), *reh’g denied*, 371 U.S. 873 (1962); *Veal v. Geraci*, 23 F.3d 722, 725 (2d Cir. 1994) (“[U]nder traditional principles of agency the attorney’s knowledge must be imputed to [the client].”).

<sup>12</sup> *See also* 3 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 790 (1994) (noting that it has been widely held that a corporation is charged with imputed knowledge “even though the officer or agent does not in fact communicate the knowledge to the corporation”); Restatement (Third) of Agency § 5.03 cmt. b (“A principal may not rebut imputation of an agent’s notice of a fact by establishing that the agent kept silent.”).

conclusive presumption that the agent has discharged his duty to impart to the principal all the knowledge which is necessary for the principal's protection or guidance. *First Ala. Bank of Montgomery, N.A. v. First State Ins. Co.*, 899 F.2d 1045, 1061 n.8 (11th Cir. 1990). These legal presumptions are intended "to avoid the injustice which would result if the principal could have an agent conduct business for him and at the same time shield himself from the consequences which would ensue from knowledge of conditions or notice of the rights and interests of others had the principal transacted his own business in person." *Id.* Similarly, principals may not benefit from the inequitable conduct of their agents. *Queiroz v. Harvey*, 205 P.3d 1120, 1122 (Ariz. 2009) (recognizing that innocent third party must be protected, rather than the principal who has retained an unscrupulous agent on whom he has relied); *see also S Dev. Co.*, 31 P.3d at 133-34 (holding principal vendor charged with knowledge of plumbing defect in apartment complex known to its agents in action alleging fraud and nondisclosure).

**b. The knowledge of GM personnel who worked at both Old and New GM is properly imputed to New GM.**

Here, many GM attorneys, managers, lead engineers, and other personnel who worked at both Old and New GM acquired knowledge of the Ignition Switch Defect while performing their duties, using systems and procedures that Old and then New GM maintained to comply with Safety Act obligations. As this Court found, "at least 24 Old GM personnel ..., including engineers, senior managers, and attorneys, were informed or otherwise aware of the Ignition Switch Defect prior to the Sale motion," and, based on that knowledge, Old GM should have conducted a recall prior to the 2009 bankruptcy. *See In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*16. In reaching this conclusion, the Court effectively rejected New GM's



arguments that only a “limited” number of Old GM personnel were aware of the ignition switch defect, or that only Old GM’s low- or mid-level employees knew of the defect.<sup>13</sup>

Because almost all of the Old GM employees involved in the ignition switch debacle and the other safety issues involved in the State’s case were employed by New GM, and generally held the same positions at both companies, New GM can be charged with its employees’ knowledge of pre-bankruptcy information. Indeed, as this Court noted, *all* of the 24 Old GM employees with knowledge of the Ignition Switch Defect worked for New GM. *In re Motors Liquidation Co.*, 2015 LEXIS 1296, at \*54. And New GM does not dispute that Old GM

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<sup>13</sup> In any event, an employee’s position within the corporate hierarchy is irrelevant or purposes of imputation, so long as she obtained the knowledge while acting within the scope of her authority. *See Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1369-70 (Fed. Cir. 2013) (reversing holding that employees were insufficiently senior in the corporate hierarchy for their actions and knowledge to be imputed), *cert. denied*, 135 S. Ct. 167 (2014); *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 126-27 (E.D.N.Y. 2011) (imputing authorized Maytag repairman’s knowledge of oven’s defects and of attempts to conceal the defects to Maytag, where repairmen obtained this knowledge in the course of repairing Maytag ovens). And a corporation is charged with the collective knowledge of all of its employees even if no single individual possessed all of the relevant knowledge or was individually responsible for acting on it. *See Copeman Labs. Co. v. Gen. Motors Corp.*, 36 F. Supp. 755, 762 (E.D. Mich. 1941) (“The knowledge possessed by a corporation about a particular thing is the sum total of all the knowledge which its officers and agents, who are authorized and charged with the doing of the particular thing acquire, while acting under and within the scope of their authority.”); *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 Del. Ch. LEXIS 133, at \*39 (Del. Ch. Aug. 26, 2005) (“Delaware law states the knowledge of an agent acquired while acting within the scope of his or her authority is imputed to the principal.”); Restatement (Third) of Agency § 5.03 cmt. c. (“Organizations are treated as possessing the collective knowledge of their employees and other agents, when that knowledge is material to the agents’ duties, however the organization may have configured itself or its internal practices for transmission of information.”). The Michigan Supreme Court applied this “imputed collective knowledge” standard in *Upjohn Co. v. New Hampshire Ins. Co.*, 476 N.W.2d 392 (Mich. 1991), *reh’g denied*, 503 N.W.2d 442 (Mich. 1991), where it considered an insurance claim for damages from the continuous leaking of toxic materials from a corroded underground storage tank, which was regularly monitored by the plaintiff corporation’s employees. 476 N.W.2d at 395-96. The court held that information available to the corporation, “through its various employees and through its records,” permitted a finding that the corporation had expected the leak, and *refused* to ignore knowledge obtained by individual employees, even if they could not comprehend its full import. *Id.* at 400-01.

personnel knew enough as of the time of Old GM’s June 2009 bankruptcy filing for Old GM then to have been obligated to conduct a recall of the affected vehicles under the Safety Act. *Id.* at \*54-55.

Under the logic of this Court’s ruling and under established Arizona law, the pre-bankruptcy knowledge of employees who worked first at Old GM and then at New GM is imputed to New GM. This Court based its conclusion in part on the fact that Old GM—and later New GM—engineers, senior managers, and attorneys who knew of the Ignition Switch Defect were part of “a group large in size and relatively senior in position.” *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*111 n.154. In this Court’s opinion, “a group of this size is sufficient for the Court to conclude that a ‘critical mass’ of Old GM personnel had the requisite knowledge—*i.e.*, were in a position to influence the noticing process.” *Id.* (citing *cf. Weisfelner v. Fund 1 (In re Lyondell Chemical Co.)*, 503 B.R. 348, 389 (Bankr. S.D.N.Y. 2014) (Gerber, J.)). Necessarily, given the presence of this same “critical mass” at New GM, New GM had knowledge of the Ignition Switch Defect from day one after the 363 Transaction. The same conclusion would follow if New GM had cleaned house and hired a group of engineers, senior managers, and attorneys from a rival car company, and that group happened to be aware (or became aware) of the Ignition Switch Defect in Old GM vehicles. The fact that the key employees previously worked at Old GM cannot immunize New GM from the consequences of its failure to act appropriately on the information its employees possessed.<sup>14</sup>

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<sup>14</sup> The same is true with respect to the other pre-bankruptcy defects discussed in the Complaint. But for the purposes of this pleading the State notes that if it cannot prove New GM’s awareness (or imputed awareness) of one or more of the defects, then those defects will fall out of the case. In no circumstances would (or could) the State prove that New GM violated the Consumer Fraud Act based on the conduct of Old GM.

The State’s argument on imputation is bolstered by the fact that New GM had ongoing obligations under the Safety Act to monitor GM-branded vehicles on the road, to make quarterly reports to NHTSA, and to maintain all relevant records for five years.<sup>15</sup> The Safety Act and related regulations require the quarterly submission to NHTSA of “early warning reporting” data, including incidents involving death or injury, claims relating to property damage received by the manufacturer, warranty claims paid by the manufacturer, consumer complaints, and field reports prepared by the manufacturer’s employees or representatives concerning failure, malfunction, lack of durability, or other performance issues. 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21. Manufacturers must retain for five years all underlying records on which the early warning reports are based and all records containing information on malfunctions that may be related to motor vehicle safety. 49 C.F.R. §§ 576.5-576.6.

The Safety Act further requires *immediate* action when a manufacturer determines or should determine that a safety defect exists. *United States v. Gen. Motors Corp.*, 574 F. Supp. 1047, 1050 (D.D.C. 1983). Within five days of learning about a safety defect, a manufacturer *must* notify NHTSA and provide a description of the vehicles potentially containing the defect, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(b)-(c). Then, “within a reasonable time”<sup>16</sup> after deciding that a safety issue exists, the manufacturer must notify the owners of the defective vehicles. 49 C.F.R. §§ 577.5(a), 577.7(a), 49 U.S.C. § 30165(a)(1).

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<sup>15</sup> New GM explicitly assumed this duty with respect to Old GM cars and parts in § 6.15 of the Sale Agreement.

<sup>16</sup> 49 C.F.R. § 577.7(a) was updated, effective October 11, 2013, to replace “within a reasonable time” to “no later than 60 days” from the filing of the NHTSA notification.

Old and New GM used several processes to identify safety issues, including the TREAD database and Problem Resolution Tracking System (“PRTS”). *See* Valukas Report at 282-313 (available at <http://www.nhtsa.gov/staticfiles/nvs/pdf/Valukas-report-on-gm-redacted.pdf>). The TREAD database, used to store the data required for the quarterly NHTSA early warning reports, was the principal database used by Old and New GM to track incidents related to GM-branded vehicles. *Id.* at 306. The database included information from (i) customer service requests; (ii) repair orders from dealers; (iii) internal and external surveys; (iv) field reports from employees who bought GM-branded vehicles and from Captured Test Fleet reports;<sup>17</sup> (v) complaints from the OnStar call center; and (vi) a database maintained by GM legal staff to track data concerning complaints filed in court. *Id.* A TREAD reporting team would conduct monthly database searches and prepare scatter graphs to identify spikes in the number of accidents or complaints related to various GM-branded vehicles. *Id.* at 307. Because the same employees carried out the TREAD Act obligations at Old and New GM, they not only retained the knowledge acquired during the days of Old GM—they were in fact required to do so.

Once again, the great majority of the pre-bankruptcy allegations in the Complaint concern the Ignition Switch Defects and other defects, and are in the Complaint because the Old GM personnel with knowledge of the defects were employed at New GM; that knowledge is imputed to New GM as a matter of law.

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<sup>17</sup> Captured Test Fleet reports were submitted by employees who were given vehicles and asked to document any problems that arose while driving. Valukas Report at 300. The Quality Group would review, summarize, and group these reports into categories. *Id.*

**c. The remaining allegations concerning Old GM and pre-bankruptcy events provide context for the post-bankruptcy claims arising solely from the independent actions of New GM.**

The remaining allegations concerning Old GM provide context for the *Arizona* action—but none seek to hold New GM liable for Old GM’s conduct. So, for example, the Complaint states:

New GM was incorporated in 2009 and, effective on July 11, 2009, acquired substantially all assets and assumed certain liabilities of General Motors Corporation (“Old GM”) through a Section 363 Sale under Chapter 11 of the U.S. Bankruptcy Code.

¶ 29. By pointing out the origins of New GM, the State is not attempting to hold New GM responsible for the actions of Old GM.

To take just one more example, in its discussion of how New GM’s focus on cost-cutting negatively impacted the safety of GM-branded vehicles, the State alleges that “From the date of New GM’s inception in 2009, [the Company’s TREAD database] has been the principal database used by New GM to track [safety] incidents related to its vehicles.” ¶ 91. The New GM employees charged with monitoring the TREAD database were known as the “TREAD Reporting team.” ¶ 90. The State further alleges that New GM “starv[ed] the TREAD Reporting team of the resources it needed to identify potential safety issues” and thereby “helped to ensure that safety issues would not come to light.” ¶ 94. By way of context, the Complaint explains that—while at one point pre-bankruptcy “the TREAD Reporting team had eight employees who would conduct monthly searches and prepare scatter graphs to identify spikes in accidents or complaints with respect to various GM-branded vehicles,” New GM used only three TREAD Reporting team employees for its pared-down searches. ¶¶ 92-93. Once again, there is no

reading of these allegations under which New GM could be held liable for the conduct of Old GM.

#### IV. CONCLUSION

For the reasons stated above, the *Arizona* action should be allowed to proceed forthwith in Arizona state court.

Dated: June 16, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2015, I caused the People of the State of Arizona’s “No Strike” Pleading to be filed and served upon all parties receiving notice via the Court’s ECF system.

Dated: June 16, 2015

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# Exhibit D



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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> ,	: No. 09-50026 (REG)
f/k/a GENERAL MOTORS CORP., <i>et al.</i> ,	: (Jointly Administered)
	: Debtors. :
-----X	

**PEOPLE OF THE STATE OF CALIFORNIA’S “NO STRIKE” PLEADING**

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The People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas, submit this No Strike Pleading in accordance with paragraph 12(c) of this Court’s Judgment dated June 1, 2015. For the reasons stated herein, the State submits that the Sale Order neither does, nor properly could, enjoin any of the claims or allegations in the *California* action.<sup>1</sup>

**I. INTRODUCTION**

The *California* action is a law enforcement action for civil penalties and injunctive relief against General Motors LLC (“New GM”) based *exclusively* on New GM’s independent violations of the California’s Unfair Competition Law (“UCL”) (Cal. Bus. Code § 17200) and False Advertising Law (“FAL”) (Cal Bus. Code § 17500). The *California* action seeks to hold New GM liable for only its *own* acts and omissions after this Court approved the 363 Transaction<sup>2</sup> and New GM began operations on July 11, 2009. The *California* action does not seek to recover any remedies resulting from the actions or conduct of General Motors Corporation (“Old GM”) and therefore is not subject to this Court’s Sale Order bar on claims against New GM arising from or related to the conduct of Old GM.<sup>3</sup> Accordingly, under the

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<sup>1</sup> The “*California* action” is *The People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas v. General Motors LLC*, Case No.: 30-2014-00731038-CU-BT-CXC, pending in the Orange County Superior Court before Judge Kim G. Dunning, and a copy of the First Amended Complaint is attached as Exhibit A.

<sup>2</sup> The term “363 Transaction” refers to the sale of Old GM’s assets to New GM pursuant to 11 U.S.C. § 363, as effectuated by this Court’s July 5, 2009 Sale Order. Capitalized terms used but not defined herein shall have the meanings ascribed to them in this Court’s *Decision on Motion to Enforce Sale Order*, entered on April 15, 2015, (“Decision”), and reported as *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296 (Bankr. S.D.N.Y. Apr. 15, 2015).

<sup>3</sup> In response to this Court’s statements at page 6 n.8 of its *Decision re Form of Judgment*, entered on May 27, 2015, the State wishes to be clear: the State has never questioned this Court’s jurisdiction to enforce the Sale Order, and has never had anything but respect for the authority of

logic of this Court’s Decision, the *California* action consists exclusively of Independent Claims, and should be permitted to proceed without amendment.

Plaintiff alleges that New GM is liable for civil penalties as a result of its post-July 10, 2009 conduct in (i) concealing the existence of the many known defects plaguing an astounding number of models and years of GM-branded vehicles;<sup>4</sup> (ii) maintaining a corporate culture that valued cost-cutting over safety and actively discouraged GM personnel from flagging or addressing safety issues, while (iii) falsely marketing its brand and its vehicles as safe and reliable. *See, e.g.*, ¶¶ 2-5, 9.<sup>5</sup> In fact, the *California* action is limited to New GM’s conduct occurring after June 27, 2010; that is because the UCL has a four year statute of limitations,<sup>6</sup> and the original complaint was filed on June 27, 2014. The State’s claims for violations of the California UCL and FAL target New GM’s conduct in creating safety defects, concealing known safety defects, and falsely marketing its vehicles as safe and reliable. ¶¶ 253-273.

Simply put, the State’s claims arose after the 363 Transaction, and are based *solely* on the post-Sale conduct of New GM. As such, the claims do not fall properly within the category of claims barred or released by the Sale Order. Moreover, as a matter of law, the Sale Order cannot bar claims based solely on the conduct of the non-debtor New GM that did not arise until *after*

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this Court. The reason that the State is not now amending its Complaint is because of its strong belief that under the Sale Order, and the logic of the Decision, the *California* action should be free to proceed.

<sup>4</sup> The term “GM vehicles” (or “GM-branded vehicles”) is used in the Complaint as a generic term for GM vehicles—regardless of whether they were sold by Old GM or New GM. In either case, the *California* action seeks to impose liability only on New GM for its own, post-Sale Order conduct.

<sup>5</sup> References preceded by “¶” are to the paragraphs of the *California* First Amended Complaint for Violations of California Unfair Competition Law and False Advertising Law, attached hereto as Ex. A.

<sup>6</sup> *See Ortega v. Natural Balance Inc.*, 2013 WL 6596792, at \*4 (C.D. Cal. Dec. 16, 2013).

the 363 Transaction. There is no precedent for providing immunity for future wrongdoing to a purchaser in a 363 transaction—no matter how much more enticing that would make the offer of sale—and no court has the subject matter jurisdiction to grant such immunity. Accordingly, the State’s claims are not subject to the injunction in the Sale Order.

The State is not alone in its belief that New GM violated the law. Indeed, New GM has conceded as much by entering into a Consent Order with the National Highway Safety Administration (“NHTSA”), in which it “admits that it violated the Safety Act by failing to provide notice to NHTSA [of the ignition switch defects] ... within five working days as required by” the Act and applicable regulations.<sup>7</sup> And the Department of Justice has reportedly found evidence of criminal wrongdoing by New GM in connection with its cover-up of the ignition switch defect.<sup>8</sup> Surely New GM can be held liable for its own violations of California law.

Finally, this Court should reject New GM’s argument that the mere mention of Old GM or pre-bankruptcy events somehow renders the *California* Complaint improper (in whole or in part). By its own terms, the Sale Order enjoins “*claims*,” or causes of action – and not factual allegations. In fact, the pre-Sale conduct alleged in the Complaint involved Old GM personnel

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<sup>7</sup> See Consent Order at 4 (available at <http://www.nhtsa.gov/staticfiles/communications/pdf/May-16-2014-TQ14-001-Consent-Order.pdf>). The “Safety Act” refers to the National Traffic Vehicle and Motor Vehicle Safety Act, 49 U.S.C. § 30101, *et seq.*, as amended by the Transportation Recall, Enhancement, Accountability and Documentation Act (the “TREAD Act”). In Section 6.15 of the Sale Agreement through which it acquired substantially all of the assets and assumed certain responsibilities of Old GM, New GM agreed to abide by all Safety Act obligations with respect to vehicles and parts manufactured by Old GM.

<sup>8</sup> See, e.g., “*G.M. Inquiry Said to Find Criminal Wrongdoing*,” N.Y. Times (May 22, 2015) (available at [http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?\\_r=0](http://www.nytimes.com/2015/05/23/business/gm-inquiry-said-to-find-criminal-wrongdoing.html?_r=0)); *GM CEO Says She’s Been Interviewed in Ignition Switch Probe*, Associated Press (June 10, 2015) (available at <http://www.latimes.com/business/la-fi-hy-gm-barra-20150609-story.html>).



that New GM employed in the same or similar capacities. Hence, just as employees' knowledge acquired in the scope of their employment was imputed to Old GM under California law, it was also imputed to New GM. When New GM chose to maintain dozens of Old GM employees who were aware of the Ignition Switch Defect and "relatively senior in position,"<sup>9</sup> those employees carried that knowledge into New GM. The *California* Complaint focuses in part on what New GM did and did not do given that knowledge. The State's claims arise solely from New GM's conduct, and the propriety of the action should not turn on whether or not the term "Old GM" appears in the Complaint, or on whether the New GM employees with knowledge of dangerous defects had previously worked for Old GM.

In sum, the *California* action has been delayed long enough, and should now proceed in California state court.<sup>10</sup>

## II. BACKGROUND

### A. The State's claims target only New GM's post-Sale misconduct.

The State commenced the *California* action in California State court against New GM on June 27, 2014, seeking an injunction and civil penalties from New GM as a remedy for New

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<sup>9</sup> *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*111 n.154.

<sup>10</sup> The State is mindful of this Court's admonition that "the No Strike Pleading shall not reargue issues that were already decided by the Decision and Judgment." Judgment, ¶ 12(c). But the State also notes the Court's statement in the Decision that, apart from the claims of the Pre-Closing Accident Plaintiffs, the "matters now before the Court" and addressed by the Decision "involves only *economic losses* allegedly sustained with respect to Old GM vehicles or parts." *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*7 n.4 (emphasis in original); *see also id.* at \*11 n.8 (noting that briefs were filed on behalf of personal injury and "Economic Loss Plaintiffs" only). The State, of course, does not seek "economic losses" of any sort, let alone "losses sustained with respect to Old GM vehicles or parts." Instead, the State's law enforcement claims seek civil penalties and injunctive relief based solely on New GM's post-Sale acts and omissions. The State does not believe that this Court has yet decided the issues addressed herein given the unique circumstances of the *California* action.

GM's misleading misrepresentations to California consumers concerning the safety and reliability of its vehicles, the integrity of the New GM brand, and New GM's alleged concealment of defects in certain GM-branded vehicles or parts. After the State filed an Amended Complaint on June 27, 2014, New GM filed a Notice of Removal. Then, on October 9, 2014, the State filed a motion to remand. (14-MD-2543 Docket No. 335.)

On November 24, 2014, Judge Furman granted Plaintiff's motion to remand and directed the *California* action back to the Orange County Superior Court where it was filed. *In re Gen. Motors LLC Ignition Switch Litig.*, 2014 WL 6655796, at \*8 (S.D.N.Y. Nov. 24, 2014). In his remand order, Judge Furman noted that: "The Amended Complaint asserts that the case is a 'law enforcement action which primarily seeks to protect the public safety and welfare, brought by a governmental unit in the exercise of and to enforce its police power' and that [the State] only seeks to hold New GM liable for its '*own* acts and omissions *after* the July 10, 2009 effective date' of the Sale Order. (Am. Compl. ¶¶ 1, 3 (emphasis in original))." *In re Gen. Motors LLC Ignition Switch Litig.*, 2014 WL 6655796, at \*1. In fact, the Amended Complaint expressly states that:

This action seeks to hold [New] GM liable only for its *own* acts and omissions *after* the July 10, 2009 effective date of the Sale Order and Purchase Agreement through which [New] GM acquired virtually all of the assets and certain liabilities of Old GM. [¶ 3].<sup>[11]</sup>

As the Amended Complaint alleges, after the 363 Transaction, New GM "told the world that it was a new and improved company" committed to innovation, safety and maintaining a

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<sup>11</sup> As this paragraph makes clear, the term "GM" in the Amended Complaint refers to what is referred to by lawyers and judges in this litigation as "New GM." *See also, e.g.*, ¶ 10 (defining "Defendant General Motors LLC" as "GM."); ¶ 22 ("From its inception in 2009, GM has known that many defects exist in GM-branded vehicles.").

strong brand. ¶ 238. The Amended Complaint provides many examples of New GM’s public statements to that effect, and New GM’s marketing of its vehicles as safe, reliable and of high-quality. ¶¶ 228-247. New GM made these misrepresentations in order “misl[e]a and/or deceive[] [California consumers] into believing that they would be purchasing a safe and reliable vehicle built by a reputable manufacturer that values safety and stands behind its vehicles after they are sold....” ¶ 261. Indeed, “[a] vehicle made by a reputable manufacturer of safe and reliable vehicles is worth more than an otherwise similar vehicle made by a disreputable manufacturer that is known to devalue safety and to conceal serious defects from consumers and regulators,” ¶ 4, and New GM successfully—and falsely—branded itself as the former.

In reality, New GM failed to disclose, and affirmatively concealed, both its own systemic devaluation of safety<sup>12</sup> and a staggering and ever-growing number of safety defects in GM-branded vehicles. ¶¶ 31, 224.<sup>13</sup> The Complaint further alleges that New GM’s systematic concealment of safety defects was deliberate:

From its inception in 2009, [New] GM knew about an ever-growing list of serious safety defects in millions of GM-branded vehicles, but concealed them from consumers and regulators in order to boost sales and avoid the cost and publicity of recalls. [¶ 32] \*\*\*

The available evidence shows a consistent pattern: [New] GM learned about a particular defect and, often only at the prodding of regulatory authorities, “investigated” the defect and decided upon a “root cause.” [New] GM then took minimal action – such as issuing a carefully-worded “Technical Service Bulletin” to its dealers, or even recalling a very small number of affected vehicles. All the while, the true nature and scope of the defects were kept under wraps, vehicles affected by the defects remained on the road,

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<sup>12</sup> See, e.g., ¶¶ 179-211.

<sup>13</sup> The parade of recalls continued on throughout 2014, covering many millions of more vehicles with many more safety defects.

and [New] GM enticed consumers to purchase its vehicles by touting the safety, quality, and reliability of its vehicles, and presenting itself as a manufacturer that stands behind its products. [¶ 36.]

Now the truth has come out, as (i) New GM was forced to disclose scores of serious defects in a never-ending series of recalls affecting over 17 million GM-branded vehicles (¶ 224; *see* ¶¶ 38-177 (describing the defects that had been revealed as of the time of the filing of the Amended Complaint, and explaining that New GM was often aware of them prior to 2014 but chose to conceal them)); (ii) information about New GM's systemic de-valuation of safety and active discouragement of personnel who might otherwise flag safety issues has been publicized in a report by Anton Valukas commissioned by New GM (*see* ¶¶ 179-211); and (iii) in a Consent Order with NHTSA, New GM admitted that it had violated its legal obligations to promptly disclose the existence of known safety defects (¶ 13). As a result of the revelation of New GM's fraudulent omissions and misrepresentations, and New GM's extreme mishandling of safety issues, the value of *all* GM-branded vehicles sold after New GM's inception has diminished. ¶ 224.

**B. The State claims that New GM independently violated the California UCL and FAL.**

The State asserts only claims against New GM solely for its post-Sale violations of California law. As the Amended Complaint alleges, the *California* action:

arises from [New] GM's breach of its obligations and duties, including but not limited to: (i) its concealment of, and failure to disclose that, as a result of a spate of safety defects, over 17 million Defective Vehicles were on the road nationwide – and many hundreds of thousands in California; (ii) its failure to disclose the defects despite its TREAD Act obligations; (iii) its failure to disclose that it devalued safety and systemically encouraged the concealment of known defects; (iv) its continued use of defective ignition switches as replacement parts; (v) its sale

of used “GM certified” vehicles that were actually plagued with a variety of known safety defects; and (vi) its repeated and false statements that its vehicles were safe and reliable, and that it stood behind its vehicles after they were purchased. [¶ 21.]

The Amended Complaint asserts that this conduct of New GM violated the California UCL, which prohibits “unfair competition,” including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. Code § 17200. See ¶¶ 253-264. The Amended Complaint also asserts that New GM’s conduct violated the California FAL, which states that:

It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

Cal. Bus. Code § 17500. By definition, then, New GM can only be held liable if *it* committed unlawful, unfair or fraudulent business acts or practices, or if *it* promulgated untrue or misleading advertising. The claims necessarily arise exclusively from the alleged acts and omissions of New GM and did not accrue until after the Sale Order.

Likewise, in the Prayer for Relief, all the remedies are targeted at New GM’s conduct, as the State seeks to (A) enjoin New GM from committing further acts of unfair competition; and (B) obtain civil penalties from New GM for its violations of the UCL and FAL. Ultimately, there are two possible results in the *California* action: (i) New GM is found to have *itself* violated the California UCL and/or FAL by using unlawful, unfair or fraudulent business acts or

practices, and/or promulgating untrue or misleading advertising, and is therefore subject to civil penalties and injunctive relief; **or** (ii) New GM is found not to have violated the California statutes and New GM therefore prevails. The *California* Complaint simply cannot be read as an effort to hold New GM liable for the conduct of Old GM—under a successor liability theory, a transferee theory, or any other theory.

### III. ARGUMENT

#### A. On its face, the Sale Order does not bar the State’s claims based on New GM’s violations of its own independent legal duties.

The Sale Order has no application to the State’s claims against New GM for New GM’s post-Sale violations of the California UCL and FAL. The claims do not attempt to hold New GM liable for the conduct of Old GM—whether on a successor liability theory, a “transferee” theory, or any other theory. Under the plain language of the Sale Order, and the logic of this Court’s Decision, the State’s claims against the non-debtor New GM are Independent Claims and should proceed in California State Court without further impediment.

New GM has argued that it is has no liability for at least certain of the State’s claims under paragraph 46 of the Sale Order, which reads as follows:

Except for the Assumed Liabilities expressly set forth in the [Sale Agreement], ... *[New GM] ... shall [not] have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against [Old GM] . . . prior to the Closing Date. . . . Without limiting the foregoing, [New GM] shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity . . . and products . . . liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.* [Emphasis added.]

The State's claims did not arise prior to the Closing Date of the 363 Transaction, as the conduct of New GM about which the State complains had not yet occurred. Nor do the claims "relate[] to the *production* of vehicles prior to the Closing Date;" the State does not seek to hold New GM liable for the "production" of any vehicles prior to the Sale date, but rather for its own post-Sale misconduct. Finally, the State's claims were never "assertable against Old GM," as they are based on the conduct of New GM and did not arise until *after* Old GM ceased to exist.

Paragraph 46 cannot be read to bar the State's claims.

New GM also claims immunity from some or all of the State's claims based on the injunction in the Sale Order, but that injunction cannot be read to bar the State's claims. Under the injunction:

[A]ll persons and entities ... holding liens, claims, encumbrances, and other *interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets* (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), *arising under or in any way relating to, [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing . . . are forever barred, estopped, and permanently enjoined . . . from asserting against [New GM] . . . such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.*

Sale Order, ¶ 8 (emphasis added).

Once again, the State does not assert any claims based on successor or transferee liability, and its legal claims neither "arise under" nor are "related to" the conduct of Old GM. Once again, while the Complaint contains factual allegations pre-dating the existence of Old GM, the State's legal claims arise solely from New GM's own post-Sale misconduct. The injunction

cannot be read as providing New GM with immunity for its future misconduct, and has no application to the State's claims.

**B. The Bankruptcy Court did not have jurisdiction to provide New GM with immunity for its own post-Sale violations of its independent legal obligations.**

If the Sale Order had purported to enjoin claims against New GM for its own post-Sale conduct, such an injunction would extend beyond the jurisdiction of the bankruptcy court. Subject matter jurisdiction in a bankruptcy proceeding over third-party claims (such as the non-derivative claims of the State) can extend only to actions affecting the *res* of the bankruptcy estate. *In re Johns-Manville Corp.*, 517 F.3d 52, 66-68 (2d Cir. 2008), *rev'd on other grounds sub nom., Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009) (holding that, despite a "common nucleus of operative facts involving" the debtor and the insurer, bankruptcy order enjoining actions unrelated to the *res* of the estate are outside the scope of the bankruptcy court's injunction power). The Sale Order cannot properly bar the *California* action.

While a bankruptcy court assuredly has jurisdiction to interpret and enforce its own 363 transaction orders, that ancillary jurisdiction exists only to the extent that the court has the jurisdiction to enter the 363 transaction order itself. *See Zerand-Bernal Grp. v. Cox*, 23 F.3d 159, 164 (7th Cir. 1994) (affirming the bankruptcy court's holding that it "lacked jurisdiction" to enjoin a post-363 transaction claim against a non-debtor: "[T]he fact that the bankruptcy court, in the order approving the bankruptcy sale and later in the plan of reorganization, purported expressly to assume jurisdiction ... could not confer jurisdiction. A court cannot write its own jurisdictional ticket."); *see also In re Johns-Manville Corp.*, 517 F.3d at 65 n.22 ("The ancillary jurisdiction courts possess to enforce their own orders 'is itself limited by the jurisdictional limits of the order sought to be enforced.'").



This Court did not have subject matter jurisdiction to protect the non-debtor New GM by limiting the right of the State to bring suit against New GM for New GM's own post-Sale misconduct in breach of New GM's own independent legal duties. Subject matter jurisdiction of bankruptcy courts is limited to "civil proceedings arising under Title 11, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b). Because the State's claims are based solely on the non-debtor New GM's post-sale conduct, the claims cannot be said to "arise in" or "under" Title 11. *See Zerand-Bernal Grp.*, 23 F.3d at 162 ("arising under" jurisdiction "is limited to questions that arise during the bankruptcy proceeding and concern the administration of the bankrupt estate, such as whether to discharge a debtor"). And the State's claims are not "related to" Title 11, since the outcome of the *California* action can have no conceivable effect on the bankrupt estate. *See In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992); *see also In re Quigley Co., Inc.*, 676 F.3d 45, 61-62 (2d Cir. 2012) (bankruptcy court lacks jurisdiction to enjoin a claim against a third party where such claim would not have an effect on the *res* of the bankruptcy estate), *cert. denied*, 133 S. Ct. 2849 (2013). *See generally In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987) ("For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings 'arising under', 'arising in a case under', or 'related to a case under', title 11.... [I]t is necessary only to determine whether a matter is at least 'related to' the bankruptcy.").

This Court should reject any argument that New GM should get immunity for its own post-Sale misconduct because immunity for the non-debtor increases the value of the estate. That a broad injunction against future claims against a purchaser might result in a buyer paying a higher price for assets in a 363 transaction is pure speculation, and in any event cannot confer

jurisdiction over future claims against the purchaser arising from its independent misconduct. *See Zerand-Bernal Grp.*, 23 F.3d at 164 (rejecting the argument that bankruptcy courts may immunize a purchaser from state or federal law in the interests of increasing the value of a debtor’s assets). As the *Zerand-Bernal Grp.* court reasoned, the argument that “the price received in a bankruptcy sale will be lower if a court is free to disregard a condition in the sale agreement enjoining claims against the purchaser based on the seller’s misconduct” should be rejected because it “proves too much”:

It implies, what no one believes, that by virtue of the arising-under jurisdiction a bankruptcy court enjoys a blanket power to enjoin all future lawsuits against a buyer at a bankruptcy sale in order to maximize the sale price; more, that the court could in effect immunize such buyers from all state and federal laws that might reduce the value of the assets bought from the bankrupt[.]<sup>[14]</sup>

There is no sound reason to encourage non-debtors to pay a purchase price in a 363 transaction that reflects a belief that they are forever immunized from liability for breaches of their *own* independent legal duties.

Thus, as the Second Circuit reiterated in *In re Johns-Manville Corp.*, 600 F.3d 135, 153 (2d Cir. 2010), bankruptcy courts do not have jurisdiction to enjoin “claims against non-debtor third parties” where those claims are based on the non-derivative misconduct of the non-debtor and the claims do not impact the bankruptcy estate. *See also, e.g., In re 1031 Tax Grp., LLC*, 2011 U.S. Dist. LEXIS 33755, at \*7 (S.D.N.Y. Mar. 29, 2011) (“federal courts are without jurisdiction to enjoin actions against third-parties not in bankruptcy when those actions are premised upon an ‘independent legal duty’”). Here, again, the State’s law enforcement claims

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<sup>14</sup> *Zerand-Bernal Grp.*, 23 F.3d at 163 (citation omitted).

are based on New GM's fraudulent concealment of the scores of defects plaguing GM-branded vehicles; New GM's culture, which systematically devalued safety; and New GM's misrepresentations concerning the safety and reliability of GM-branded vehicles—all in violation of New GM's independent legal duties. A Bankruptcy Court simply does not have jurisdiction to enjoin such claims.

Accordingly, to the extent New GM claims that the Sale Order bars the claims in the *California* Amended Complaint, New GM asks this Court to exercise jurisdiction that it does not have.

**C. The fact that the *California* Complaint contains factual allegations about Old GM does not mean that the legal claims in the Complaint are based on the conduct, cars or parts of Old GM.**

**1. The Sale Order enjoins legal “claims,” *not* factual allegations.**

New GM has advanced the facile argument that any factual allegations concerning Old GM and events that occurred prior to the bankruptcy automatically are improper under the Sale Order. But this Court has at least implicitly rejected that argument by holding that the Economic Loss Plaintiffs can assert “claims involving Old GM vehicles and parts so long as they were basing their claims *solely on New GM conduct*, and not based on any kind of successor liability or any other act by Old GM.” *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*22. It is hard to envision how such a legal claim could be pled without at least mentioning that the vehicle at issues was manufactured by Old GM. It simply cannot be that the mere mention of Old GM is improper.

Indeed, the Sale Order and Sale Agreement speak of legal “claims” being enjoined, *not* factual allegations. *See supra* at 9-10 (discussing relevant provisions of Sale Order and Sale Agreement). So it is not enough for New GM to simply point to the mention of Old GM (or pre-

Sale events) in the Complaint. Rather, New GM must explain how it is that the State's assertion of law enforcement claims against New GM for its own alleged violations of California law are somehow claims based on the conduct of Old GM. Because New GM has not and cannot do so, the mention of Old GM cars and past events cannot be said to run afoul of the Sale Order or the Sale Agreement.

**2. The Complaint's factual allegations concerning pre-bankruptcy events are proper, since (a) New GM has knowledge of pre-bankruptcy information because the same personnel worked at Old GM; and (b) pre-bankruptcy events provide context for New GM's alleged misconduct.**

As New GM ignores in challenging the propriety of the *California* action under the Sale Order, the law in California and elsewhere broadly imputes an employee's knowledge to its corporate employer. Significantly, each of the 24 Old GM employees that this Court found to be aware of the Ignition Switch Defect remained at New GM because New GM chose to keep them. As there is no reason to suppose those employees lost their knowledge of the defects on the day Old GM became New GM, their knowledge is imputed to New GM, as is the knowledge of all other New GM employees acting within the scope of their employment. To impute the knowledge of those employees to New GM is not a successor liability claim. If New GM hadn't elected to retain Old GM's employees, the knowledge of those employees would not be imputed to New GM. And if New GM or those employees had acted appropriately upon their hiring by New GM to address (rather than conceal) the known problems, New GM would not have liability.

New GM's knowledge of the Ignition Switch Defect and a host of other defects is, of course, highly relevant to the State's claims against New GM. Moreover, because of New GM's continuing obligations under the Safety Act, the Company was under a duty to (i) continue to

monitor all GM vehicles that were on the road, and (ii) maintain the many records it was required to generate in connection with actual or potential safety issues. Because of this, the actual number of New GM personnel with knowledge of the defects and safety issues in Old GM vehicles is far greater than the 24 found by this Court. The State's claims against New GM are properly premised, in part, on the knowledge of the dozens of personnel that New GM employed who were aware of the defects and safety issues in Old GM vehicles. That fact accounts for nearly all the allegations in the *California* Complaint that concern events that pre-date the existence of New GM. The few remaining allegations concerning pre-bankruptcy facts are in the Complaint to provide context. None of those allegations can possibly be used to hold New GM liable for the actions of Old GM.

**a. An employee's knowledge of facts learned in the scope of her employment is broadly imputed to the corporate employer.**

Knowledge of the ignition switch defects and other pre-bankruptcy defects was wide-reaching and extensive within Old GM—and therefore New GM—including among Old GM's in-house counsel, management, and lead design engineers (most or all of whom stayed on at New GM). Under California agency principles, the knowledge of these employees and counsel is imputed to Old GM because knowledge acquired by an agent in the scope of her employment is imputed to the principal. That is especially clear here given that the Old GM employees with knowledge of the defects were performing the car manufacturer's obligations under the Safety Act. *See infra* at 20-22.

According to Cal. Civ. Code § 232, "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other." *See, e.g., Mack v. Dep't of*

*Alcoholic Beverage Control*, 178 Cal. App. 2d 149 (1960) (knowledge of employee acquired during transaction of his employer’s business is imputed to the employer with same effect as if the employer actually participated in transaction). The law on these issues is substantially the same across the law of Michigan (where New GM is based), Delaware (where it was incorporated), and New York (most frequently analyzed before the Bankruptcy Court), and therefore the law applicable in all of these potentially relevant jurisdictions is also discussed herein.<sup>15</sup>

As discussed *infra* at 19-20, knowledge of the Ignition Switch Defect was widespread and communicated throughout New GM. But even if that were not the case, employees’ knowledge acquired within the scope of their employment is imputed to the corporation even if it is never communicated. Indeed, since an agent generally has a duty to disclose matters to his or her principal, the actual knowledge of the agent is imputed to the principal. *See, e.g., O’Riordan v. Federal Kemper Life Assurance Co.*, 114 P.3d 753 (Cal. 2005); *see also Kirschner v. KPMG LLP*, 938 N.E.2d 941, 950-51 (N.Y. 2010) (applying legal presumption that agents communicate information to principals).<sup>16</sup> “The fact that the knowledge acquired by the agent was not

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<sup>15</sup> *N.Y. Marine & Gen. Ins. Co. v. Tradeline L.L.C.*, 266 F.3d 112, 122 (2d Cir. 2001); *Allard v. Arthur Andersen & Co. (USA)*, 924 F. Supp. 488, 494-95 (S.D.N.Y. 1996) (applying New York and Michigan law to impute the knowledge and conduct of corporate officials acting within the scope of their employment); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962) (“[E]ach party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.”) (citation omitted), *reh’g denied*, 371 U.S. 873 (1962); *Veal v. Geraci*, 23 F.3d 722, 725 (2d Cir. 1994) (“[U]nder traditional principles of agency the attorney’s knowledge must be imputed to [the client].”).

<sup>16</sup> *See also* 3 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 790 (1994) (noting that it has been widely held that a corporation is charged with imputed knowledge “even though the officer or agent does not in fact communicate the knowledge to the corporation”); Restatement (Third) of Agency § 5.03 cmt. b (“A principal may not rebut imputation of an agent’s notice of a fact by establishing that the agent kept silent.”).

actually communicated to the principal ... does not prevent operation of the rule.” *O’Riordan*, 114 P.3d at 757 (quoting *Columbia Pictures Corp. v. DeToth*, 87 Cal. App. 2d 620, 630 (1948)). And the principle is “charged with knowledge which his agent acquires before the commencement of the relationship when that knowledge can reasonably be said to be present in the mind of the agent while acting for the principle.” *Columbia Pictures Corp. v. DeToth*, 87 Cal. App. 2d at 631.

**b. The knowledge of GM personnel who worked at both Old and New GM is properly imputed to New GM.**

Here, many GM attorneys, managers, lead engineers, and other personnel who worked at both Old and New GM acquired knowledge of the Ignition Switch Defect while performing their duties, using systems and procedures that Old and then New GM maintained to comply with Safety Act obligations. As this Court found, “at least 24 Old GM personnel ..., including engineers, senior managers, and attorneys, were informed or otherwise aware of the Ignition Switch Defect prior to the Sale motion,” and, based on that knowledge, Old GM should have conducted a recall prior to the 2009 bankruptcy. *See In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*54. In reaching this conclusion, the Court effectively rejected New GM’s arguments that only a “limited” number of Old GM personnel were aware of the ignition switch defect, or that only Old GM’s low- or mid-level employees knew of the defect.<sup>17</sup>

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<sup>17</sup> In any event, an employee’s position within the corporate hierarchy is irrelevant or purposes of imputation, so long as she obtained the knowledge while acting within the scope of her authority. *See Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1369-70 (Fed. Cir. 2013) (reversing holding that employees were insufficiently senior in the corporate hierarchy for their actions and knowledge to be imputed), *cert. denied*, 135 S. Ct. 167 (2014); *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 126-27 (E.D.N.Y. 2011) (imputing authorized Maytag repairman’s knowledge of oven’s defects and of attempts to conceal the defects to Maytag, where repairmen obtained this knowledge in the course of repairing Maytag ovens).

Because almost all of the Old GM employees involved in the ignition switch debacle and the other safety issues involved in the State’s case stayed on at New GM, and generally held the same positions at both companies, New GM can be charged with its employees’ knowledge of pre-bankruptcy information from day one of its existence. Indeed, as this Court noted, *all* of the 24 employees with knowledge of the Ignition Switch Defect transferred from Old GM to New GM. *In re Motors Liquidation Co.*, 2015 LEXIS 1296, at \*54. And New GM does not dispute that Old GM personnel knew enough as of the time of Old GM’s June 2009 bankruptcy filing for Old GM then to have been obligated to conduct a recall of the affected vehicles under the Safety Act. *Id.* at \*54-55.

Under the logic of this Court’s ruling and under established California law, the pre-bankruptcy knowledge of employees who worked first at Old GM and then at New GM is imputed to New GM. This Court based its conclusion in part on the fact that Old GM—and later

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And a corporation is charged with the collective knowledge of all of its employees even if no single individual possessed all of the relevant knowledge or was individually responsible for acting on it. *See Copeman Labs. Co. v. Gen. Motors Corp.*, 36 F. Supp. 755, 762 (E.D. Mich. 1941) (“The knowledge possessed by a corporation about a particular thing is the sum total of all the knowledge which its officers and agents, who are authorized and charged with the doing of the particular thing acquire, while acting under and within the scope of their authority.”); *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 Del. Ch. LEXIS 133, at \*39 (Del. Ch. Aug. 26, 2005) (“Delaware law states the knowledge of an agent acquired while acting within the scope of his or her authority is imputed to the principal.”); Restatement (Third) of Agency § 5.03 cmt. c. (“Organizations are treated as possessing the collective knowledge of their employees and other agents, when that knowledge is material to the agents’ duties, however the organization may have configured itself or its internal practices for transmission of information.”). The Michigan Supreme Court applied this “imputed collective knowledge” standard in *Upjohn Co. v. New Hampshire Ins. Co.*, 476 N.W.2d 392 (Mich. 1991), *reh’g denied*, 503 N.W.2d 442 (Mich. 1991), where it considered an insurance claim for damages from the continuous leaking of toxic materials from a corroded underground storage tank, which was regularly monitored by the plaintiff corporation’s employees. 476 N.W.2d at 395-96. The court held that information available to the corporation, “through its various employees and through its records,” permitted a finding that the corporation had expected the leak, and *refused* to ignore knowledge obtained by individual employees, even if they could not comprehend its full import. *Id.* at 400-01.



New GM—engineers, senior managers, and attorneys who knew of the Ignition Switch Defect were part of “a group large in size and relatively senior in position.” *In re Motors Liquidation Co.*, 2015 Bankr. LEXIS 1296, at \*111 n.154. In this Court’s opinion, “a group of this size is sufficient for the Court to conclude that a ‘critical mass’ of Old GM personnel had the requisite knowledge—*i.e.*, were in a position to influence the noticing process.” *Id.* (citing *cf. Weisfelner v. Fund 1 (In re Lyondell Chemical Co.)*, 503 B.R. 348, 389 (Bankr. S.D.N.Y. 2014) (Gerber, J.)). Necessarily, given the presence of this same “critical mass” at New GM, New GM had knowledge of the Ignition Switch Defect from day one after the 363 Transaction. The same conclusion would follow if New GM had cleaned house and hired a group of engineers, senior managers, and attorneys from a rival car company, and that group happened to be aware (or became aware) of the Ignition Switch Defect in Old GM vehicles. The fact that the key employees previously worked at Old GM cannot immunize New GM from the consequences of its failure to act appropriately on the information its employees possessed.<sup>18</sup>

The State’s argument on imputation is bolstered by the fact that New GM had ongoing obligations under the Safety Act to monitor GM-branded vehicles on the road, to make quarterly reports to NHTSA, and to maintain all relevant records for five years. The Safety Act and related regulations require the quarterly submission to NHTSA of “early warning reporting” data, including incidents involving death or injury, claims relating to property damage received by the manufacturer, warranty claims paid by the manufacturer, consumer complaints, and field

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<sup>18</sup> The same is true with respect to the other pre-bankruptcy defects discussed in the Amended Complaint. But for the purposes of this pleading the State notes that if it cannot prove New GM’s awareness (or imputed awareness) of one or more of the defects, then those defects will fall out of the case. ***In no circumstances would (or could) the State prove that New GM violated the California UCL or FAL based on the conduct of Old GM.***

reports prepared by the manufacturer's employees or representatives concerning failure, malfunction, lack of durability, or other performance issues. 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21. Manufacturers must retain for five years all underlying records on which the early warning reports are based and all records containing information on malfunctions that may be related to motor vehicle safety. 49 C.F.R. §§ 576.5-576.6.

The Safety Act further requires *immediate* action when a manufacturer *determines or should determine that a safety defect exists*. *United States v. Gen. Motors Corp.*, 574 F. Supp. 1047, 1050 (D.D.C. 1983). Within five days of learning about a safety defect, a manufacturer *must* notify NHTSA and provide a description of the vehicles potentially containing the defect, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(b)-(c). Then, “within a reasonable time”<sup>19</sup> after deciding that a safety issue exists, the manufacturer *must* notify the owners of the defective vehicles. 49 C.F.R. §§ 577.5(a), 577.7(a), 49 U.S.C. § 30165(a)(1).

Old and New GM used several processes to identify safety issues, including the TREAD database and Problem Resolution Tracking System (“PRTS”). *See* Valukas Report at 282-313 (available at <http://www.nhtsa.gov/staticfiles/nvs/pdf/Valukas-report-on-gm-redacted.pdf>). The TREAD database, used to store the data required for the quarterly NHTSA early warning reports, was the principal database used by Old and New GM to track incidents related to GM-branded vehicles. *Id.* at 306. The database included information from (i) customer service requests; (ii) repair orders from dealers; (iii) internal and external surveys; (iv) field reports from employees

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<sup>19</sup> 49 C.F.R. § 577.7(a) was updated, effective October 11, 2013, to replace “within a reasonable time” to “no later than 60 days” from the filing of the NHTSA notification.

who bought GM-branded vehicles and from Captured Test Fleet reports;<sup>20</sup> (v) complaints from the OnStar call center; and (vi) a database maintained by GM legal staff to track data concerning complaints filed in court. *Id.* A TREAD reporting team would conduct monthly database searches and prepare scatter graphs to identify spikes in the number of accidents or complaints related to various GM-branded vehicles. *Id.* at 307. Because the same employees carried out the TREAD Act obligations at Old and New GM, they not only retained the knowledge acquired during the days of Old GM—they were in fact required to do so.

Once again, the pre-bankruptcy allegations in the Amended Complaint concern the ignition switch defects and other defects, and are in the Complaint because the Old GM personnel with knowledge of the defects stayed on at New GM; that knowledge is imputed to New GM as a matter of law.

**c. The remaining allegations concerning Old GM and pre-bankruptcy events provide context for the post-bankruptcy claims arising solely from the independent actions of New GM.**

The remaining allegations concerning Old GM provide context for the *California* action—but none seek to hold New GM liable for Old GM’s conduct. So, for example, the Complaint states:

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

¶ 3. By pointing out the origins of New GM, the State is not attempting to hold New GM responsible for the actions of Old GM.

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<sup>20</sup> Captured Test Fleet reports were submitted by employees who were given vehicles and asked to document any problems that arose while driving. Valukas Report at 300. The Quality Group would review, summarize, and group these reports into categories. *Id.*

To take just one more example, in its discussion of how New GM’s focus on cost-cutting negatively impacted the safety of GM-branded vehicles, the State alleges that “From the date of its inception in 2009, [the Company’s TREAD database] has been the principal database used by [New] GM to track [safety] incidents related to its vehicles.” ¶ 188. The New GM employees charged with monitoring the TREAD database were known as the “TREAD Reporting team.” ¶¶ 187, 189. The State further alleges that New GM “starv[ed] the TREAD Reporting team of the resources it needed to identify potential safety issues” and thereby “helped to ensure that safety issues would not come to light.” ¶ 191. By way of context, the Complaint explains that—while at one point pre-bankruptcy “the TREAD Reporting team had eight employees who would conduct monthly searches and prepare scatter graphs to identify spikes in accidents or complaints with respect to various GM-branded vehicles,” New GM used only three TREAD Reporting team employees for its pared-down searches. ¶¶ 189-190. Once again, there is no reading of these allegations under which New GM could be held liable for the conduct of Old GM.

**IV. CONCLUSION**

For the reasons stated above, the *California* action should be allowed to proceed forthwith in California State court.

Dated: June 16, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2015, I caused the People of the State of California's "No Strike" Pleading to be filed and served upon all parties receiving notice via the Court's ECF system.

Dated: June 16, 2015

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