S. Alyssa Young, Esq. (SY 6105)
LEADER & BERKON LLP
630 Third Avenue, 17th Floor
New York, New York 10017
Phone (212) 486-2400
Fax (212) 486-3099

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN LLC
300 Evans Avenue, P.O. Box 229
Wood River, Illinois 62095-0229
Phone: (618) 254-1127
Fax: (618) 254-0193

Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	GENERAL MOTORS CORP., *et al.*, Debtor,	Chapter 11 Case No.
	KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVANS, BARBARA ALLEN, STANLEY OZAROWSKI, and DONNA SANTI,	09-50026 (REG) (Jointly Administered) Adv. Proc. No. 09-00509
	Plaintiffs, v. GENERAL MOTORS COMPANY, f/k/a NEW GENERAL MOTORS COMPANY, INC., Defendant.	

FIRST AMENDED COMPLAINT

Plaintiffs Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi, as class representatives on behalf of a

certified class, by and through class counsel and the undersigned attorneys, and for their First Amended Complaint, state as follows:

Case Overview

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

2. On April 14, 2009, United States District Judge William B. Shubb entered final judgment ("Final Judgment") certifying the class and approving the parties' settlement agreement ("the Agreement"). A copy of the Final Judgment is attached as Exhibit A. A copy of the Agreement is attached as Exhibit B.

3. This action seeks a declaration that Defendant General Motors Company, f/k/a New General Motors Company, Inc. ("New GM") expressly assumed liability under the Agreement and Final Judgment pursuant to the Amended and Restated Master Sale and Purchase Agreement ("ARMSPA") executed between Old GM and New GM dated June 26, 2009 as part of Old GM's bankruptcy proceedings. In short, the Agreement and Final Judgment are "Liabilities" as defined by the ARMSPA which arose under express written warranties provided by Old GM and, therefore, were expressly assumed by New GM pursuant to the ARMSPA. A copy of the ARMSPA is attached as Exhibit C.

4. In addition, Plaintiffs seek a declaration that New GM impliedly assumed liabilities under the Agreement and Final Judgment attendant to its customer service programs in connection with the corporate restructuring and attempted refurbishing of the GM and Saturn

brands.

Jurisdiction

5. Plaintiff Kelly Castillo is an appointed class representative in the Class Action and a citizen of the State of California.

6. Plaintiff Nichole Brown is an appointed class representative in the Class Action and a citizen of the State of Georgia.

7. Plaintiff Brenda Alexis Digiandomenico is an appointed class representative in the Class Action and a citizen of the State of Virginia.

8. Plaintiff Valerie Evans is an appointed class representative in the Class Action and a citizen of the State of Missouri.

9. Plaintiff Barbara Allen is an appointed class representative in the Class Action and a citizen of Oklahoma.

10. Plaintiff Stanley Ozarowski is an appointed class representative in the Class Action and a citizen of the State of Illinois.

11. Plaintiff Donna Santi is an appointed class representative in the Class Action and a citizen of the State of Michigan.

12. Defendant New GM is a Delaware corporation with its principal place of business in Michigan and is a citizen of the States of Michigan and Delaware.

13. Non-party General Motors Corporation ("Old GM") is the original judgment debtor in the action underlying this lawsuit, and is a debtor in bankruptcy. Since the bankruptcy, Old GM has changed its name to Motors Liquidation Company.

14. Personal jurisdiction over New GM is proper because New GM is incorporated in Delaware, transacts substantial business within this State, has made or assumed contracts or promises substantially connected with this State, and has otherwise subjected itself to the general

jurisdiction of this Court and the other courts in this State.

15. Venue is proper in this county because New GM resides herein.

The Defective VTi Transmission

16. Many Saturn owners experienced multiple VTi transmission failures during their vehicle's first 100,000 miles, and the average repair cost to the consumer was at least $3,989.00, with many repairs costing in excess of $5,500 for a transmission replacement.

17. The defectively designed/manufactured VTi transmissions are contained in 4-cylinder Model Year 2002-2005 Saturn Vues and Model Year 2003-2004 Saturn Ions.

18. In April of 2003, Old GM recognized excessive durability problems with the VTi transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the VTi.

19. In early 2004, Old GM again recognized durability problems with the VTi transmission when it voluntarily extended the warranty on vehicles containing the VTi from 3 years / 36,000 miles to 5 years / 75,000 miles. A copy of Old GM's Special Bulletin 04020 memorializing this extended warranty is attached as Exhibit V. However, this temporary remedy was inadequate.

The Class Action

20. On October 10, 2007, the Class Action was filed in the United States District Court for the Eastern District of California based on, among other theories, breach of express warranty. A copy of the original Class Action Complaint is attached as Exhibit D. A copy of the First Amended Class Action Complaint is attached as Exhibit E. A copy of the Second Amended Class Action Complaint is attached as Exhibit F.

21. Plaintiffs' Class Action Complaint, particularly "Count II – Breach of Express Warranties" (Exhibit D, p. 14), states explicitly that it arises under the express written warranty

provided by Old GM with the sale of the Saturn vehicles at issue:

a. "***GM expressly warranted the vehicles*** at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of ***three years or 36,000 miles*** and, further, that GM would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. Such warranties are express warranties within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) in each of the Class States at issue in the class action and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*" Exhibit D, p. 14, para. 71 (emphasis added).

b. "More specifically, ***GM's 'New Car Limited Warranty'*** promises that GM 'will provide for repairs to the vehicle' during the warranty period and that '[t]his warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring' during the warranty period." Exhibit D, p. 14, para. 72 (emphasis added).

c. "At the time of sale and forward, GM has ***breached these express warranties*** by selling to Plaintiffs and the Class vehicles equipped with defective VTi transmissions that are, by design, unsafe, subject to extreme premature wearing and failure., and likely to cause serious injury to Plaintiffs and Class members – if the vehicles are even operable at all—and/or by refusing to adequately repair or replace their transmissions." Exhibit D, p. 15, para. 77 (emphasis added).

d. "As a direct and proximate cause of ***GM's breach of express warranties***, Plaintiffs and the Class have suffered actual damages and are threatened with irreparable harm by virtue of an elevated and unreasonable risk of serious bodily injury." Exhibit D, p. 15, para. 78 (emphasis added).

e. "Any ***limitation on the duration of GM's express warranties*** is unconscionable within the meaning of Section 2-302 of the UCC, and therefore is unenforceable in that, among other things, vehicles with VTi transmissions contain a latent defect of which GM was actually or constructively aware at the time of sale, and purchasers lacked a meaningful choice with respect to the terms of the warranty

due to unequal bargaining power and a lack of warranty competition." Exhibit D, p. 15, para. 79 (emphasis added).

f. "Any attempt by GM to repair a defective VTi transmission or to replace one defectively designed VTi transmission with another defectively designed VTi transmission within the warranty period could not satisfy ***GM's obligation to correct defects under the warranty***. The design defect in the VTi transmission – which unreasonably elevates the risk of premature failure, immobility and/or dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective VTi transmission." Exhibit D, p. 22, para. 81 (emphasis added).

22. Old GM filed a Declaration swearing that the warranty relied upon in Plaintiffs' complaint was, indeed, the Saturn Express Limited Warranty Booklet for 2003 Saturn Vue and provided a copy of the warranty for the Class Action file. A copy of the Declaration is attached as Exhibit G.

23. Along with Old GM's Motion to Dismiss the complaint filed in the Class Action, Old GM filed its Memorandum And Points Of Authority In Support Of Motion To Dismiss. A copy of that pleading is attached as Exhibit H. While disputing the merits of the Plaintiffs' claim, Old GM consistently acknowledged that Plaintiffs were asserting a claim under the Saturn Express Limited Warranty provided with the sale of a new vehicle, specifically, the warranty referenced in the Declaration, *supra*:

a. "Contrary to Plaintiffs' allegations (Complaint, ¶¶ 30, 71), the ***Limited New Vehicle Warranty for the 2003 Saturn VUE*** *did not* warrant a 'defect-free' vehicle." Exhibit H, p. 2 (emphasis added).

b. "Plaintiffs have chosen not to attach ***the Saturn warranty*** to their complaint. In ruling on the motion, however, the Court may judicially notice and consider this warranty ***because the complaint refers to and relies upon this document*** and it is

indisputably authentic." Exhibit H, p. 2, fn. 2 (emphasis added).

24. In response to Old GM's Motion to Dismiss, Plaintiffs' Brief In Opposition To Defendant's Motion To Dismiss was filed in the Class Action. A copy of the Plaintiffs' brief is attached as Exhibit I. Plaintiffs' brief continued to assert a claim arising under the written warranty provided with the purchase of a new vehicle:

a. "Plaintiffs' Complaint alleges that ***GM provided an express warranty***, states the terms of the warranty, alleges that GM breached it, and claims that Plaintiffs suffered damages." Exhibit I, p. 29 (emphasis added).

b. "GM's express warranty covers the defects the Plaintiffs allege. . . . Any ambiguity in the scope of the warranty should be construed against ***GM as the drafter of the written warranty*** and as the party with superior bargaining power." Exhibit I, p. 5 (emphasis added).

The Settlement Agreement and Final Judgment

25. In July of 2008, Plaintiffs and Old GM entered into the Agreement to resolve the Class Action. Relief under the Agreement is both retrospective and prospective. Class members who purchased their vehicles new will receive 100% reimbursement for expenses incurred at 100,000 miles or less, and 75% reimbursement for expenses incurred between 100,001 and 125,000 miles. Class members who purchased used vehicles will receive 75% reimbursement for expenses incurred at 100,000 miles or less, and 30% reimbursement for expenses incurred between 100,001 and 125,000 miles.

26. The Agreement executed by Old GM expressly acknowledged that the Class Action asserted a claim for breach of warranty: "[plaintiffs] claim that GM is liable to alleged class members for damages under state consumer protection statutes and ***on breach of warranty*** and unjust enrichment theories." Exhibit B, p. 2, para. 2 (emphasis added).

27. According to the Agreement, Old GM entered into the settlement, at least in part, to promote customer satisfaction: "GM has concluded, however, that it is desirable to settle the Action upon the terms and conditions set forth herein because it will (i) fully resolve all claims that were or could have been raised in the Action; (ii) avoid the expense, burdens and uncertainties of continued litigation; and (iii) promote customer satisfaction with Saturn vehicles." Exhibit B, p. 4, para. 5.

28. The definition of "Released Claims" in the Agreement executed by Old GM (a) included a broad class of claims related to VTi transmission sufficient to include warranty claims in general and (b) specifically released the legal claims asserted in the Class Action:

> "Released Claims" means any and all past present, and future claims, demands, causes of actions or liabilities, including but not limited to those for alleged violations of any state or federal statutes, rules or regulations, and all common law claims, including Unknown Claims as defined herein, based on or related in any way to (a) the operation, design, durability, reliability, repair, value or performance of VTi transmissions in Class Vehicles or (b) the factual allegations and ***legal claims that were made or could have been made in the Action***. Released Claims do not include any claim, demand or cause of action against GM for property damage or personal injury in connection with a VTi transmission.

Exhibit B, p. 6, para. 14 (emphasis added).

29. On September 8, 2008, Judge Shubb preliminarily approved the Agreement and ordered that notice be provided to the class members. A copy of the Memorandum and Order is attached as Exhibit J.

30. On January 12-13, 2009, the Notice of Proposed Class Action Settlement sent to Class Members, under the heading "DESCRIPTION OF THE LAWSUIT," advised the class members that the Class Action claimed that Old GM, among other things, "breached express . . .

warranties." A copy of the Notice of Proposed Settlement is attached as Exhibit K.

31. On February 27, 2009, Plaintiffs filed their Memorandum In Support of Final Approval of Class Settlement, wherein the obligations created by the Agreement and Final Judgment were explained in terms of the original warranty provided with the vehicles. See the Memorandum in Support of Final Approval attached as Exhibit L.

32. A Final Fairness Hearing was held March 30, 2009, and Final Judgment approving the Agreement was entered by Judge Shubb on April 14, 2009.

33. Old GM was to mail claim forms to class members, but, instead, Old GM filed for bankruptcy protection on June 1, 2009.

The GM Bankruptcy

34. In its bankruptcy proceeding, Old GM sought and obtained authority to honor customer service programs during the bankruptcy, including warranty obligations, via the filing of a motion entitled Motion Of Debtors For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(A) And 363 Authorizing Debtors To Honor Prepetition Obligations To Customers, Dealers, And Trade Customers And To Otherwise Continue Warranty, Credit Card, Other Customer, Dealer, And Trade Customer Programs In The Ordinary Course Of Business ("GM's Warranty Motion"). A copy of this motion is attached as Exhibit M.

35. GM's warranty motion alleged repeatedly and in the strongest possible terms that customer satisfaction was essential to the success of its business and that honoring prepetition warranties was an essential component of customer satisfaction, and was ultimately imperative to ensure the successful sale of the GM assets, brands, and goodwill, to wit:

a. "The Debtors' customers are the lifeblood of their business. In this highly competitive business, customer satisfaction is the key to survival." Exhibit M, p. 11, para. 30.

b. "The Debtors believe that the assurance to the consumer public that all vehicle and parts warranties (whether pre- or postpetition) will be honored on an uninterrupted basis is crucial to their ongoing business operations and goodwill, and absolutely essential to maintaining customer loyalty." Exhibit M, p. 13, para. 36.

c. "The aggregate cost to the Debtors to honor and continue the Customer Programs is insignificant when compared to the irreparable harm and detrimental impact on their businesses that will be suffered if these programs are abandoned. Maintenance of the Customer Programs is essential to the ability of the Debtors to effectively compete in the market and to the continued viability of the Debtors' business enterprise." Exhibit M, p. 14, para. 36.

d. "It is self-evident that continuation of the Warranty and Service Programs is essential to the Debtors' ongoing business operations, to the maintenance of customer goodwill and loyalty, and to efforts to preserve the residual value of GM-branded products in the marketplace. Any risk that these programs will not continue in accordance with past practice would irreparably damage the GM enterprise and its reputation in the marketplace, to the detriment and prejudice of all parties in interest. Indeed, if existing and future consumers cannot rely on the continued availability and honoring of warranty claims, GM's entire customer base would likely erode." Exhibit M, p. 16, para. 42.

e. "The Debtors submit, and it can hardly be legitimately disputed, that the continuing support of their customers is imperative to their ongoing operations and the viability of the enterprise, and the uninterrupted continuance of Customer Programs is critical to maintaining and preserving such support." Exhibit M, p. 23, para. 62.

f. "The failure to maintain the Customer Programs will completely undermine the Debtors' sales efforts and place the Debtors at a severe, and perhaps insurmountable, competitive disadvantage. This is particularly true with respect to the Warranty and Service Programs which, if not honored and continued,

would have a devastating impact on the Debtors' credibility in the market and its ability to effectively and competitively sell vehicles." Exhibit M, p. 24-25, para. 65.

36. As part of the bankruptcy proceedings, Old GM and New GM entered into a contract for the sale and purchase of assets and selected liabilities, the ARMSPA.

37. The ARMSPA defines certain terms, including the following:

a. "'Claims' means all rights, claims . . . causes of action, . . . rights of recovery, . . . litigation, . . . or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto." Exhibit C, p. 4.

b. "'Contracts' means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representatives agreements, employee or consulting agreements, leases subleases, licenses, ***product warranty or service agreements*** and ***other binding commitments, agreements, obligations*** and undertakings of any nature (whether ***written*** or oral, and whether ***express or implied***)." Exhibit C, p. 5 (emphasis added).

c. "'Law' means ***any and all applicable United States*** or Non-United States ***federal***, national, provincial, ***state*** or local laws, rules, regulations, directives, decrees, treaties, ***statutes***, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, ***as well as any applicable Final Order***. Exhibit C, p. 11 (emphasis added).

d. "'Liabilities' means ***any and all liabilities and obligations of every kind and description whatsoever***, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness ***and those arising under any*** Law, ***Claim, Order, Contract*** or otherwise." Exhibit C, p. 11

(emphasis added).

e. "'Order' means any writ, ***judgment***, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent." Exhibit C, p. 12 (emphasis added).

38. According to the ARMSPA, New GM, as Purchaser, agreed to "assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities." Exhibit C, p. 23.

39. Included among the "Assumed Liabilities" as defined by the ARMSPA are "all ***Liabilities arising under express written warranties*** of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing." Exhibit C, p. 29, Section 2.3(a)(vii)(emphasis added).

40. For the reasons set forth above, the Agreement and the Final Judgment fall within the definition of "Liabilities" under the ARMSPA as, among other things, "Claims," "Contracts," "Law," and/or "Orders." Further, because the claims asserted in the Class Action and resolved by the Agreement and Final Judgment were based upon Old GM's alleged breach of its express new car warranty, the Agreement and Final Judgment are "Liabilities arising under express written warranties of Sellers [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles." As such, the Agreement and Final Judgment are "Assumed Liabilities" of New GM under the express terms of the ARMSPA.

Treatment of Fresh Failures

41. Despite the various phases of the litigation, Saturn VTi transmissions continue to

fail, and class members are faced with the costs associated with malfunctioning VTi transmissions. These malfunctions are described as "fresh failures"(i.e., recent transmission failures rendering the vehicles inoperable).

42. Shortly after preliminary approval of the Agreement and months prior to the bankruptcy, Old GM began honoring the terms of the settlement as to fresh failures. Old GM trained customer service representatives as to procedures to follow when contacted with claims within the terms of the Agreement, and Old GM provided Class Counsel with a customer service phone number class members experiencing fresh failures could use to contact Old GM for reimbursement. In addition, Old GM began to systematically reimburse class members according to the terms of the settlement for expenses incurred related to fresh failures of VTi transmissions.

43. Counsel for Old GM in the Class Action confirmed its treatment of fresh failures in correspondence of October 15, 2008: "As we discussed, customers who contact GM's Customer Assistance Center concerning recent VTi transmission problems are being handled by customer relations personnel who have been instructed to provide goodwill repairs and assistance in accordance with the terms of the pending settlement." A copy of this correspondence is attached as Exhibit N.

44. Old GM continued to honor the settlement as set forth in the foregoing paragraph even after filing bankruptcy, and did so until the closing with New GM of the Sale and Purchase Agreement.

45. Separate and apart from New GM's agreement to satisfy the "Assumed Liabilities" in the ARMSPA, Section 6.15 of the ARMSPA provides as follows:

> From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under

(i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. Exhibit C, p. 69.

46. Following the closing of the ARMSPA, New GM began providing reimbursement to class members experiencing fresh failures consistent with the terms of the Agreement, even causing class members to submit claims for failed VTi transmissions on claim forms created in connection with and attached to the Agreement.

47. In connection with the bankruptcy, Old GM and New GM have both stated publicly and repeatedly that GM customers' warranties would be honored by New GM.

48. Since purchasing the Old GM assets, New GM has continued to honor the Agreement as to fresh failures as set forth above. By way of example, Plaintiffs attach the following service invoices showing Saturn customers being compensated for VTi transmission repairs according to the terms of the Agreement and Final Judgment:

a. Saturn service invoice dated July 17, 2009 showing that the original owner of a 2004 Vue with 111,943 miles was required to pay only 25% of $3,991.01 for VTi transmission repairs and New GM paid the remaining 75%. Exhibit O.

b. Saturn service invoice dated July 20, 2009 showing second owner of 2003 Vue with 68,373 miles was required to pay only 25% of $4,552.28 for VTi transmission repairs and New GM paid the remaining 75%. Exhibit P.

c. Saturn service invoice dated July 22, 2009 showing original owner of 2003 Vue with 99,975 miles required to pay nothing for extensive transmission repair and New GM paid 100%. Exhibit Q.

d. Additional invoices reflecting similar practices attached collectively as Exhibit T.

49. During Old GM's bankruptcy, Old GM and New GM have communicated with their customers, including Class Members, via direct mail or e-mail regarding the sale of the Saturn brand to Penske Automotive Group and Old GM's sale of assets to New GM. Correspondence on Saturn letterhead and GM letterhead are attached as Exhibits R and S, respectively.

50. Via this correspondence, Old GM and New GM have assured Class Members that New GM would honor their obligations under new vehicle warranties:

a. "Saturn has always been a brand you can trust and I want you to be assured your vehicle's Saturn warranty is absolutely safe and sound. There is no change in the new vehicle warranty for any Saturn." Exhibit R.

b. "We would like to remind you that dealers of GM vehicles will continue to service vehicles and honor GM vehicle warranties." Exhibit S.

c. "This email is being sent by New GM on behalf of both General Motors Corporation and New GM." Exhibit S.

51. While Old GM and New GM publicly claim to be putting customers first, GM's former CEO, Rick Wagoner, will receive a severance package reportedly worth over $8.15 million, a $2.5 million cash value life insurance policy, and a $74,000 annual pension payment.

52. Although New GM fulfilled certain obligations under the Agreement and Final Judgment, other obligations under the Agreement and Final Judgment have not been performed and are past due to be performed, such as payment of each Plaintiff's incentive award of $2500 and reimbursement of their Past Reimbursable Expenses as defined by the Agreement and Final Judgment.

53. Plaintiffs are intended to be third-party beneficiaries under the ARMSPA.

COUNT I – DECLARATORY JUDGMENT
(Express Assumption Of Liability)

54. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 53 as if fully set forth herein.

55. By virtue of its ARMSPA with Old GM, New GM expressly agreed to assume the liability under the Agreement and Final Judgment pursuant to its warranty obligations.

56. Plaintiffs have performed all of their obligations under the terms of the Agreement and Final Judgment.

WHEREFORE, Plaintiffs request the following relief:

A. A declaration that the Agreement and Final Judgment are "Assumed Liabilities" under the ARMSPA; and

B. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT II –DECLARATORY JUDGMENT
(Implied Assumption Of Liability)

57. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 56 as if fully set forth herein.

58. On August 26, 2009, Plaintiffs filed the present action.

59. On September 28, 2009, New GM issued a bulletin entitled "Saturn VTi Transmission Settlement Clarification" to all Saturn retailers. A copy of the bulletin is attached as Exhibit W.

60. The Saturn VTi Transmission Settlement clarification acknowledges the Agreement and admits that Old GM and, post-Closing, New GM were reimbursing class

members for VTi transmission failures in accordance with the Agreement and Final Judgment until the bulletin was issued.

61. New GM's post-Closing decision to cease honoring the Agreement and Final Judgment resulted in class members being initially told by New GM, post-Closing, that the class member would be reimbursed for qualifying costs and expenses pursuant to the terms of the Agreement and Final Judgment, but, subsequently, denied reimbursement under the Agreement and Final Judgment. The affidavit of one such class member, Dan Richardson, is attached as Exhibit U.

62. New GM has impliedly agreed to assume the Final Judgment liability by repeatedly and systematically honoring the terms of the Settlement Agreement by reimbursing Class Members who are outside any other warranty coverage for expenses related to malfunctioning VTi transmissions in amounts and via procedures consistent with the Agreement and Final Judgment.

WHEREFORE, Plaintiffs request the following relief:

A. A declaration that Defendant assumed the liabilities under the Agreement and Final Judgment; and

B. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT III – DECLARATORY JUDGMENT
(In The Alternative To Counts I And II)

63. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 62 as if fully set forth herein.

64. Count III is set forth in the alternative in the event that the Agreement and Final Judgment are determined not to be Assumed Liabilities of New GM pursuant to the ARMSPA.

65. According to Old GM and New GM, the Agreement is an executory contract. In re Motors Liquidation Company, No. 09-50026, Doc. # 4458.

66. Under the Section 6.6(e) of the ARMSPA, from and after the Closing, New GM is obligated to pay or cause to be paid all amounts due in respect to Seller's performance under each of Old GM's Executory Contracts that is a Deferred Executory Contract for as long as such contract remains a Deferred Executory Contract. Exhibit C, Sec. 6.6(e).

67. Section 6.6(c) of the ARMSPA defines a Deferred Executory Contract as each Executory Contract, immediately following the Closing, entered into by Old GM that has not previously been designated as an Assumable Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Old GM pursuant to Section 365 of the Bankruptcy Code. Exhibit C, Sec. 6.6(c).

68. Prior to the Closing, the Agreement was not assumed or rejected by Old GM pursuant to Section 365.

69. Additionally, the Agreement was not, prior to the Closing, designated as an Assumable Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract pursuant to the procedures set forth in the ARMSPA.

70. Specifically, Section 6.6 of the ARMSPA expressly requires "a writing" in order to so designate a contract, and no such writing exists.

71. At the time of the Closing, therefore, the Agreement became a Deferred Executory Contract such that New GM became responsible for "all amounts due in respect of [Old GM's] performance" for "so long as such Contract remains a Deferred Executory Contract." Exhibit C, Sec. 6.6(e).

72. At the time of the Closing, performance on the part of Old GM was due in many respects under the Agreement, including the cost of notice of final approval to class members, class representatives' incentive awards, attorneys' fees and expenses, Past Reimbursable Expenses, Past Trade-In With VTi Transmission Malfunction Reimbursement, and certain Future Reimbursable Expenses (at least through July 10, 2009). At time of the Closing, New GM became responsible for this performance pursuant to Sec. 6.6(e) of the ARMSPA. Exhibit C, Sec. 6.6(e).

73. Plaintiffs are intended third party beneficiaries of the agreement in that the ARMSPA requires New GM to pay certain amounts to the Plaintiffs that would otherwise be the responsibility of Old GM.

WHEREFORE, Plaintiffs request the following relief:

A. A declaration that the Agreement was, post-Closing, a Deferred Executory Contract within the meaning of the ARMSPA;

B. A declaration that New GM is responsible for the amounts owed on the Agreement at the time it was a Deferred Executory Contract, including the cost of notice of final approval to class members, class representatives' incentive awards, attorneys' fees and expenses, Past Reimbursable Expenses, Past Trade-In With VTi Transmission Malfunction Reimbursement, and certain Future Reimbursable Expenses (at least through July 10, 2009);

C. A declaration of the date through which New GM is responsible for the amounts described in the foregoing paragraph; and

D. Such other and further relief as the Court deems appropriate under the circumstances.

Dated: December 4, 2009

Respectfully submitted,

/s/ S. Alyssa Young
S. Alyssa Young, Esq. (SY 6105)
LEADER & BERKON LLP
630 Third Avenue
New York, New York 10017
Phone: (212) 486-2400
Fax: (212) 486-3099

Robert W. Schmieder II
Mark L. Brown
LAKINCHAPMAN LLC
300 Evans Avenue, P.O. Box 229
Wood River, Illinois 62095-0229
Phone: (618) 254-1127
Fax: (618) 254-0193

Attorneys for Plaintiffs

EXHIBIT A

ROBERT W. SCHMIEDER II (*pro hac vice*)
MARK L. BROWN (*pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (916) 254-0193

C. BROOKS CUTTER (S.B. #121407)
KERSHAW, CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

GREGORY R. OXFORD (S.B. #62333)
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

FINAL JUDGMENT

Honorable William B. Shubb

This matter having come before the Court on the application of Plaintiffs, individually and as representatives of a class of similarly situated persons (collectively, "Plaintiffs"), and General Motors Corporation ("Defendant") for approval of the settlement set forth in the Stipulation of Settlement and the exhibits thereto (collectively the "Agreement"), and the Court having considered all papers filed, all evidence submitted and proceedings had herein and otherwise being fully informed;

IT IS **HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Court has jurisdiction over the subject matter of this litigation, and over all parties to the litigation, including all members of the proposed Class defined as all residents of the United States who as of January 13, 2009, own or have owned a model year 2002, 2003, 2004 or 2005 Saturn VUE or model year 2003 or 2004 Saturn ION equipped with a continuously variable VTi transmission ("Class Vehicle") excluding (i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles from GM, or any entity related or affiliated with GM, for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has instituted an action for damages for property damage or personal injury against GM related to the VTi transmission of a Class Vehicle ("Class"). Excluded from the Class are members of a Subclass consisting of persons otherwise falling within this Class definition but (1) to whom Notice of the Settlement inadvertently was not mailed prior to the Settlement Approval hearing and (2) who did not otherwise receive timely notice of the Settlement.

2. Pursuant to Rule 23(a), Federal Rules of Civil Procedure, the Court finds that the members of the proposed Class are so numerous that joinder of all members is impracticable, that there are questions of law and fact common to the Class, that the claims of the named plaintiffs are typical of the claims of Class and that the named plaintiffs have fairly and adequately represented the Class and will continue to do so. Pursuant to Rule 23(b), Federal Rules of Civil Procedure, the Court further finds that questions of fact common to the Class predominate over factual questions affecting only

individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the Court certifies the Class as defined in paragraph 1 above.

3. The Court hereby finds that: (a) the settlement memorialized in the Stipulation of Settlement previously filed with the Court ("Agreement") has been entered into in good faith and was concluded after Class Counsel had conducted an extensive investigation concerning the issues raised by Plaintiffs' claims; (b) the settlement evidenced by the Agreement is fair, reasonable and adequate as to, and in the best interests of, the Class Members; (c) the settlement delivers benefits to the Class in a timely manner while resolving complex issues that would require expensive and long-lasting litigation; (d) the Agreement was the result of extensive arms' length negotiations among highly experienced counsel, with full knowledge of the risks inherent in this litigation; (e) there is no evidence of collusion or fraud in connection with the settlement; (f) the investigation conducted to date suffices to enable the parties and the Court to make an informed decision as to the fairness and adequacy of the settlement; (g) the case raised complex and vigorously contested issues of law and fact that would result in complex, expensive, and lengthy litigation; (h) the Plaintiffs faced significant risks in establishing liability and damages; and (i) the release is tailored to address the allegations in the case.

4. Accordingly, the Court hereby orders and declares (a) the Agreement is approved by the Court and shall be binding on all Class Members; and (b) the Agreement as approved by this final judgment is and shall be binding and preclusive in all pending and future lawsuits or other proceedings whether in state or federal court. Each and every term and condition of the Agreement as a whole (including its attached exhibits) is approved as proposed and is to be effective, implemented, and enforced as provided in the Agreement.

5. The Court finds that the Class Notice and methodology implemented pursuant to this Court's Preliminary Approval Order provided the best notice practicable

under the circumstances. The Court further finds that the Class Notice advised each member of the Class, in plain easily understood language: (a) the nature of the suit; (b) the definition of the Class certified; (c) the class claims, issues, and defenses; (d) that a Class Member could enter an appearance through counsel if desired; (e) that the Court would exclude from the Class any member who timely requested exclusion by a specified date; and (f) that the judgment incorporating the settlement will fully release Defendant, dismiss this lawsuit with prejudice, and include and bind all members of the Class who did not timely request exclusion. The Court finds that the Class Notice and methodology fully complied with all applicable legal requirements, including the Due Process Clause of the Constitution of the United States and the Federal Rules of Civil Procedure.

6. The Court also finds that the Final Notice and the post-settlement notice methodology to be implemented pursuant to the Agreement will provide the best practicable notice under the circumstances of the Judgment and Claim Form to all Class Members, and the Court further finds that the Final Notice and methodology constitute due, adequate and sufficient notice to all persons entitled to receive notice, and fully comply with all applicable requirements of law, including the Due Process Clause of the Constitution of the United States and the Federal Rules of Civil Procedure.

7. The Court finds that Class Counsel and the Class representatives adequately represented the Class for purposes of entering into and implementing the Agreement.

8. The terms of the Agreement as approved by this final judgment shall be forever binding on, and shall have *res judicata* effect and preclusive effect in, all pending and future lawsuits or other proceedings that may be maintained by or on behalf of the Plaintiffs or any Class Members, as well as their collective heirs, executors, administrators, successors and assigns, relating to the Action and/or the Released Claims (as defined in the Agreement).

9. The preceding paragraph of this Judgment covers, without limitation,

any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or the Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of the settlement and/or the Released Claims.

10. All Class Members who did not timely exclude themselves from the Class are, from this day forward, hereby permanently barred and enjoined from:

(a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit in any jurisdiction based on or relating to: (i) the claims and causes of action asserted or that could have been asserted in this Action; (ii) the facts and circumstances relating to this Action; or (iii) the Released Claims, or

(b) organizing Class Members, or soliciting the participation of Class Members, in a separate class for purposes of pursuing as a purported class action any other lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to: (i) the claims and causes of action asserted or that could have been asserted in this Action; (ii) the facts and circumstances relating to this Action; or (iii) the Released Claims.

11. Class Representatives are each awarded $2,500 for their roles in this litigation ("Incentive Fees"). Class Counsel and Local Counsel are hereby awarded the total sum of $4,425,000 in attorneys' fees, costs and expenses ("Attorneys' Fees and Expenses"). Defendant shall pay the Incentive Fees and Attorneys' Fees and Expenses in accordance with the Settlement Agreement. Defendant shall have no responsibility for and no liability with respect to the allocation of Attorneys' Fees to Class Counsel or any other person who may assert some claim thereto.

12. Neither this Judgment nor the Agreement (nor any document referred to herein or any action taken to carry out this Final Judgment) is, may be construed as, or

may be used as an admission by Defendant of the validity of any claim, of actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Agreement and any negotiations or proceedings relating to the settlement shall not in any event be construed as, or deemed to be evidence of, an admission or concession of the Defendant and shall not be offered or received into evidence in any action or proceeding against any party hereto in any court, judicial, administrative, regulatory hearing, arbitration, or other tribunal or proceeding for any purpose whatsoever, except in a proceeding to enforce the Agreement. This Final Judgment and the Agreement it approves (including exhibits thereto) may, however, be filed in any action against or by the Defendant to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. All individual claims by Class Members and all Class claims asserted or that could have been asserted herein by Class Members, are hereby DISMISSED WITH PREJUDICE, without fees, costs, or expenses to any party except as otherwise provided herein. Pursuant to Rule 54(b), Fed. R. Civ. P., the Court finds that there is no just reason for delay and expressly directs that this judgment be entered forthwith, without prejudice to the rights of members of the Subclass consisting of persons who otherwise fall within the Class definition but (a) to whom Notice of the Settlement inadvertently was not mailed prior to the Settlement Approval hearing and (b) did not otherwise receive timely notice of the Settlement.

DATED: April 14, 2009

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

Tana Burton

From:	caed_cmecf_helpdesk@caed.uscourts.gov
Sent:	Thursday, April 16, 2009 12:04 PM
To:	caed_cmecf_nef@caed.uscourts.gov
Subject:	Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Judgment

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 4/16/2009 at 10:04 AM PDT and filed on 4/16/2009
Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer:
Document Number: 74

Docket Text:
FINAL JUDGMENT [71] entered pursuant to [73] Order filed on 4/14/2009. The Court has jurisdiction over subject matter of this litigation, and over all parties to litigation, including all members of proposed Class definedas all residents of the United States. (Marciel, M)

2:07-cv-2142 Electronically filed documents will be served electronically to:

C Brooks Cutter bcutter@kcrlegal.com, kdonnel@kcrlegal.com, kgradwohl@kcrlegal.com, landerson@kcrlegal.com, yburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Mark L. Brown-PHV markb@lakinchapman.com, debbies@lakinchapman.com, docket@lakinchapman.com

Robert W. Schmieder PHV , II robs@lakinchapman.com, debbies@lakinchapman.com, docket@lakinchapman.com, mattc@lakinchapman.com, paulas@lakinchapman.com, tanab@lakinchapman.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=4/16/2009] [FileNumber=2996942-0
] [3df8915c37ef9b8885bd0378ce82e5dfb657aacfc009a16f6aa4fb9808f3205c95e
d9ba3751d25a46eb5212139fba2dee0cf5b9731a1b4170a29cd0aa5e462ff]]

EXHIBIT B

ROBERT W. SCHMIEDER II (*pro hac vice*)
MARK L. BROWN (*pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (916) 254-0193

C. BROOKS CUTTER (S.B. #121407)
KERSHAW, CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

GREGORY R. OXFORD (S.B. #62333)
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.

Case No. 2:07-CV-02142 WBS-GGH

STIPULATION OF SETTLEMENT

Honorable William B. Shubb

This Stipulation of Settlement (the "Agreement") is made and entered into between Plaintiffs Kelly Castillo, Nicole Brown, Barbara Glisson, Valerie Evans, Brenda Alexis Digiandomenico, Stanley Ozarowski and Donna Santi, individually and as representatives of the Class (as defined below), and General Motors Corporation on its own behalf and on behalf of its subsidiaries and affiliates, including but not limited to Saturn Corporation and Saturn Distribution Corporation (collectively "GM" or "Defendant"). The Agreement is intended to fully, finally and forever resolve, discharge and settle the lawsuit styled *Kelly Castillo, et al. v. General Motors Corporation*, Case No. 2:07-CV-02142 WBS-GGH, pending in the United States District Court for the Eastern District of California (the "Action") and all matters raised or that could have been raised therein, subject to the terms and conditions hereof and approval by the Court.

I. BACKGROUND

1. Plaintiffs Castillo, Brown and Glisson originally filed this Action individually and on behalf of a proposed class of all residents of the states of California, Florida, Georgia, Illinois, Massachusetts, Missouri, Michigan, New Jersey, New York, North Carolina, Ohio or Oklahoma who own or have owned a 2002, 2003, 2004 or 2005 Saturn VUE or a 2003 and 2004 Saturn ION equipped with a continuously variable VTi transmission (the "Class Vehicle" or "Vehicle"). These and four other plaintiffs (Ms. Evans, Ms. Digiandomenico, Mr. Ozarowski and Ms. Santi) later filed a First Amended Complaint which added residents of Virginia to the proposed class. Contemporaneously herewith, plaintiffs are filing a Second Amended Complaint on behalf of a proposed nationwide class which is further described below.

2. Plaintiffs allege that the Vehicles are defective because the VTi transmission is prone to "premature" failure. They claim that GM is liable to alleged class members for damages under state consumer protection statutes and on breach of warranty and unjust enrichment theories. GM denies that there is any defect or that it is liable to plaintiffs or members of the proposed Class on any theory. In March 2004, however, GM voluntarily extended the limited new vehicle warranty for the VTi transmission from 3 years or

36,000 miles, whichever comes first, to 5 years or 75,000 miles, whichever comes first. GM contends that state consumer protection statutes do not apply in this case, that it is satisfying all of its warranty obligations by performing its duties under the extended new vehicle warranty and that plaintiffs' unjust enrichment theory cannot enlarge its legal obligations beyond those provided by the warranty.

3. Both before and after commencing the Action Class Counsel (as that term is defined below) conducted an extensive examination and evaluation of the relevant law and facts in order to assess the merits of Plaintiffs' claims and GM's defenses and to determine how best to serve the interests of Plaintiffs and the proposed Class. That examination and evaluation included: (i) interviews of hundreds of Class Members; (ii) consultation with automotive and damages experts; (iii) research into various technical issues; (iv) depositions of GM employees knowledgeable concerning the VTi transmission; (v) review of thousands of pages of documents produced by GM; and (vi) review of voluminous documents that Class Counsel subpoenaed from third parties. Based on this investigation, Plaintiffs and Class Counsel are satisfied that the Agreement is based upon an appropriate analysis of the facts and law and that this Agreement is in the best interests of the Class.

4. Plaintiffs and Class Counsel have agreed to settle the Action pursuant to the provisions of the Agreement, and subject to court approval, after considering such factors as: (i) the benefits to Plaintiffs and the Class under the terms of the Agreement; (ii) the uncertainty of being able to prove the allegations made in the Action, and the uncertainty of being able to overcome the factual and legal defenses thereto; (iii) the inherent risks and uncertainty of complex litigation such as the Action; (iv) the difficulties, risks and delays inherent in such litigation; (v) the desirability of consummating the Agreement promptly in order to provide expeditious relief to plaintiffs and the Class; (vi) the fact that GM has consistently and vigorously disputed Plaintiffs' substantive legal and factual allegations; and (vii) the significant expense and time necessary to prosecute the litigation through trial and appeal. Plaintiffs and Class Counsel believe that settlement in

accordance with the terms of the Agreement is desirable and in the best interests of the Class and preferable to continuing with protracted and uncertain litigation and that the settlement terms are fair and reasonable and provide substantial and immediate relief to the Class. The Agreement has been reached after substantial, good faith, arms-length negotiations, including mediation before the Honorable Ronald Sabraw, Judge of the Alameda County Superior Court (Ret.) (the "Mediator").

5. GM expressly denies any wrongdoing and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, and GM denies that plaintiffs or any Class Members have suffered damage or were harmed by the conduct alleged. GM has concluded, however, that it is desirable to settle the Action upon the terms and conditions set forth herein because it will (i) fully resolve all claims that were or could have been raised in the Action; (ii) avoid the expense, burdens and uncertainties of continued litigation; and (iii) promote customer satisfaction with Saturn vehicles.

6. Plaintiffs and GM therefore stipulate and agree that, subject to the approval of the Court, the Action shall be compromised, settled, released, and dismissed with prejudice upon and subject to the following terms and conditions:

II. DEFINITIONS

As used in this Agreement and the exhibits hereto the following terms have the meanings specified below:

1. "Action" means the lawsuit styled *Kelly Castillo, et al. v. General Motors Corporation*, Case No. 2:07-CV-02142 WBS-GGH, pending in the United States District Court for the Eastern District of California.

2. "Class" or "Class Members" means all persons who are residents of the United States and who as of the date of entry of the Preliminary Approval Order (as defined in paragraph 5 below) own or have owned a Class Vehicle (as defined in paragraph 3 below) except that the Class shall exclude (i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles from GM, or any entity related

or affiliated with GM, for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has instituted an action for damages for property damage or personal injury against GM in connection with a VTi transmission.

3. "Class Vehicles" and "Vehicles" mean 2002 through 2005 model year Saturn VUEs equipped with VTi transmissions and 2003 through 2004 model year Saturn IONs equipped with VTi transmissions.

4. "Judgment" means the judgment, substantially in the form attached hereto as Exhibit A, to be entered by the Court in the Action finally approving this Agreement and dismissing the Action with prejudice.

5. "Preliminary Approval Order" means the Court's order preliminarily approving the terms of this Agreement as fair, adequate, and reasonable, including the Court's approval of the form and manner of giving notice to Class Members, substantially in the form attached hereto as Exhibit B.

6. "Effective Date" means ten (10) business days after the later of (a) the date upon which the time for seeking appellate review of the Judgment (by appeal or otherwise) shall have expired; or (b) the date upon which the time for seeking appellate review of any appellate decision affirming the Judgment (by appeal or otherwise) shall have expired and all appellate challenges to the Judgment shall have been dismissed with prejudice without any person having any further right to seek appellate review thereof (by appeal or otherwise).

7. "Class Notice" means the notice, substantially in the form attached hereto as Exhibit C, provided to Class Members after issuance of the Preliminary Approval Order.

8. "Final Notice" means the notice substantially in the form attached hereto as Exhibit D that will be provided to Class Members after the Effective Date.

9. "Claim Form" means the forms attached hereto as Exhibits E-1 and E-2, to be sent to Class Members who purchased their Vehicles new or used, respectively, along with the Final Notice.

10. "Class Counsel" means The Lakin Law Firm, P.C., 300 Evans Avenue, P.O. Box 229, Wood River, Illinois 62095, who are the lead attorneys of record representing the interests of Plaintiffs and Class Members.

11. "Local Counsel" means Kershaw, Cutter & Ratinoff, LLP, 401 Watt Avenue, Sacramento, California 95864, who are the local attorneys of record representing the interests of Plaintiffs and Class Members.

12. "Defendant's Counsel" means Isaacs Clouse Crose & Oxford LLP, 21515 Hawthorne Boulevard, Suite 950, Torrance, California 90503, who are the attorneys of record representing GM.

13. "Authorized Saturn Retailer" means any Saturn Retailer in the United States that is a signatory to an existing and effective Saturn Retailer Agreement.

14. "Released Claims" means any and all past, present, and future claims, demands, causes of actions or liabilities, including but not limited to those for alleged violations of any state or federal statutes, rules or regulations, and all common law claims, including Unknown Claims as defined herein, based on or related in any way to (a) the operation, design, durability, reliability, repair, value or performance of VTi transmissions in Class Vehicles or (b) the factual allegations and legal claims that were made or could have been made in the Action. Released Claims do not include any claim, demand or cause of action against GM for property damage or personal injury in connection with a VTi transmission.

15. "Unknown Claims" means any Released Claim that any plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release provided for herein, including without limitation those that, if known to him, her or it, might have affected his, her or its settlement and release pursuant to the terms of this Agreement, or might have affected his, her or its decision not to object to the settlement terms memorialized herein.

16. "Attorneys' Fees and Expenses" means the amount awarded by the Court to Class and Local Counsel to compensate them, and any other attorneys for plaintiffs or the

Class, and is inclusive of all attorneys' fees, costs and expenses of any kind in connection with the Action. Attorneys' Fees and Expenses will not under any circumstances exceed the sum of $4,425,000.00.

17. "Fairness Hearing" means the hearing at which the Court will consider and approve the Agreement as fair, reasonable, and adequate, certify the Class, award Attorneys' Fees and Expenses, enter the Final Judgment, and make such other final rulings as are contemplated by this Stipulation.

III. CLASS RELIEF, ATTORNEYS' FEES AND COSTS

1. The relief available to Class Members under the terms of this Stipulation is reimbursement for certain out-of-pocket expenses and losses relating to the VTi transmissions of Class Vehicles. Reimbursable expenses include (a) costs to inspect, repair or replace a malfunctioning VTi transmission ("repair costs"), (b) costs to rent a replacement vehicle or secure other transportation while the malfunctioning VTi transmission was or is being inspected, repaired or replaced ("rental costs"), (c) costs to tow or transport the Class Vehicle to the place where the malfunctioning VTi transmission was or is being inspected, repaired or replaced ("towing costs") and (d) documented expenses relating to the trade-in of a Class Vehicle with a VTi transmission failure at time of trade-in as further limited and defined below ("trade-in costs"). To be reimbursable, repair, rental, towing and trade-in costs relating to the VTi transmission ("Reimbursable Expenses") must be incurred by the Class Member within 125,000 miles after the original retail sale or lease of the Class Vehicle or within the time limitations set forth in Chart A below, whichever occurs first. The relief available to Class Members shall be personal to each Class Member, and shall not under any circumstances be assignable to any other person, third party or other entity and GM shall have no liability to provide any such relief whatsoever to any third person whether based on a purported assignment, subrogation or any other legal theory.

A. Past Reimbursable Expenses

GM will reimburse Class Members who incur Reimbursable Expenses for repair, rental and towing costs relating to a VTi transmission on or before the date of Final Judgment ("Past Reimbursable Expenses") based on the percentages shown in Chart B below. To obtain reimbursement, the Class Member must submit a Claim Form (*see* Exhibits E-1 and E-2) and submit as proof of the Reimbursable Expenses the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the malfunctioning VTi transmission inspection, repair and/or replacement costs paid by the Class Member as well as receipts showing the rental and towing costs, if any, incurred by the Class Member. All Past Reimbursable Expense claims must be submitted within one (1) year after the Effective Date. GM shall use, or cause any claims administrator to use, its best efforts to issue Past Reimbursable Expense checks to the Class Member as soon as practicable, but in no event more than thirty (30) days from the date the Claim Form and proof of loss is received.

B. Past Trade-In With VTi Transmission Malfunction Reimbursement

To claim reimbursement for "trade-in expense," the Class Member must submit a Claim Form (*see* Exhibits E-1 and E-2) and provide contemporaneous dealer documentation including (1) a sales contract including the Vehicle Identification Number ("VIN") of the Class Vehicle that was traded in and (2) a contemporaneous repair estimate referencing the same VIN dated on or before the trade-in date showing a transmission malfunction. The reimbursement shall equal the repair estimate multiplied by the appropriate percentage from Chart B based on the Vehicle's mileage and the Class Member being either a new or used Vehicle purchaser. Class Members may seek reimbursement of trade-in losses only upon proof that the Class Vehicle was traded-in before the date Class Notice was mailed to potential Class Members. All claims for reimbursement of trade-in expense must be submitted within one (1) year after the Effective Date. GM shall use, or cause any claims administrator to use, its best efforts to issue Past Trade-In With VTi Transmission Malfunction Reimbursement checks to the

Class Member as soon as practicable, but in no event more than thirty (30) days from the date the Claim Form and proof of loss is received.

C. Future Reimbursable Expenses

GM will reimburse Class Members who incur an expense relating to a VTi transmission after the date of Final Judgment (except trade-in expense) ("Future Reimbursable Expenses") based on the percentages shown in Chart B below. To obtain reimbursement, the Class Member must submit a Claim Form (*see* Exhibits E-1 and E-2) and submit as proof of the repair expense the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the malfunctioning VTI transmission inspection, repair and/or replacement costs paid by the Class Member as well as receipts showing the rental and towing costs, if any, incurred by the Class Member. GM shall use, or cause any claims administrator to use, its best efforts to issue Future Reimbursable Expense checks to the Class Member within ten (10) General Motors business days of the date the Claim Form and proof of loss is received. Upon written request by the Class Member, GM shall also issue Future Reimbursable Expense checks payable jointly to the Class Member and a Saturn Retailer or other repair shop. All Future Expense Reimbursement claims must be for expenses incurred by the Class Member before the dates set forth in Chart A below and must be submitted no later than the first day of March following the date specified in Chart A for the applicable model year Class Vehicle.

CHART A

Model Year	Date Before Which Expense is Reimbursable
2002	January 1, 2010
2003	January 1, 2011
2004	January 1, 2012
2005	January 1, 2012

CHART B

Vehicle Mileage[1]	GM Reimbursement (New)	GM Reimbursement (Used)
100,000 or less	100 percent	75 percent
100,101-125,000	75 percent	30 percent

3. For each VTi transmission repair or replacement using genuine Saturn or GM parts, such replacement parts will be covered by the standard GM Service Parts Operations warranty for a period of 12 months or 12,000 miles, whichever comes first.

4. For a claim involving a Past Reimbursable Expense, a Past Trade-in With Transmission Malfunction Expense, or a Future Reimbursable Expense incurred prior to the Effective Date, GM has the right to reduce the amount to be reimbursed by any amount previously paid by GM or any affiliate of GM for that same expense. GM, however, has no right to reduce any other Future Reimbursable Expense claim incurred by the Class Member subject to appropriate verification of the amount of the expenses and the Class Member's Eligibility for reimbursement. Notwithstanding the foregoing provisions, GM shall have the right to enforce fully the terms of any release, judgment, arbitration award or other adjudication obtained in connection with any Class Member's prior claim relating to the alleged malfunction of a VTi transmission.

5. GM in addition to all other relief provided herein shall pay all costs of Class Notice and claims administration, which payments shall not diminish any relief provided to Class Members under paragraphs 1 through 3 above. GM subject to the terms of the Preliminary Approval Order shall use its best efforts to direct or cause to be directed first-class mail notice to Class Members based on vehicle registration data to be obtained from The Polk Company ("Polk") and updated using the U.S. Postal Service's NCOA (National Change of Address) data base. Within a reasonable time following the Effective Date, GM also agrees to provide appropriate notification to authorized Saturn Retailers. GM may at its option select a Claims Administrator or process claims internally, in either case

[1] Mileage at time Past or Future Reimbursable Expense is incurred.

subject to appropriate notice to and consultation with Class Counsel, who shall have the right to monitor claims administration. GM or its designee will process Claim Forms submitted by Class Members and determine if the Class Member is eligible for any of the relief available under the Agreement. With respect to any claim denials that are disputed by the Class Member or any disputes concerning reimbursement rates, GM and Class Counsel will use reasonable efforts to resolve the dispute, but if no resolution is reached, then the dispute will be submitted to the Mediator (or in his absence another JAMS neutral approved by GM and Class Counsel), who the parties and Class Members agree will have authority to render a binding and final decision in the nature of a non-appealable arbitration award.

6. GM agrees to provide appropriate notice to governmental officials pursuant to the terms of the Class Action Fairness Act.

7. After an agreement was reached as to the principal terms and conditions of this Agreement, and with the assistance of the Mediator, the Parties entered into discussions regarding incentive payments to the named plaintiffs in the Action ("Incentive Fees") and Attorneys' Fees and Expenses for Class and Local Counsel, as described herein. Pursuant to those discussions, prior to the Fairness Hearing and entry of the Judgment, Class Counsel agree to apply to the Court for an award of Incentive Fees to the named Plaintiffs and for an award of Attorneys' Fees and Expenses. GM agrees not to oppose either application provided that Class Counsel do not request an award of Incentive Fees in excess of $2,500 per Plaintiff and do not request a total and all-inclusive Attorneys' Fees and Expenses award exceeding the sum of $4,425,000.00. Subject to the other terms of this Agreement, GM agrees to pay the Incentive Fees and Attorneys' Fees and Expenses awarded by the Court provided that the awards do not exceed these amounts. Such payments will not reduce benefits available to Class Members nor will Class Members be required to pay any portion of the Attorneys' Fees and Expenses. The Class Notice will advise the Class Members of Class Counsel's intent to seek awards of Attorneys' Fees and Expenses and Incentive Fees for the named plaintiffs, including the

amounts thereof. The amounts awarded by the Court shall not affect the other terms of the settlement which shall remain in full force and effect.

8. The Incentive Fees and Attorneys' Fees and Expenses, as awarded by the Court, shall be paid to Class Counsel by GM after the entry of the Judgment and within ten (10) business days after the Effective Date, contingent on receipt of appropriate taxpayer identification information. In no event shall GM pay or be required to pay any other attorneys' fees, costs or expenses to Class Counsel, Local Counsel, or any other attorney purporting to represent any plaintiff.

9. Class Counsel will allocate and distribute the award of Attorneys' Fees and Expenses among all other counsel of record and/or for Plaintiffs. GM shall have no responsibility for and no liability with respect to the allocation of the Attorneys' Fees and Expenses among Class Counsel, Local Counsel, or any counsel representing Plaintiffs, and GM takes no position with respect to such matters. GM's sole obligation will be to pay the Attorneys' Fees and Expenses to Class Counsel that are awarded by the Court and that are not in excess of $4,250,000.00 and the Incentive Fees to the named Plaintiffs that are not in excess of $2,500.00 per Plaintiff.

10. GM shall have no liability or obligation to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person, either directly or indirectly, in connection with this Action, the Agreement, or the proposed settlement, other than the amounts expressly provided for in the Agreement.

11. Promptly after execution, plaintiffs and GM shall submit this Agreement and its exhibits to the Court and jointly apply for a Preliminary Approval Order which contains substantially all of the terms and provisions in Exhibit B attached hereto, including approving the Class Notice, Final Notice, Claim Form, notification procedure, and the provisions for Class Members to opt out or object as set forth herein. The Parties will request that the Court set a Fairness Hearing promptly after the necessary mailing information is obtained by Polk and a schedule for mailing Class Notice is established.

12. Each Plaintiff and Class Member stipulates and agrees that, upon the Effective Date, he, she, or it shall be deemed to have, and by operation of the Judgment shall have, released, waived and discharged his, her or its Released Claims as defined herein and shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code, and of any similar law of any other state, which provides: "a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Upon entry of the Judgment, each Plaintiff and Class Member shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by any law of the United States, or any state of the United States, or principle of common law that is similar, comparable or equivalent to section 1542 of the California Civil Code. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but each Plaintiff and Class Member, upon entry of the Judgment, shall be deemed to have, and by operation of law shall have, fully, finally and forever settled, released and discharged any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofor may have existed upon any theory of law or equity now existing or coming into existence in the future, including but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

13. Plaintiffs reserve the right to conduct reasonable confirmatory discovery.

IV. REQUESTS FOR EXCLUSION

1. Any putative Class Member who wishes to be excluded from the Class must deliver a written request for exclusion to Class Counsel, and the same must be postmarked

within 40 days following the date of mailing of the Class Notice. Copies of any requests for exclusion received by Class Counsel shall be forwarded immediately to GM's counsel. Class Counsel shall file with the Court a list of all Class Members who requested exclusion at least five (5) business days before the Fairness Hearing.

2. Any putative Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders and judgments in the Action.

3. Pending Court approval of this Agreement at the Fairness Hearing, all potential Class Members who do not timely exclude themselves from the Class are preliminarily enjoined and barred *(i)* from filing, commencing, prosecuting, intervening in, or participating as class members in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims; and *(ii)* from filing, commencing or prosecuting any other lawsuit as a class action on behalf of Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

V. OBJECTIONS TO SETTLEMENT

1. Any Class Member who has not submitted a timely written request for exclusion and who wishes to object to the Agreement, the proposed settlement, or to the request for Attorneys' Fees and Expenses, must serve a written objection that must be postmarked no later than 40 days following the date of mailing of the Class Notice. Written objections must include: *(i)* the objector's name, address and telephone number; *(ii)* the Vehicle Identification Number of the vehicle that makes the objector a member of the Class; *(iii)* the name of this case and the case number, *(iv)* a statement of each objection; and *(v)* a statement of the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). If the objection is

presented through an attorney, the written objection must also include: *(i)* the identity and number of Class Members represented by objector's counsel; *(ii)* the number of such represented Class Members who have opted out of the settlement; *(iii)* the number of such represented Class Members who have remained in the settlement and have not objected; *(iv)* the date the objector's counsel assumed representation for the objector, and *(v)* a list of the names of all cases where the objector's counsel has objected to a class action settlement in the last three years. Objecting Class Members must also make themselves available for deposition by Class Counsel and/or GM's counsel in their county of residence, between the time the objection is filed and seven (7) days before the date of the Fairness Hearing.

2. Any Class Member who properly files and serves a written objection may appear at the Fairness Hearing, either in person or through a personal counsel hired at the Class Member's sole expense, to object to the fairness, reasonableness, or adequacy of the Agreement or the proposed settlement, or to the request for Attorneys' Fees and Expenses. Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing, must deliver to Class Counsel and Defendant's Counsel, and have file-stamped by the Court, no later than 20 days before the Fairness Hearing or as the Court otherwise may direct, a Notice of Intention to Appear. The Notice of Intention to Appear must: *(i)* state how much time the Class Member and/or their attorney anticipates needing to present the objection; *(ii)* identify, by name, address, telephone number and detailed summary of testimony, any witnesses the Class Member and/or their attorney intends to present any testimony from; and *(iii)* identify all exhibits the Class Member and/or their attorney intends to offer in support of the objection and attach complete copies of all such exhibits.

3. Any Class Member and/or their attorney who fails to comply with the provisions of the foregoing paragraphs 1 and 2 shall be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of the Agreement.

VI. GENERAL PROVISIONS

1. The terms and provisions of the Agreement may only be amended, modified or expanded by written agreement signed on behalf of all Parties.

2. The Agreement will terminate at the sole option and discretion of GM or plaintiffs if: *(i)* the Court, or any appellate court(s), rejects, modifies or denies approval of any material portion of the Agreement or the proposed settlement (except for the award of Attorneys' Fees and Expenses, as to which the provisions of paragraph III-7 shall control), including, without limitation, the terms of relief, the findings of the Court, the provisions relating to notice, the definition of the Class and/or the scope or terms of the Released Claims; or *(ii)* the Court, or any appellate court(s), does not enter or affirm, or alters or expands, any material portion of the Final Judgment. The terminating party must exercise the option to withdraw from and terminate the Agreement, no later than 10 business days after receiving notice of the event prompting the termination.

3. GM may elect to terminate the Agreement if it is required to pay any amount or take any action not agreed upon herein by the Parties, or if more than 5% of Class Members opt out of the Class.

4. If the Agreement is terminated, then the Agreement shall be null and void and shall have no force or effect, and no party to the Agreement shall be bound by any of its terms, and:

a. The Agreement, all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of GM, plaintiffs or any other Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of the Agreement;

b. GM reserves all defenses, arguments and motions as to all claims that have been or might later be asserted in the Action, including (without limitation) any argument that the Action may not be litigated as a class action;

c. Plaintiffs reserve all claims that have been or might later be asserted in the Action, as well as all motions relating thereto and arguments in support thereof;

d. Neither the Agreement, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever, and the settlement negotiations shall remain confidential; and

e. Any order or judgment entered as a result of the Agreement will be deemed vacated and will be without force or effect, and shall be inadmissible into evidence for any purpose whatsoever.

5. The Agreement shall be governed by and interpreted according to the laws of the State of California, notwithstanding its conflict of law provisions.

6. If any disputes arise regarding the implementation or interpretation of this Agreement, the parties agree to use reasonable efforts to resolve the dispute, including consultation with the Mediator, and if no agreement can be reached, the dispute will be submitted to the Court, which will retain continuing jurisdiction to resolve such disputes.

7. Whenever the Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by facsimile and/or next-day (excluding weekends and holidays) express delivery service as follows:

a. If to Defendant, then to:

L. Joseph Lines, III
General Motors Corporation
Mail Code 482-026-601
400 Renaissance Center
P.O. Box 400
Detroit, Michigan 48265-4000

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
(310) 316-1990
(310) 316-1330 (FAX)

b. If to Plaintiffs, then to:

Robert W. Schmieder II
Mark L. Brown
The Lakin Law Firm
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
(618) 254-1127
(618) 254-0193 (FAX)

8. The Parties reserve the right, subject to the Court's approval, to agree upon any reasonable extensions of time that might be necessary to carry out any of the provisions of the Agreement.

9. All parties agree that this Agreement was drafted jointly by counsel for the parties at arm's length and that the Agreement including its Exhibits constitutes the sole agreement between the parties concerning the subject matter hereof. Further, the parties intend and agree that this Agreement including its Exhibits is a fully integrated agreement, that there are no other agreements, written or oral, between the parties concerning this subject matter, that this Agreement shall not be modified or amended except by a signed writing executed by or on behalf of all parties, and that no representations, warranties or inducements have been made to any party concerning the settlement, Agreement or exhibits thereto other than are contained in the Agreement and exhibits.

10. In no event shall the Agreement, any of its provisions or any negotiations, statements, or court proceedings relating hereto in any way be construed as, offered as, received as, or used as an admission of liability in any judicial, administrative, regulatory, arbitration or other proceeding. Further, this Agreement shall not be offered or admitted into evidence in any proceeding, except the proceeding to seek court approval of this settlement or in a proceeding to enforce the terms of the settlement.

11. The parties, their successors and assigns, and their attorneys undertake to implement the terms of the Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of the Agreement.

12. The parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking Court approval of the Agreement and to use their best efforts to effect the prompt consummation of the Agreement and the proposed settlement.

13. Each person executing this Agreement warrants that he or she has the authority to do so.

14. The Agreement may be signed in counterparts, each of which shall constitute a duplicate original.

APPROVED AND AGREED TO BY AND ON BEHALF OF PLAINTIFFS

Date: July 17, 2008

THE LAKIN LAW FIRM, P.C.

By: _____
Robert W. Schmieder II
Mark L. Brown
Class Counsel

APPROVED AND AGREED TO BY AND ON BEHALF OF DEFENDANT GENERAL MOTORS CORPORATION

Date: July 16, 2008

ISAACS CLOUSE CROSE & OXFORD LLP

By: _____
Gregory R. Oxford
Attorney for Defendant
General Motors Corporation

ROBERT W. SCHMIEDER II (*pro hac vice*)
MARK L. BROWN (*pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (916) 254-0193

C. BROOKS CUTTER (S.B. #121407)
KERSHAW, CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

GREGORY R. OXFORD (S.B. #62333)
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

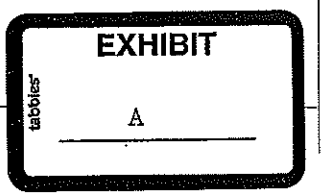
GENERAL MOTORS CORPORATION,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

STIPULATION AND [PROPOSED] ORDER PRELIMINARILY APPROVING STIPULATION OF SETTLEMENT AND DIRECTING CLASS NOTICE

Honorable William B. Shubb



WHEREAS, Plaintiffs and Defendant have entered into a Stipulation of Settlement (the "Agreement") subject to the approval and determination of the Court as to fairness, reasonableness, and adequacy of the settlement which, if approved, will result in dismissal of the Action with prejudice; and

WHEREAS, terms defined in the Agreement filed by the parties herein will have the same meaning in this Order,

IT IS HEREBY STIPULATED, by and among Plaintiffs and Defendant, that the Court following its review of the Stipulation of Settlement and related documents submitted by the parties, may enter its order as follows:

The Court based on its independent review of and due deliberation concerning the Stipulation of Settlement and related documents hereby orders:

1. **Preliminary Approval and Provisional Certification**. Based on the facts and legal authorities presented to the Court, the proposed Agreement appears to be fair, reasonable and adequate with respect to Class Members and the Class as defined in the Stipulation of Settlement is provisionally certified for purposes of the proposed settlement.

2. **Fairness Hearing.** A hearing will be scheduled by the Parties at a date and time approved by the Court pursuant to subsequent application of the parties to decide, among other things: (a) whether the Class should be certified; (b) whether the Agreement should be finally approved as fair, reasonable and adequate; (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Agreement; (d) whether Class Members should be bound by the release set forth in the Agreement; (e) whether Class Members should be subject to a permanent injunction that, among other things, enjoins and bars Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims (as defined in the Agreement); and (f)

whether the application of Class Counsel for an award of Attorneys' Fees and Expenses should be approved.

3. **Pre-Hearing Notices.**

(a) **Class Notice.** Notice of the proposed class action settlement, in the form filed with this Court as Exhibit C to the Agreement (the "Class Notice"), shall be mailed by Defendant to Class Members within 90 days after the entry of this Preliminary Approval Order, subject to any reasonable extension of this deadline that is agreeable to the parties or ordered by the Court in the event that receipt of needed address information for Class Members from state motor vehicle authorities is delayed.

(b) **Proof of Mailing Class Notices.** At or before the Fairness Hearing, Defendant shall file with the Court proof of mailing the Class Notices.

4. **Findings Concerning Notice.** Having considered, among other factors, *(i)* the cost of giving notice by various methods, *(ii)* the interests of each Class Member; *(iii)* the likelihood that Class Members' current address can be obtained, and *(iv)* the likelihood that each Class Member will receive actual notice, the Court expressly finds that notice given in the form and manner provided in Paragraph 2(a) of this Order and as described in the Agreement will provide the best notice practicable under the circumstances. The Court finds that the content and manner of the Class Notice: *(i)* is the best practicable notice; *(ii)* is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and of their right to object to or exclude themselves from the proposed settlement; *(iii)* is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and *(iv)* meets all applicable requirements of any law, the Due Process Clause of the United States Constitution, and the Federal Rules of Civil Procedure. The Court further finds that the proposed manner and form of the Class Notice reasonably advises potential members of the Class of the following: (a) the nature of the Action and settlement relief, and that the relief is limited to that provided by the Agreement and is contingent on the Court's final approval thereof; (b) that the Court will exclude a member from the Class if requested by a specified date; (c) that the judgment

incorporating the settlement will include and bind all Class Members who do not request exclusion by the specified date; and (d) that any Class Member who does not request exclusion may, if he or she desires, object and enter an appearance through his or her counsel. In sum, the Court finds that the Class Notice and method of mailing to Class Members provided in the Agreement is readily understandable, reasonable, constitutes due, adequate and sufficient notice to all persons entitled to receive notice and meets all the requirements of due process.

5. **Exclusion From Class.** Any potential Class Member who wishes to be excluded from the Class must comply with Section IV of the Agreement and deliver a written request for exclusion for receipt by Class Counsel no later than forty (40) days after the date upon which Defendant mails Notice. If the proposed settlement and Agreement is approved, any Class Member who has not submitted a timely and complete written request for exclusion from the Class shall be bound by all subsequent proceedings, orders and judgments in this Action, even if he, she or it has previously initiated or subsequently initiates litigation or other proceeding against the Defendant relating to the Action or the Released Claims. Class Counsel shall tabulate all communications from Class Members requesting to be excluded from the Class and report the names and addresses of such persons to the Court and General Motors no less than 10 days before the Fairness Hearing.

6. **Objections and Appearances.**

(a) **Written Objections.** Any Class Member who has not submitted a timely written request for exclusion and who wishes to object to the fairness, reasonableness or adequacy of the Agreement or the proposed settlement, or to the award of Attorneys' Fees, may make a written objection, in compliance with Section V of the Agreement, which must be received by Class Counsel and Defendant's Counsel and have been file-stamped by the Court no later than forty (40) days after the date upon which Defendant mails Notice. Written objections must be verified by sworn affidavit and must include: *(i)* the objector's name, address and telephone number; *(ii)* the name of the

Action and the case number, *(iii)* a statement of each objection; and *(iv)* a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). If the objection is presented through an attorney, the written objection must also include: *(i)* the identity and number of Class Members represented by objector's counsel; *(ii)* the number of such represented Class Members who have opted out of the settlement; *(iii)* the number of such represented Class Members who have remained in the settlement and have not objected; *(iv)* the date the objector's counsel assumed representation for the objector, and *(v)* a list of the names of all cases where the objector's counsel has objected to a class action settlement in the last three years. Objecting Class Members who intend to testify in support of their objection either in person or by affidavit must also make themselves available for deposition by Plaintiffs' counsel or Defendant's counsel in their county of residence, between the time the objection is filed and seven (7) days before the date of the Fairness Hearing.

(b) **Appearance at Fairness Hearing.** Any Class Member who files and serves a written objection, as described in the preceding subsection, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Agreement or the proposed settlement, or to the award of Attorneys' Fees and Expenses. Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing, must deliver to Class Counsel and Defendant's Counsel, and have file-marked by the Court, no later than twenty (20) days before the Fairness Hearing or as the Court otherwise may direct, a Notice of Intention to Appear. The Notice of Intention to Appear must: *(i)* state how much time the Class Member and/or their attorney anticipates needing to present the objection; *(ii)* identify, by name, address, telephone number and detailed summary of testimony any witnesses the Class Member and/or their attorney intends to present any testimony from; and *(iii)* identify all exhibits the Class Member and/or their

attorney intends to offer in support of the objection and attach complete copies of all such exhibits.

(c) Any Class Member and/or their attorney who fails to comply with the provisions of the preceding subsections shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of the Agreement and any orders entered by the Court.

(d) Written objections and Notices of Intention to Appear (along with the supporting brief, any evidence, and any other required materials) must be filed with the Clerk of the Court ***and*** delivered to Plaintiffs' counsel and Defendant's counsel, for receipt by all, no later than twenty (20) days prior to the Fairness Hearing, at the following addresses:

Robert W. Schmieder II
Mark L. Brown
The Lakin Law Firm, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Counsel for Plaintiffs

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard
Suite 950
Torrance, California 90503
Counsel for Defendant

7. Final Approval Pleadings, Incentive Awards and Fee Application. The parties shall file all final approval pleadings no later than ten (10) days prior to the Fairness Hearing. The parties may file supplemental responses to any objections involving a deposition of an objector at any time prior to the Fairness Hearing. Class Counsel shall file an Incentive Award Application along with an Attorneys' Fee and Expense Application no later than ten (10) days prior to the Fairness Hearing.

8. Preliminary Injunction. All potential Class Members who do not timely exclude themselves from the Class are preliminarily enjoined and barred (*i*) from filing,

commencing, prosecuting, intervening in, or participating as class members in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims; and *(ii)* from filing, commencing or prosecuting any other lawsuit as a class action on behalf of Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

9. Service of Papers. Defendant's counsel and Class Counsel shall serve on each other and on all other parties who have filed notices of appearance before the Fairness Hearing, any further documents in support of the proposed settlement, including responses to any papers filed by a Class Member. Defendant's counsel and Class Counsel shall promptly furnish each other with any and all objections or written exclusion requests that may come into their possession before the Fairness Hearing.

10. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Agreement; or (b) the proposed settlement is terminated in accordance with the Agreement or does not become effective as required by the terms of the Agreement for any other reason. In such event, the proposed settlement and Agreement shall become null and void and be of no further force and effect, shall be inadmissible into evidence for any purposes, and neither the Agreement nor this Preliminary Approval Order shall be used or referred to for any purpose whatsoever.

11. Use of Order. This Preliminary Approval Order shall be of no force and effect if the settlement is not approved or does not become final and shall not be construed or used as an admission, concession or declaration by or against Defendant of any fault, wrongdoing, breach or liability, or by or against Plaintiffs or the Class Members that their

claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable, or as a waiver by any party of any defenses it may have, including defenses or arguments opposing class certification.

IT IS SO ORDERED.

DATED: _____

_____

United States District Judge

APPROVED AS TO FORM:

THE LAKIN LAW FIRM, P.C.

By: _____

Robert W. Schmieder II
Mark L. Brown
Class Counsel

ISAACS CLOUSE CROSE & OXFORD LLP

By: _____

Gregory R. Oxford
Attorneys for Defendant
General Motors Corporation

ROBERT W. SCHMIEDER II (*pro hac vice*)
MARK L. BROWN (*pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (916) 254-0193

C. BROOKS CUTTER (S.B. #121407)
KERSHAW, CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

GREGORY R. OXFORD (S.B. #62333)
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

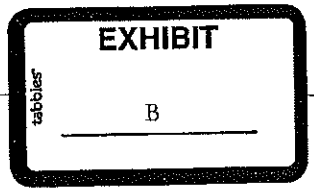
GENERAL MOTORS CORPORATION,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

FINAL JUDGMENT

Honorable William B. Shubb



This matter having come before the Court on the application of Plaintiffs, individually and as representatives of a class of similarly situated persons (collectively, "Plaintiffs"), and General Motors Corporation ("Defendant") for approval of the settlement set forth in the Stipulation of Settlement and the exhibits thereto (collectively the "Agreement"), and the Court having considered all papers filed, all evidence submitted and proceedings had herein and otherwise being fully informed;

IT IS **HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Court has jurisdiction over the subject matter of this litigation, and over all parties to the litigation, including all members of the proposed Class defined as all residents of the United States who as of [insert the date that notice was mailed to Class Members] own or have owned a model year 2002, 2003, 2004 or 2005 Saturn VUE or model year 2003 or 2004 Saturn ION equipped with a continuously variable VTi transmission ("Class Vehicle") excluding (i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles from GM, or any entity related or affiliated with GM, for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has instituted an action for damages for property damage or personal injury against GM related to the VTi transmission of a Class Vehicle ("Class").

2. Pursuant to Rule 23(a), Federal Rules of Civil Procedure, the Court finds that the members of the proposed Class are so numerous that joinder of all members is impracticable, that there are questions of law and fact common to the Class, that the claims of the named plaintiffs are typical of the claims of Class and that the named plaintiffs have fairly and adequately represented the Class and will continue to do so. Pursuant to Rule 23(b), Federal Rules of Civil Procedure, the Court further finds that questions of fact common to the Class predominate over factual questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the Court certifies the Class as defined in paragraph 1 above.

3. The Court hereby finds that: (a) the settlement memorialized in the Stipulation of Settlement previously filed with the Court ("Agreement") has been entered into in good faith and was concluded after Class Counsel had conducted an extensive investigation concerning the issues raised by Plaintiffs' claims; (b) the settlement evidenced by the Agreement is fair, reasonable and adequate as to, and in the best interests of, the Class Members; (c) the settlement delivers benefits to the Class in a timely manner while resolving complex issues that would require expensive and long-lasting litigation; (d) the Agreement was the result of extensive arms' length negotiations among highly experienced counsel, with full knowledge of the risks inherent in this litigation; (e) there is no evidence of collusion or fraud in connection with the settlement; (f) the investigation conducted to date suffices to enable the parties and the Court to make an informed decision as to the fairness and adequacy of the settlement; (g) the case raised complex and vigorously contested issues of law and fact that would result in complex, expensive, and lengthy litigation; (h) the Plaintiffs faced significant risks in establishing liability and damages; and (i) the release is tailored to address the allegations in the case.

4. Accordingly, the Court hereby orders and declares (a) the Agreement is approved by the Court and shall be binding on all Class Members; and (b) the Agreement as approved by this final judgment is and shall be binding and preclusive in all pending and future lawsuits or other proceedings whether in state or federal court. Each and every term and condition of the Agreement as a whole (including its attached exhibits) is approved as proposed and is to be effective, implemented, and enforced as provided in the Agreement.

5. The Court finds that the Class Notice and methodology implemented pursuant to this Court's Preliminary Approval Order provided the best notice practicable under the circumstances. The Court further finds that the Class Notice advised each member of the Class, in plain easily understood language: (a) the nature of the suit; (b) the definition of the Class certified; (c) the class claims, issues, and defenses; (d) that a Class Member could enter an appearance through counsel if desired; (e) that the Court would

exclude from the Class any member who timely requested exclusion by a specified date; and (f) that the judgment incorporating the settlement will fully release Defendant, dismiss this lawsuit with prejudice, and include and bind all members of the Class who did not timely request exclusion. The Court finds that the Class Notice and methodology fully complied with all applicable legal requirements, including the Due Process Clause of the Constitution of the United States and the Federal Rules of Civil Procedure.

6. The Court also finds that the Final Notice and the post-settlement notice methodology to be implemented pursuant to the Agreement will provide the best practicable notice under the circumstances of the Judgment and Claim Form to all Class Members, and the Court further finds that the Final Notice and methodology constitute due, adequate and sufficient notice to all persons entitled to receive notice, and fully comply with all applicable requirements of law, including the Due Process Clause of the Constitution of the United States and the Federal Rules of Civil Procedure.

7. The Court finds that Class Counsel and the Class representatives adequately represented the Class for purposes of entering into and implementing the Agreement.

8. The terms of the Agreement as approved by this final judgment shall be forever binding on, and shall have *res judicata* effect and preclusive effect in, all pending and future lawsuits or other proceedings that may be maintained by or on behalf of the Plaintiffs or any Class Members, as well as their collective heirs, executors, administrators, successors and assigns, relating to the Action and/or the Released Claims (as defined in the Agreement).

9. The preceding paragraph of this Judgment covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or the Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of the settlement and/or the Released Claims.

10. All Class Members who did not timely exclude themselves from the Class are, from this day forward, hereby permanently barred and enjoined from:

(a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit in any jurisdiction based on or relating to: (i) the claims and causes of action asserted or that could have been asserted in this Action; (ii) the facts and circumstances relating to this Action; or (iii) the Released Claims, or

(b) organizing Class Members, or soliciting the participation of Class Members, in a separate class for purposes of pursuing as a purported class action any other lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to: (i) the claims and causes of action asserted or that could have been asserted in this Action; (ii) the facts and circumstances relating to this Action; or (iii) the Released Claims.

11. Class Representatives are each awarded $_____ for their roles in this litigation ("Incentive Fees"). Class Counsel and Local Counsel are hereby awarded the total sum of $ _____ in attorneys' fees, costs and expenses ("Attorneys' Fees and Expenses"). Defendant shall pay the Incentive Fees and Attorneys' Fees and Expenses in accordance with the Settlement Agreement. Defendant shall have no responsibility for and no liability with respect to the allocation of Attorneys' Fees to Class Counsel or any other person who may assert some claim thereto.

12. Neither this Judgment nor the Agreement (nor any document referred to herein or any action taken to carry out this Final Judgment) is, may be construed as, or may be used as an admission by Defendant of the validity of any claim, of actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Agreement and any negotiations or proceedings relating to the settlement shall not in any event be construed as, or deemed to be evidence of, an admission or concession of the Defendant and shall not be offered or received into evidence in any action or proceeding against any party hereto in any court, judicial, administrative, regulatory hearing,

arbitration, or other tribunal or proceeding for any purpose whatsoever, except in a proceeding to enforce the Agreement. This Final Judgment and the Agreement it approves (including exhibits thereto) may, however, be filed in any action against or by the Defendant to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Plaintiffs' Second Amended Complaint and this entire Action, including all individual claims and Class claims asserted or that could have been asserted herein, is hereby DISMISSED WITH PREJUDICE, without fees, costs, or expenses to any party except as otherwise provided herein.

DATED: _____

_____
United States District Judge

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS NOTICE IS BEING SENT TO YOU BECAUSE YOU MAY CURRENTLY OWN OR MAY PREVIOUSLY HAVE OWNED

A 2002, 2003, 2004 OR 2005 MODEL YEAR SATURN VUE

OR

A 2003 OR 2004 MODEL YEAR SATURN ION

EQUIPPED WITH A CONTINUOUSLY VARIABLE VTi TRANSMISSION

THIS NOTICE MAY AFFECT YOUR RIGHTS,

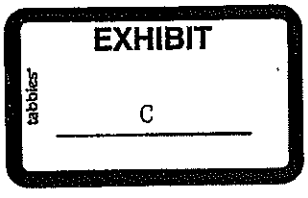
SO PLEASE READ IT CAREFULLY

THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION AND, IF YOU ARE A CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS REGARDING THE PROPOSED SETTLEMENT.

In the action styled Kelly Castillo, et al. v. General Motors Corporation, United States District Court for the Eastern District of California, plaintiffs and defendant General Motors Corporation ("GM") have negotiated the following proposed settlement which they believe will, if approved by the Court, benefit Class Members. The following is only a summary of the proposed settlement terms and background. Complete copies of the proposed settlement documents are on file with the Court.

1. WHO IS IN THE CLASS

The Class consists of all persons who are residents of the United States and who purchased a new or used 2002, 2003, 2004 or 2005 model year Saturn VUE or 2003 or 2004 model year Saturn ION equipped with a continuously variable VTi transmission ("Vehicles"). Excluded from the Class are (i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has filed a lawsuit against GM seeking damages for alleged personal injury or property damage in connection with a VTi transmission.



2. DESCRIPTION OF THE LAWSUIT

In October 2007, Plaintiffs filed this lawsuit styled *Kelly Castillo et al.*, v. *General Motors Corporation*, Case No. 2:07-CV-02142 WBS-GGH, in the United States District Court for the Eastern District of California (the "Action"). Plaintiffs on their own behalf and on behalf of the proposed Class allege that the continuously variable VTi transmissions of Class Vehicles are prone to premature failure. They claim that GM by marketing and selling the Class Vehicles equipped with VTi transmissions violated state consumer protection statutes, breached express and implied warranties and was unjustly enriched. GM denies Plaintiffs' legal allegations and contends that it is fully satisfying its warranty obligations to Vehicle owners after it voluntarily extended warranty repair coverage for the VTi transmission in March of 2004 from three years or 36,000 miles, whichever comes first, to five years or 75,000 miles, whichever comes first. GM nonetheless believes that it is appropriate in the interests of customer satisfaction to provide the additional benefits to Class Members that would be made available if the proposed settlement is approved.

3. REASONS FOR THE SETTLEMENT

Counsel for Plaintiffs and the proposed Class ("Class Counsel") have conducted a detailed investigation which included depositions and review of voluminous documents concerning the design, testing and marketing of the VTi transmissions, as well as consultation with independent automotive experts. Based on this investigation Class Counsel have concluded that the proposed settlement, negotiated at arm's length with the assistance of a retired judge, is in the best interests of members of the proposed Class because it will provide immediate and substantial benefits to Class Members while avoiding the uncertainties, substantial delay and expense that would be incurred if litigation of the case continued.

In reaching this settlement, Class Counsel have fully assessed the risks associated with the claims asserted in the Action, including without limitation the requirements that Plaintiffs prove: (i) that the Action is appropriate for class certification treatment; (ii) that the Class Vehicles have a defect that GM was unable to effectively repair under warranty; (iii) that GM in connection with the marketing of the VTi-equipped Vehicles violated differing state consumer protection statutes in fifty states; and (iv) the fact and amounts of damage, if any, experienced by Class Members with respect to more than 90,000 Class Vehicles. Class counsel have also assessed the significant delay in providing benefits to Class Members that would occur even if they were successful in litigating the case through class certification proceedings, trial and a possible appeal. In light of these considerations, Class Counsel believe that the terms of the settlement are fair, adequate, and in the best interests of the Class.

GM vigorously denies any liability in this Action, but also considers it desirable in the interests of customer satisfaction with Saturn products and avoidance of the expense, inconvenience and distraction of litigation that the Action be compromised, settled and dismissed as set forth in the settlement agreement and proposed Final Judgment.

This notice does not express any opinion by the Court concerning the merits of the respective claims or defenses asserted in the Action. This notice is sent merely to advise you of the proposed settlement and of your rights in connection therewith.

4. RELIEF AVAILABLE TO CLASS MEMBERS

If the Court approves the proposed settlement, the benefits available to Class Members will include the following:

(1) Reimbursement for out-of-pocket expenses relating to the previous inspection, repair, or replacement of a malfunctioning VTi transmission, including related towing and rental car expenses, subject to specific time and mileage limitations ("Past Reimbursable Expenses");

(2) Reimbursement for out-of-pocket expenses based on a previous trade-in of a Class Vehicle with VTi transmission malfunction at the time of trade-in ("Trade-In with Transmission Malfunction Reimbursement"), subject to specific time and mileage limitations; and

(3) Reimbursement for out-of-pocket expenses relating to the future inspection, repair or replacement of a malfunctioning VTi transmissions, including related towing and rental care expenses, subject to specific time and mileage limitations ("Future Reimbursable Expenses").

Under the terms of the proposed settlement, reimbursable expenses will include (a) costs to inspect, repair or replace a malfunctioning VTi transmission, (b) costs to rent a replacement vehicle or secure other transportation while the Class Vehicle's malfunctioning VTi transmission is/was being inspected, repaired or replaced, (c) costs to tow or transport the Class Vehicle to the place(s) where the VTi transmission is/was inspected, repaired or replaced, and (d) costs relating to the trade-in of a Class Vehicle with a malfunctioning VTi transmission at the time of trade-in, as further limited and defined below.

To be reimbursable, the expense must be incurred (1) within 125,000 miles of the original retail sale or lease of the Class Vehicle and (2) within the time limitations set forth in Paragraph B (if applicable) and Chart A below.

A. Past Expense Reimbursement

GM will reimburse any Class Member who incurs Past Reimbursable Expenses on or before the date of Final Judgment (*i.e.*, the date of final approval of the settlement by the United States District Court) based on the percentages shown in Chart B below. To obtain reimbursement, the Class Member must submit a Claim Form and the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the repair costs paid by the Class Member and, if applicable, receipts showing the rental car, alternative transportation or towing costs incurred by the Class Member.

All claims for Past Expense Reimbursement will have to be submitted no later than one year after the Effective Date of the proposed settlement, as more specifically defined in the Stipulation of Settlement, but essentially the date upon which the Final Judgment of the Court approving the settlement becomes final and is no longer subject to any possible appeal. This deadline will be clearly stated on the Claim Forms that Class Members will receive after the Effective Date.

B. Past Trade-In With Transmission Malfunction Reimbursement

To claim reimbursement if the Class Member traded in a Class Vehicle with a VTi transmission malfunction, the Class Member must submit a Claim Form and provide contemporaneous dealer documentation including (1) a sales contract including the Vehicle Identification Number ("VIN") of the Class Vehicle that was traded in and (2) a contemporaneous VTi transmission repair estimate referencing the same VIN dated on or before the trade-in date. The reimbursement to the Class Member shall equal the repair estimate multiplied by the applicable percentage shown on Chart B based on the Vehicle's mileage and the Class Member being either a New or Used Vehicle Purchaser. ***Class Members will be entitled to seek reimbursement of trade-in losses only upon proof that the Class Vehicle was traded-in before [insert date that this Class Notice is mailed to potential Class Members].***

C. Future Expense Reimbursement

GM will reimburse any Class Member who incurs Future Reimbursable Expenses after the date of Final Judgment based on the percentages shown in Chart B below, provided that the Class Member incurs the expense and submits the claim within the time limits set forth in Chart A below. To obtain reimbursement, the Class Member must submit a Claim Form and the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the repair costs paid by the Class Member and, if applicable, receipts showing the rental car, alternative transportation or towing costs incurred by the Class Member. GM shall use, or cause any claims administrator to use, its best efforts to issue checks for Future Reimbursable Expense to Class Members within ten (10) General Motors business days of receipt of the Claim Form with all required supporting

documentation. Upon written request by the Class Member, GM shall also issue checks for Future Expense Reimbursement payable jointly to the Class Member and a Saturn Retailer or other repair shop specified by the Class Member.

CHART A

Model Year	Date Before Which Expense is Reimbursable	Claim Submission Deadline for Future Service Expenses
2002	January 1, 2010	March 1, 2010
2003	January 1, 2011	March 1, 2011
2004	January 1, 2012	March 1, 2012
2005	January 1, 2012	March 1, 2012

CHART B

Vehicle Mileage[1]	GM Reimbursement (New[2])	GM Reimbursement (Used)
100,000 or less	100 percent	75 percent
100,101-125,000	75 percent	30 percent

For each VTi transmission repair or replacement using genuine Saturn or GM parts, such replacement parts will be covered by the standard GM Service Parts Operations warranty for a period of 12 months or 12,000 miles, whichever comes first.

For a claim involving a Past Reimbursable Expense, a Trade-in With Transmission Malfunction Expense Reimbursement or a Future Reimbursable Expense incurred before the Effective Date of the Settlement, GM will have the right to reduce the amount to be reimbursed by any amount previously paid by GM or any affiliate of GM for that same repair or trade-in expense. GM, however, will have no right to reduce the amount of any other claim for Future Reimbursable Expenses subject to appropriate verification of the amount of such expenses and the Class Member's eligibility for reimbursement. Notwithstanding the foregoing, GM shall have the right to enforce fully the terms of any

[1] Mileage at time Past or Future Reimbursable Expense is incurred.

[2] To qualify for reimbursement as a "new" vehicle purchaser, the Class Member must be the original retail purchaser or lessee of the Class Vehicle.

release, judgment, arbitration award or other adjudication obtained in connection with any Class Member's prior claim relating to the alleged malfunction or failure of a VTi transmission..

If the settlement is approved by the Court, you will receive another notice that will include the Claim Form and explain how you can claim benefits under the settlement.

5. DISMISSAL AND RELEASE OF CLAIMS

If the proposed Settlement Agreement is approved by the Court, then all claims that were or could have been asserted in this Action will be dismissed with prejudice. None of those claims may thereafter be asserted by anyone who remains in the Class. If the Court does not approve the proposed settlement, the Settlement Agreement will terminate and shall be null and void, and this Action will remain before the Court.

6. CHOICES OF CLASS MEMBERS

If you qualify to be a Class Member, you have the following choices: (a) you may remain in the Class and be eligible to request benefits under the proposed settlement if it is approved by the Court by submitting a Claim Form that will be mailed to you; (b) if you do not wish to remain in the Class, you may exclude yourself by sending a formal, written request for exclusion; or (c) you may remain in the Class and file with the Court a written objection to the proposed settlement. **If you wish to remain in the class, you do not need to take any action.**

7. EXCLUSION FROM THE CLASS

To request exclusion, you must send a written request for exclusion to Class Counsel: The Lakin Law Firm, P.C., 300 Evans Avenue, P.O. Box 229, Wood River, Illinois 62095. You must include in your request for exclusion *(i)* your name, address, and telephone number, *(ii)* a statement that you want to be excluded from the Class, *(iii)* the name of the Action appearing in this Notice, and *(iv)* your signature. If you exclude yourself from the Class, you will not be eligible for any settlement relief or be permitted to participate in the proposed settlement. Your written request for exclusion must be received no later than [Date Certain], or you will lose your right to request exclusion and you will be bound by the settlement and by all orders and judgments in this Action.

8. FAIRNESS HEARING, DATE AND LOCATION

The Court will hold a Fairness Hearing to consider and then decide whether to certify the proposed Class, approve the proposed Settlement Agreement and determine the amount of Incentive Fees to award to Class Representatives and Attorneys' Fees and Expenses to award to Class Counsel. The hearing is scheduled for [Date] at [Time], in

the United States District Court for the Eastern District of California, Courtroom 5 (Hon. William B. Shubb), 501 I Street, Sacramento, California 95814.

9. PRELIMINARY INJUNCTION PENDING FAIRNESS HEARING

Pending the Fairness Hearing, all potential Class Members who do not timely exclude themselves from the Class are preliminarily enjoined and barred *(i)* from filing, commencing, prosecuting, intervening in, or participating as class members in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims; and *(ii)* from filing, commencing or prosecuting any other lawsuit as a class action on behalf of Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

10. YOUR RIGHT TO OBJECT AND APPEAR

If you do not exclude yourself from the class, you may file a written objection to the proposed settlement. Your written objection must be verified by sworn affidavit and include: *(i)* the objector's name, address and telephone number; *(ii)* the name of the Action and the case number, *(iii)* a statement of each objection; and *(iv)* a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). If the objection is presented through an attorney, the written objection must also include: *(i)* the identity and number of Class Members represented by objector's counsel; *(ii)* the number of such represented Class Members who have opted out of the settlement; *(iii)* the number of such represented Class Members who have remained in the settlement and have not objected; *(iv)* the date the objector's counsel assumed representation for the objector, and *(v)* a list of the names of all cases where the objector's counsel has objected to a class action settlement in the last three years. Objecting Class Members who intend to testify in support of their objection either in person or by affidavit must also make themselves available for deposition by Plaintiffs' counsel and/or Defendants' counsel in their county of residence, between the time the objection is filed and at least seven (7) days before the date of the Fairness Hearing. You must file your written objection with the Clerk of the Court and send copies to Class Counsel and Defendants' counsel for receipt no later than [Date], 2008, at the following addresses:

Robert W. Schmieder II
Mark L. Brown
The Lakin Law Firm, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503

As a Class Member, if you file and serve a written objection as described above, you may appear at the Fairness Hearing, either in person or through an attorney paid by you, to object to the proposed settlement. If you or your attorney intend to appear, you must file a Notice of Intention to Appear with the Clerk of the Court that includes *(i)* how much time you or your lawyer anticipates will be required to present the objection; *(ii)* the name, address and telephone number of all witnesses who will testify and a detailed summary of such testimony; *(iii)* identification of all exhibits to be offered in support of your objection and attach complete copies of all such exhibits. Notices of Intention to Appear must be filed with the Court and delivered to Class Counsel and Defendants' Counsel no later than [Date] in order to be allowed to appear at the Fairness Hearing.

11. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND LITIGATION COSTS AND EXPENSES

Subject to Court approval, GM has agreed to pay up to $2,500.00 to each of the seven named plaintiffs in the Action for the time, effort and expense incurred by them in connection with the litigation. GM has also agreed, subject to Court approval, to pay a separate sum not to exceed $4,425,000.00 in full payment of the fees, costs and expenses of Class Counsel. In addition, GM shall pay the cost of notice and of the claims administration. These amounts do not reduce the relief available to Class Members and are in addition to and separate from all other benefits available to Class Members under the settlement. Class Members will have no personal liability for any attorneys' fees or costs associated with the Action.

12. ADDITIONAL INFORMATION

This Notice is only a summary of the proposed settlement. The full proposed Agreement, along with the pleadings and other papers, are on file with the Clerk of the Court. If you have any questions regarding the proposed settlement, then you may contact Class Counsel at saturnvti.classaction@lakinlaw.com, (618) 254-xxxx, or at the above address.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

FINAL NOTICE OF APPROVAL OF SETTLEMENT AND CLAIM FORM

Dear Class Member:

In _____ 200_, you were notified of a proposed settlement of a lawsuit styled *Kelly Castillo et al. v. General Motors Corporation*, Case No. 2:07-CV-02142 WBS-GGH pending in the United States District Court for the Eastern District of California. On _____, 200_, the Court after a hearing determined that the settlement was fair, reasonable and adequate and entered final judgment approving implementation of the settlement.

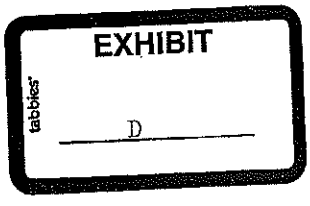
The purpose of this Final Notice is to inform you of the Court's approval of the settlement and provide you with the enclosed Claim Form. The Class consists of all persons who are residents of the United States who as of the date of Final Judgment own or have owned a model year 2002, 2003, 2004 or 2005 Saturn VUE or a model year 2003 or 2004 Saturn ION equipped with a continuously variable VTi transmission, excluding (i) all persons, firms, corporations or other entities that purchased for resale or for fleet purposes (including authorized Saturn Retailers) and (ii) all persons (if any) who have filed an action for damages against defendant General Motors Corporation ("GM") based on alleged personal injury or property damage relating to a VTi transmission.

If you are a Class Member and wish to submit a claim for reimbursement of VTi-related expenses covered by the settlement, then you must properly and timely complete and sign the enclosed Claim Form and return it and the required supporting documentation to the address indicated on the Claim Form. The deadlines for submitting Claim Forms, which may vary depending on the type of reimbursement you claim and the model year of your Saturn are clearly set forth on the Claim Form.

[For used owners only] The records have identified you as a purchaser of a **Used** model year 2002, 2003, 2004 or 2005 Saturn VUE or a **Used** model year 2003 or 2004 Saturn ION equipped with a continuously variable VTi transmission. If this is incorrect, then please indicate on the Claim Form and submit a copy of the sale contract, bill of sale, lease, title, or other document showing your purchase or lease of a new vehicle.

If you have any questions, then you may contact Class Counsel (The Lakin Law Firm, P.C.) at **saturnvti.classaction@lakinlaw.com**, (618) 254-xxxx, or 300 Evans Avenue, PO Box 229, Wood River, Illinois 62095.

Plaintiffs, Class Counsel, and GM worked hard to make the applicable reimbursement benefits available to you as promptly as possible and hope that the availability of these benefits will increase your level of satisfaction with your Saturn VUE or ION.



CLAIM FORM – ORIGINAL RETAIL PURCHASE OR LEASE

To make a claim for reimbursement, complete and sign this Claim Form and mail it along with all required documents to:

VTi Transmission
P.O. Box ___
Detroit, Michigan [zip]

This Claim Form must be postmarked no later than [**one year after Effective Date**] for:

- reimbursement of repair, towing and rental expenses that you incurred before [date of final judgment]
- reimbursement of a trade-in loss that you incurred before [notice date].

For reimbursement of repair, towing and rental expenses after [date of Final Judgment] see the reverse side for any applicable deadlines.

PERSONAL INFORMATION

Name [Insert per Polk records]
Address [Insert per Polk records, updated by NCOA]

☐ Check this box to update your name and/or address on the reverse side of this Claim Form.

Vehicle Identification Number [from GM list given to Polk]

CLAIM INFORMATION

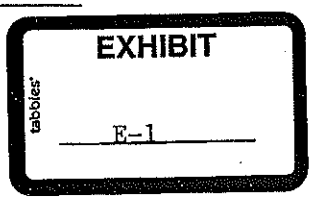
Check all boxes that apply to you. *See reverse side for reimbursement amount, mileage and date limitations, and claim submission deadlines.*

☐ **Repair, Towing and Car Rental Expense**

Repair Date(s)	Vehicle Mileage(s)	Repair Cost(s)	Towing Cost(s)	Car Rental or Transportation Cost(s)	Total Amount Paid by You

You **must** submit documents (repair bills, towing bills, car rental or other alternative transportation bills) with this Claim Form to receive reimbursement under the Settlement which will be paid on a percentage basis per the schedule on the reverse side.

☐ Check this box to have the reimbursement check payable jointly to you and the authorized Saturn Retailer (or repair shop) that performed the repairs.
Saturn Retailer (or repair shop): _____
Street Address or P.O. Box _____
City/State/Zip _____



□ **Past Trade-In with VTi Transmission Failure (incurred before [Notice date])**

Trade-In Date	Vehicle Mileage	Repair Estimate Amount

You **must** submit: (1) a sales contract showing the trade-in date, VIN, and mileage; and (2) a written VTI transmission repair estimate showing the same VIN and dated on or before the trade-in date.

I declare under penalty of perjury under the laws of the United States of America that all information provided on this Claim Form and any enclosed repair, towing or rental receipts, trade-in documents, repair estimates or other supporting documentation are true and correct. I understand that my claim may be subject to audit, verification and review, including contacting dealers and repair facilities which inspected, repaired or replaced your VTi transmission, and I give my consent to GM or its representatives, employees or other designees to perform such audit, verification and review and to contact such repair facilities with respect to this claim.

Dated: _____, 200_ _____

[Signature]

[REVERSE SIDE]

Model Year	Date Before Which Expense is Reimbursable	Claim Submission Deadline for Future Repair, Towing and Rental Expenses
2002	January 1, 2010	March 1, 2010
2003	January 1, 2011	March 1, 2011
2004	January 1, 2012	March 1, 2012
2005	January 1, 2012	March 1, 2012

Vehicle Mileage	GM Reimbursement
100,000 or less	100 percent
100,101-125,000	75 percent

For each VTi transmission repair or replacement using genuine Saturn or GM parts, such replacement parts will be covered by the standard GM Service Parts Operations warranty for a period of 12 months or 12,000 miles, whichever comes first.

Updated Address Information:

Name: _____

Address: _____

_____

CLAIM FORM – PURCHASE AS USED VEHICLE

To make a claim for reimbursement, complete and sign this Claim Form and mail it along with all required documents to:

VTi Transmission
P.O. Box ___
Detroit, Michigan [zip]

This Claim Form must be postmarked no later than [**one year after Effective Date**] for:

- reimbursement of repair, towing and rental expenses that you incurred before [date of final judgment]
- reimbursement of a trade-in loss that you incurred before [notice date].

For reimbursement of repair, towing and rental expenses after [date of Final Judgment] see the reverse side for any applicable deadlines.

PERSONAL INFORMATION

Name [Insert per Polk records]
Address [Insert per Polk records, updated by NCOA]

□ Check this box to update your name and/or address on the reverse side of this Claim Form.

Vehicle Identification Number [from GM list given to Polk]

CLAIM INFORMATION

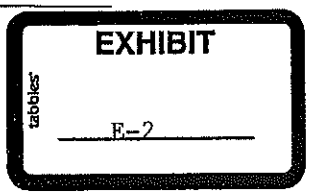
Check all boxes that apply to you. *See reverse side for reimbursement amount, mileage and date limitations, and claim submission deadlines.*

□ **Repair, Towing and Car Rental Expense**

Repair Date(s)	Vehicle Mileage(s)	Repair Cost(s)	Towing Cost(s)	Car Rental or Transportation Cost(s)	Total Amount Paid by You

You **must** submit documents (repair bills, towing bills, car rental or other transportation bills) with this Claim Form to receive reimbursement under the Settlement which will be paid on a percentage basis per the schedule on the reverse side.

□ Check this box to have the reimbursement check payable jointly to you and the authorized Saturn Retailer (or repair shop) that performed the repairs.
Saturn Retailer (or repair shop): _____
Street Address or P.O. Box _____
City/State/Zip _____



□ **Past Trade-In with VTi Transmission Failure (incurred before [Notice date])**

Trade-In Date	Vehicle Mileage	Repair Estimate Amount

You **must** submit: (1) a sales contract showing the trade-in date, VIN, and mileage; and (2) a written VTI transmission repair estimate showing the same VIN and dated on or before the trade-in date.

I declare under penalty of perjury under the laws of the United States of America that all information provided on this Claim Form and any enclosed repair, towing or rental receipts, trade-in documents, repair estimates or other supporting documentation are true and correct. I understand that my claim may be subject to audit, verification and review, including contacting dealers and repair facilities which inspected, repaired or replaced your VTi transmission, and I give my consent to GM or its representatives, employees or other designees to perform such audit, verification and review and to contact such repair facilities with respect to this claim.

Dated: _____, 200_ _____

[Signature]

[REVERSE SIDE]

Model Year	Date Before Which Expense is Reimbursable	Claim Submission Deadline for Future Repair, Towing and Rental Expenses
2002	January 1, 2010	March 1, 2010
2003	January 1, 2011	March 1, 2011
2004	January 1, 2012	March 1, 2012
2005	January 1, 2012	March 1, 2012

Vehicle Mileage	GM Reimbursement
100,000 or less	75 percent
100,101-125,000	30 percent

For each VTi transmission repair or replacement using genuine Saturn or GM parts, such replacement parts will be covered by the standard GM Service Parts Operations warranty for a period of 12 months or 12,000 miles, whichever comes first.

Updated Address Information:

Name: _____

Address: _____

_____

LAW FIRM OF
ISAACS CLOUSE CROSE & OXFORD LLP

21515 HAWTHORNE BLVD
SUITE 950
TORRANCE, CA 90503

TELEPHONE (310) 316-1990
FACSIMILE (310) 316-1330

VIA FEDERAL EXPRESS

July 16, 2008

Robert W. Schmieder II
The Lankin Law Firm, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095

Re: Castillo v. General Motors Corp.

Dear Rob:

Enclosed per our discussion this morning is a fully executed Stipulation of Settlement and Exhibits A, B, C, D, E-1 and E-2. I also have signed Exhibit A which is in form a stipulation to the entry of the proposed preliminary approval order.

Please let me know if you have any questions.

Very Truly Yours,

Gregory R. Oxford
of Isaacs Clouse Crose & Oxford LLP

Encl.

EXHIBIT C
Part 1

EXECUTION COPY

AMENDED AND RESTATED

MASTER SALE AND PURCHASE AGREEMENT

BY AND AMONG

GENERAL MOTORS CORPORATION,

SATURN LLC,

SATURN DISTRIBUTION CORPORATION

AND

CHEVROLET-SATURN OF HARLEM, INC.,

as Sellers

AND

NGMCO, INC.,

as Purchaser

DATED AS OF

JUNE 26, 2009

TABLE OF CONTENTS

EXHIBITS

Exhibit A	Form of Parent Warrant A
Exhibit B	Form of Parent Warrant B
Exhibit C	UAW Active Labor Modifications
Exhibit D	Form of UAW Retiree Settlement Agreement
Exhibit E	Form of VEBA Warrant
Exhibit F	Certain Excluded Owned Real Property
Exhibit G	Certain Retained Workers' Compensation Claims
Exhibit H	Form of Sale Procedures Order
Exhibit I	Form of Sale Approval Order
Exhibit J-1	Form of Deferred Termination Agreement for Saturn Discontinued Brand Dealer Agreements
Exhibit J-2	Form of Deferred Termination Agreement for Hummer Discontinued Brand Dealer Agreements
Exhibit J-3	Form of Deferred Termination Agreement for non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and Excluded Continuing Brand Dealer Agreements
Exhibit K	Form of Participation Agreement
Exhibit L	Form of Subdivision Master Lease
Exhibit M	Form of Assignment and Assumption of Willow Run Lease
Exhibit N	Form of Ren Cen Lease
Exhibit O	Form of Equity Registration Rights Agreement
Exhibit P	Form of Bill of Sale
Exhibit Q	Form of Assignment and Assumption Agreement
Exhibit R	Form of Novation Agreement
Exhibit S	Form of Government Related Subcontract Agreement
Exhibit T	Form of Intellectual Property Assignment Agreement
Exhibit U	Form of Transition Services Agreement
Exhibit V	Form of Assignment and Assumption of Real Property Leases
Exhibit W	Form of Assignment and Assumption of Harlem Lease
Exhibit X	Form of Master Lease Agreement
Exhibit Y	Form of Certificate of Designation of Purchaser for Preferred Stock
Exhibit Z	VEBA Note Term Sheet

AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT (this "Agreement"), dated as of June 26, 2009, is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, on June 1, 2009 (the "Petition Date"), the Parties entered into that certain Master Sale and Purchase Agreement (the "Original Agreement"), and, in connection therewith, Sellers filed voluntary petitions for relief (the "Bankruptcy Cases") under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, pursuant to Sections 363 and 365 of the Bankruptcy Code, Sellers desire to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser desires to purchase, accept and acquire from Sellers all of the Purchased Assets (as hereinafter defined) and assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities (as hereinafter defined), in each case, in accordance with the terms and subject to the conditions set forth in this Agreement and the Bankruptcy Code;

WHEREAS, on the Petition Date, Purchaser entered into equity subscription agreements with each of Canada, Sponsor and the New VEBA (each as hereinafter defined), pursuant to which Purchaser has agreed to issue, on the Closing Date (as hereinafter defined), the Canada Shares, the Sponsor Shares, the VEBA Shares, the VEBA Note and the VEBA Warrant (each as hereinafter defined);

WHEREAS, pursuant to the equity subscription agreement between Purchaser and Canada, Canada has agreed to (i) contribute on or before the Closing Date an amount of Indebtedness (as hereinafter defined) owed to it by General Motors of Canada Limited ("GMCL"), which results in not more than $1,288,135,593 of such Indebtedness remaining an obligation of GMCL, to Canada immediately following the Closing (the "Canadian Debt Contribution") and (ii) exchange immediately following the Closing the $3,887,000,000 loan to be made by Canada to Purchaser for additional shares of capital stock of Purchaser;

WHEREAS, the transactions contemplated by this Agreement are in furtherance of the conditions, covenants and requirements of the UST Credit Facilities (as hereinafter defined) and are intended to result in a rationalization of the costs, capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, Sellers and their Subsidiaries (as hereinafter defined);

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, prior to the Closing (as hereinafter defined), engage in one or more related transactions (the "Holding Company Reorganization") generally designed to reorganize

Purchaser and one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Purchaser into a holding company structure that results in Purchaser becoming a direct or indirect, wholly-owned Subsidiary of a newly-formed Delaware corporation ("Holding Company"); and

WHEREAS, it is contemplated that Purchaser may, in accordance with the terms of this Agreement, direct the transfer of the Purchased Assets on its behalf by assigning its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties (as hereinafter defined) hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

"Adjustment Shares" has the meaning set forth in **Section 3.2(c)(i)**.

"Advisory Fees" has the meaning set forth in **Section 4.20**.

"Affiliate" has the meaning set forth in Rule 12b-2 of the Exchange Act.

"Affiliate Contract" means a Contract between a Seller or a Subsidiary of a Seller, on the one hand, and an Affiliate of such Seller or Subsidiary of a Seller, on the other hand.

"Agreed G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in **Section 3.3**.

"Alternative Transaction" means the sale, transfer, lease or other disposition, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, of all or substantially all of the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser (or its Affiliates).

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Novation Agreement, the Government Related Subcontract Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the

Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII**.

"Antitrust Laws" means all Laws that (i) are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or the lessening of competition through merger or acquisition or (ii) involve foreign investment review by Governmental Authorities.

"Applicable Employee" means all (i) current salaried employees of Parent and (ii) current hourly employees of any Seller or any of its Affiliates (excluding Purchased Subsidiaries and any dealership) represented by the UAW, in each case, including such current salaried and current hourly employees who are on (a) long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence or (b) layoff status or who have recall rights.

"Arms-Length Basis" means a transaction between two Persons that is carried out on terms no less favorable than the terms on which the transaction would be carried out by unrelated or unaffiliated Persons, acting as a willing buyer and a willing seller, and each acting in his own self-interest.

"Assignment and Assumption Agreement" has the meaning set forth in **Section 7.2(c)(v)**.

"Assignment and Assumption of Harlem Lease" has the meaning set forth in **Section 7.2(c)(xiii)**.

"Assignment and Assumption of Real Property Leases" has the meaning set forth in **Section 7.2(c)(xii)**.

"Assignment and Assumption of Willow Run Lease" has the meaning set forth in **Section 6.27(e)**.

"Assumable Executory Contract" has the meaning set forth in **Section 6.6(a)**.

"Assumable Executory Contract Schedule" means Section 1.1A of the Sellers' Disclosure Schedule.

"Assumed Liabilities" has the meaning set forth in **Section 2.3(a)**.

"Assumed Plans" has the meaning set forth in **Section 6.17(e)**.

"Assumption Effective Date" has the meaning set forth in **Section 6.6(d)**.

"Bankruptcy Avoidance Actions" has the meaning set forth in **Section 2.2(b)(xi)**.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Benefit Plans" has the meaning set forth in **Section 4.10(a)**.

"Bidders" has the meaning set forth in **Section 6.4(c)**.

"Bids" has the meaning set forth in **Section 6.4(c)**.

"Bill of Sale" has the meaning set forth in **Section 7.2(c)(iv)**.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York, New York.

"CA" has the meaning set forth in **Section 6.16(g)(i)**.

"Canada" means 7176384 Canada Inc., a corporation organized under the Laws of Canada, and a wholly-owned subsidiary of Canada Development Investment Corporation, and its successors and assigns.

"Canada Affiliate" has the meaning set forth in **Section 9.22**.

"Canada Shares" has the meaning set forth in **Section 5.4(c)**.

"Canadian Debt Contribution" has the meaning set forth in the Recitals.

"Claims" means all rights, claims (including any cross-claim or counterclaim), investigations, causes of action, choses in action, charges, suits, defenses, demands, damages, defaults, assessments, rights of recovery, rights of set-off, rights of recoupment, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto.

"Claims Estimate Order" has the meaning set forth in **Section 3.2(c)(i)**.

"Closing" has the meaning set forth in **Section 3.1**.

"Closing Date" has the meaning set forth in **Section 3.1**.

"Collective Bargaining Agreement" means any collective bargaining agreement or other written or oral agreement, understanding or mutually recognized past practice with respect to Employees, between any Seller (or any Subsidiary thereof) and any labor organization or other Representative of Employees (including the UAW Collective Bargaining Agreement, local agreements, amendments, supplements and letters and memoranda of understanding of any kind).

"Common Stock" has the meaning set forth in **Section 5.4(b)**.

"Confidential Information" has the meaning set forth in **Section 6.24.**

"Confidentiality Period" has the meaning set forth in **Section 6.24.**

"Continuing Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Continuing Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Continuing Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Buick, Cadillac, Chevrolet and GMC.

"Contracts" means all purchase orders, sales agreements, supply agreements, distribution agreements, sales representative agreements, employee or consulting agreements, leases, subleases, licenses, product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

"Copyright Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright.

"Copyrights" means all domestic and foreign copyrights, whether registered or unregistered, including all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including all compilations of information or marketing materials created by or on behalf of any Seller), acquired, owned or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof) and all reissues, renewals, restorations, extensions and revisions thereof.

"Cure Amounts" means all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts.

"Damages" means any and all Losses, other than punitive damages.

"Dealer Agreement" has the meaning set forth in **Section 4.17**.

"Deferred Executory Contract" has the meaning set forth in **Section 6.6(c)**.

"Deferred Termination Agreements" has the meaning set forth in **Section 6.7(a)**.

"Delayed Closing Entities" has the meaning set forth in **Section 6.35**.

"Delphi" means Delphi Corporation.

"Delphi Motion" means the motion filed by Parent with the Bankruptcy Court in the Bankruptcy Cases on June 20, 2009, seeking authorization and approval of (i) the purchase, and guarantee of purchase, of certain assets of Delphi, (ii) entry into certain agreements in connection with the sale of substantially all of the remaining assets of Delphi to a third party, (iii) the assumption of certain Executory Contracts in connection with such sale, (iv) entry into an agreement with the PBGC in connection with such sale and (v) entry into an alternative transaction with the successful bidder in the auction for the assets of Delphi.

"Delphi Transaction Agreements" means (i) either (A) the MDA, the SPA, the Loan Agreement, the Operating Agreement, the Commercial Agreements and any Ancillary Agreements (in each case, as defined in the Delphi Motion), which any Seller is a party to, or (B) in the event that an Acceptable Alternative Transaction (as defined in the Delphi Motion) is consummated, any agreements relating to the Acceptable Alternative Transaction, which any Seller is a party to, and (ii) in the event that the PBGC Agreement is entered into at or prior to the Closing, the PBGC Agreement (as defined in the Delphi Motion) and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each of the agreements described in clauses (i) or (ii) hereof may be amended from time to time.

"DIP Facility" means that certain Secured Superpriority Debtor-in-Possession Credit Agreement entered into or to be entered into by Parent, as borrower, certain Subsidiaries of Parent listed therein, as guarantors, Sponsor, as lender, and Export Development Canada, as lender.

"Discontinued Brand Dealer Agreement" means a United States dealer sales and service Contract related to one or more of the Discontinued Brands, together with all other Contracts between any Seller and the relevant dealer that are related to the dealership operations of such dealer other than Contracts identified on Section 1.1B of the Sellers' Disclosure Schedule, each of which Contract identified on Section 1.1B of the Sellers' Disclosure Schedule shall be deemed to be a Rejectable Executory Contract.

"Discontinued Brands" means each of the following vehicle line-makes, currently distributed in the United States by Parent or its Subsidiaries: Hummer, Saab, Saturn and Pontiac.

"Disqualified Individual" has the meaning set forth in **Section 4.10(f)**.

"Employees" means (i) each employee or officer of any of Sellers or their Affiliates (including (a) any current, former or retired employees or officers, (b) employees or officers on long-term or short-term disability, military leave, sick leave, family medical leave or some other approved leave of absence and (c) employees on layoff status or with recall rights); (ii) each consultant or other service provider of any of Sellers or their Affiliates who is a former employee, officer or director of any of Sellers or their Affiliates; and (iii) each individual recognized under any Collective Bargaining Agreement as being employed by or having rights to

employment by any of Sellers or their Affiliates. For the avoidance of doubt, Employees includes all employees of Sellers or any of their Affiliates, whether or not Transferred Employees.

"Employment-Related Obligations" means all Liabilities arising out of, related to, in respect of or in connection with employment relationships or alleged or potential employment relationships with Sellers or any Affiliate of Sellers relating to Employees, leased employees, applicants, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, whether filed or asserted before, on or after the Closing. "Employment-Related Obligations" includes Claims relating to discrimination, torts, compensation for services (and related employment and withholding Taxes), workers' compensation or similar benefits and payments on account of occupational illnesses and injuries, employment Contracts, Collective Bargaining Agreements, grievances originating under a Collective Bargaining Agreement, wrongful discharge, invasion of privacy, infliction of emotional distress, defamation, slander, provision of leave under the Family and Medical Leave Act of 1993, as amended, or other similar Laws, car programs, relocation, expense-reporting, Tax protection policies, Claims arising out of WARN or employment, terms of employment, transfers, re-levels, demotions, failure to hire, failure to promote, compensation policies, practices and treatment, termination of employment, harassment, pay equity, employee benefits (including post-employment welfare and other benefits), employee treatment, employee suggestions or ideas, fiduciary performance, employment practices, the modification or termination of Benefit Plans or employee benefit plans, policies, programs, agreements and arrangements of Purchaser, including decisions to provide plans that are different from Benefit Plans, and the like. Without limiting the generality of the foregoing, with respect to any Employees, leased employees, and/or independent contractors or those individuals who are deemed to be employees of Sellers or any Affiliate of Sellers by Contract or Law, "Employment-Related Obligations" includes payroll and social security Taxes, contributions (whether required or voluntary) to any retirement, health and welfare or similar plan or arrangement, notice, severance or similar payments required under Law, and obligations under Law with respect to occupational injuries and illnesses.

"Encumbrance" means any lien (statutory or otherwise), charge, deed of trust, pledge, security interest, conditional sale or other title retention agreement, lease, mortgage, option, charge, hypothecation, easement, right of first offer, license, covenant, restriction, ownership interest of another Person or other encumbrance.

"End Date" has the meaning set forth in **Section 8.1(b)**.

"Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface soil or strata, ambient air, natural resource or wildlife habitat.

"Environmental Law" means any Law in existence on the date of the Original Agreement relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.

"Equity Incentive Plans" has the meaning set forth in **Section 6.28**.

"Equity Interest" means, with respect to any Person, any shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, options or rights for the purchase or other acquisition from such Person of such shares (or such other ownership or profits interests) and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"Equity Registration Rights Agreement" has the meaning set forth in **Section 7.1(c)**.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is part of the same controlled group, or under common control with, or part of an affiliated service group that includes any Seller, within the meaning of Section 414(b), (c), (m) or (o) of the Tax Code or Section 4001(a)(14) of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in **Section 2.2(b)**.

"Excluded Cash" has the meaning set forth in **Section 2.2(b)(i)**.

"Excluded Continuing Brand Dealer Agreements" means all Continuing Brand Dealer Agreements, other than those that are Assumable Executory Contracts.

"Excluded Contracts" has the meaning set forth in **Section 2.2(b)(vii)**.

"Excluded Entities" has the meaning set forth in **Section 2.2(b)(iv)**.

"Excluded Insurance Policies" has the meaning set forth in **Section 2.2(b)(xiii)**.

"Excluded Personal Property" has the meaning set forth in **Section 2.2(b)(vi)**.

"Excluded Real Property" has the meaning set forth in **Section 2.2(b)(v)**.

"Excluded Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Excluded Entities and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Executory Contract" means an executory Contract or unexpired lease of personal property or nonresidential real property.

"Executory Contract Designation Deadline" has the meaning set forth in **Section 6.6(a)**.

"Existing Internal VEBA" has the meaning set forth in **Section 6.17(h)**.

"Existing Saginaw Wastewater Facility" has the meaning set forth in **Section 6.27(b)**.

"Existing UST Loan and Security Agreement" means the Loan and Security Agreement, dated as of December 31, 2008, between Parent and Sponsor, as amended.

"FCPA" has the meaning set forth in **Section 4.19**.

"Final Determination" means (i) with respect to U.S. federal income Taxes, a "determination" as defined in Section 1313(a) of the Tax Code or execution of an IRS Form 870-AD and, (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of Claims for refunds, amended Tax Returns or appeals from adverse determinations.

"Final Order" means (i) an Order of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such Order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

"FSA Approval" has the meaning set forth in **Section 6.34**.

"G Transaction" has the meaning set forth in **Section 6.16(g)(i)**.

"GAAP" means the United States generally accepted accounting principles and practices as in effect from time to time, consistently applied throughout the specified period.

"GMAC" means GMAC LLC.

"GM Assumed Contracts" has the meaning set forth in the Delphi Motion.

"GMCL" has the meaning set forth in the Recitals.

"Governmental Authority" means any United States or non-United States federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

"Government Related Subcontract Agreement" has the meaning set forth in **Section 7.2(c)(vii)**.

"Harlem" has the meaning set forth in the Preamble.

"Hazardous Materials" means any material or substance that is regulated, or can give rise to Claims, Liabilities or Losses, under any Environmental Law or a Permit issued pursuant to any Environmental Law, including any petroleum, petroleum-based or petroleum-derived product, polychlorinated biphenyls, asbestos or asbestos-containing materials, lead and any noxious, radioactive, flammable, corrosive, toxic, hazardous or caustic substance (whether solid, liquid or gaseous).

"Holding Company" has the meaning set forth in the Recitals.

"Holding Company Reorganization" has the meaning set forth in the Recitals.

"Indebtedness" means, with respect to any Person, without duplication: (i) all obligations of such Person for borrowed money (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (ii) all obligations of such Person to pay amounts evidenced by bonds, debentures, notes or similar instruments (including all accrued and unpaid interest and all prepayment penalties or premiums in respect thereof); (iii) all obligations of others, of the types set forth in clauses (i)-(ii) above that are secured by any Encumbrance on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but only to the extent so secured; (iv) all unreimbursed reimbursement obligations of such Person under letters of credit issued for the account of such Person; (v) obligations of such Person under conditional sale, title retention or similar arrangements or other obligations, in each case, to pay the deferred purchase price for property or services, to the extent of the unpaid purchase price (other than trade payables and customary reservations or retentions of title under Contracts with suppliers, in each case, in the Ordinary Course of Business); (vi) all net monetary obligations of such Person in respect of interest rate, equity and currency swap and other derivative transaction obligations; and (vii) all guarantees of or by such Person of any of the matters described in clauses (i)-(vi) above, to the extent of the maximum amount for which such Person may be liable pursuant to such guarantee.

"Intellectual Property" means all Patents, Trademarks, Copyrights, Trade Secrets, Software, all rights under the Licenses and all concepts, ideas, know-how, show-how, proprietary information, technology, formulae, processes and other general intangibles of like nature, and other intellectual property to the extent entitled to legal protection as such, including products under development and methodologies therefor, in each case acquired, owned or licensed by a Seller.

"Intellectual Property Assignment Agreement" has the meaning set forth in **Section 7.2(c)(viii)**.

"Intercompany Obligations" has the meaning set forth in **Section 2.2(a)(iv)**.

"Inventory" has the meaning set forth in **Section 2.2(a)(viii)**.

"IRS" means the United States Internal Revenue Service.

"Key Subsidiary" means any direct or indirect Subsidiary (which, for the avoidance of doubt, shall only include any legal entity in which a Seller, directly or indirectly, owns greater than 50% of the outstanding Equity Interests in such legal entity) of Sellers (other than trusts) with assets (excluding any Intercompany Obligations) in excess of Two Hundred and Fifty Million Dollars ($250,000,000) as reflected on Parent's consolidated balance sheet as of March 31, 2009 and listed on Section 1.1C of the Sellers' Disclosure Schedule.

"Knowledge of Sellers" means the actual knowledge of the individuals listed on Section 1.1D of the Sellers' Disclosure Schedule as to the matters represented and as of the date the representation is made.

"Law" means any and all applicable United States or non-United States federal, national, provincial, state or local laws, rules, regulations, directives, decrees, treaties, statutes, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, as well as any applicable Final Order.

"Landlocked Parcel" has the meaning set forth in **Section 6.27(c)**.

"Leased Real Property" means all the real property leased or subleased by Sellers, except for any such leased or subleased real property subject to any Contracts designated as Excluded Contracts.

"Lemon Laws" means a state statute requiring a vehicle manufacturer to provide a consumer remedy when such manufacturer is unable to conform a vehicle to the express written warranty after a reasonable number of attempts, as defined in the applicable statute.

"Liabilities" means any and all liabilities and obligations of every kind and description whatsoever, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness and those arising under any Law, Claim, Order, Contract or otherwise.

"Licenses" means the Patent Licenses, the Trademark Licenses, the Copyright Licenses, the Software Licenses and the Trade Secret Licenses.

"Losses" means any and all Liabilities, losses, damages, fines, amounts paid in settlement, penalties, costs and expenses (including reasonable and documented attorneys', accountants', consultants', engineers' and experts' fees and expenses).

"LSA Agreement" means the Amended and Restated GM-Delphi Agreement, dated as of June 1, 2009, and any ancillary agreements entered into pursuant thereto, which any Seller is a party to, as each such agreement may be amended from time to time.

"Master Lease Agreement" has the meaning set forth in **Section 7.2(c)(xiv)**.

"Material Adverse Effect" means any change, effect, occurrence or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the Purchased Assets, Assumed Liabilities or results of operations of Parent and its

Purchased Subsidiaries, taken as a whole; provided, however, that the term "Material Adverse Effect" does not, and shall not be deemed to, include, either alone or in combination, any changes, effects, occurrences or developments: (i) resulting from general economic or business conditions in the United States or any other country in which Sellers and their respective Subsidiaries have operations, or the worldwide economy taken as a whole; (ii) affecting Sellers in the industry or the markets where Sellers operate (except to the extent such change, occurrence or development has a disproportionate adverse effect on Parent and its Subsidiaries relative to other participants in such industry or markets, taken as a whole); (iii) resulting from any changes (or proposed or prospective changes) in any Law or in GAAP or any foreign generally accepted accounting principles; (iv) in securities markets, interest rates, regulatory or political conditions, including resulting or arising from acts of terrorism or the commencement or escalation of any war, whether declared or undeclared, or other hostilities; (v) resulting from the negotiation, announcement or performance of this Agreement or the DIP Facility, or the transactions contemplated hereby and thereby, including by reason of the identity of Sellers, Purchaser or Sponsor or any communication by Sellers, Purchaser or Sponsor of any plans or intentions regarding the operation of Sellers' business, including the Purchased Assets, prior to or following the Closing; (vi) resulting from any act or omission of any Seller required or contemplated by the terms of this Agreement, the DIP Facility or the Viability Plans, or otherwise taken with the prior consent of Sponsor or Purchaser, including Parent's announced shutdown, which began in May 2009; and (vii) resulting from the filing of the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by any Subsidiary of Parent) or from any action approved by the Bankruptcy Court (or any other court in connection with any such other proceedings).

"New VEBA" means the trust fund established pursuant to the Settlement Agreement.

"Non-Assignable Assets" has the meaning set forth in **Section 2.4(a)**.

"Non-UAW Collective Bargaining Agreements" has the meaning set forth in **Section 6.17(m)(i)**.

"Non-UAW Settlement Agreements" has the meaning set forth in **Section 6.17(m)(ii)**.

"Notice of Intent to Reject" has the meaning set forth in **Section 6.6(b)**.

"Novation Agreement" has the meaning set forth in **Section 7.2(c)(vi)**.

"Option Period" has the meaning set forth in **Section 6.6(b)**.

"Order" means any writ, judgment, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent.

"Ordinary Course of Business" means the usual, regular and ordinary course of business consistent with the past practice thereof (including with respect to quantity and frequency) as and to the extent modified in connection with (i) the implementation of the Viability Plans; (ii) Parent's announced shutdown, which began in May 2009; and (iii) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of

Parent), in the case of clause (iii), to the extent such modifications were approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any such other proceedings), or in furtherance of such approval.

"Organizational Document" means (i) with respect to a corporation, the certificate or articles of incorporation and bylaws or their equivalent; (ii) with respect to any other entity, any charter, bylaws, limited liability company agreement, certificate of formation, articles of organization or similar document adopted or filed in connection with the creation, formation or organization of a Person; and (iii) in the case of clauses (i) and (ii) above, any amendment to any of the foregoing other than as prohibited by **Section 6.2(b)(vi)**.

"Original Agreement" has the meaning set forth in the Recitals.

"Owned Real Property" means all real property owned by Sellers (including all buildings, structures and improvements thereon and appurtenances thereto), except for any such real property included in the Excluded Real Property.

"Parent" has the meaning set forth in the Preamble.

"Parent Employee Benefit Plans and Policies" means all (i) "employee benefit plans" (as defined in Section 3(3) of ERISA) and all pension, savings, profit sharing, retirement, bonus, incentive, health, dental, life, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, other equity, executive or deferred compensation, hospitalization, post-retirement (including retiree medical or retiree life, voluntary employees' beneficiary associations, and multiemployer plans (as defined in Section 3(37) of ERISA)), severance, retention, change in control, vacation, cafeteria, sick leave, fringe, perquisite, welfare benefits or other employee benefit plans, programs, policies, agreements or arrangements (whether written or oral), including those plans, programs, policies, agreements and arrangements with respect to which any Employee covered by the UAW Collective Bargaining Agreement is an eligible participant, (ii) employment or individual consulting Contracts and (iii) employee manuals and written policies, practices or understandings relating to employment, compensation and benefits, and in the case of clauses (i) through (iii), sponsored, maintained, entered into, or contributed to, or required to be maintained or contributed to, by Parent.

"Parent SEC Documents" has the meaning set forth in **Section 4.5(a)**.

"Parent Shares" has the meaning set forth in **Section 3.2(a)(iii)**.

"Parent Warrant A" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit A**.

"Parent Warrant B" means warrants to acquire 45,454,545 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit B**.

"Parent Warrants" means collectively, Parent Warrant A and Parent Warrant B.

"Participation Agreement" has the meaning set forth in **Section 6.7(b)**.

"Parties" means Sellers and Purchaser together, and "Party" means any of Sellers, on the one hand, or Purchaser, on the other hand, as appropriate and as the case may be.

"Patent Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique or process covered by any Patent.

"Patents" means all inventions, patentable designs, letters patent and design letters patent of the United States or any other country and all applications (regular and provisional) for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, and all reissues, divisions, continuations, continuations in part, revisions, reexaminations and extensions or renewals of any of the foregoing.

"PBGC" has the meaning set forth in **Section 4.10(a)**.

"Permits" has the meaning set forth in **Section 2.2(a)(xi)**.

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways

abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity.

"Personal Information" means any information relating to an identified or identifiable living individual, including (i) first initial or first name and last name; (ii) home address or other physical address, including street name and name of city or town; (iii) e-mail address or other online contact information (e.g., instant messaging user identifier); (iv) telephone number; (v) social security number or other government-issued personal identifier such as a tax identification number or driver's license number; (vi) internet protocol address; (vii) persistent identifier (e.g., a unique customer number in a cookie); (viii) financial account information (account number, credit or debit card numbers or banking information); (ix) date of birth; (x) mother's maiden name; (xi) medical information (including electronic protected health information as defined by the rules and regulations of the Health Information Portability and Privacy Act, as amended); (xii) digitized or electronic signature; and (xiii) any other information that is combined with any of the above.

"Personal Property" has the meaning set forth in **Section 2.2(a)(vii)**.

"Petition Date" has the meaning set forth in the Recitals.

"PLR" has the meaning set forth in **Section 6.16(g)(i)**.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Privacy Policy" means, with respect to any Person, any written privacy policy, statement, rule or notice regarding the collection, use, access, safeguarding and retention of Personal Information or "Personally Identifiable Information" (as defined by Section 101(41A) of the Bankruptcy Code) of any individual, including a customer, potential customer, employee or former employee of such Person, or an employee of any of such Person's automotive or parts dealers.

"Product Liabilities" has the meaning set forth in **Section 2.3(a)(ix)**.

"Promark UK Subsidiaries" has the meaning set forth in **Section 6.34**.

"Proposed Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Purchase Price" has the meaning set forth in **Section 3.2(a)**.

"Purchased Assets" has the meaning set forth in **Section 2.2(a)**.

"Purchased Contracts" has the meaning set forth in **Section 2.2(a)(x)**.

"Purchased Subsidiaries" means, collectively, the direct Subsidiaries of Sellers included in the Transferred Entities, and their respective direct and indirect Subsidiaries, in each case, as of the Closing Date.

"Purchased Subsidiaries Employee Benefit Plans" means any (i) defined benefit or defined contribution retirement plan maintained by any Purchased Subsidiary and (ii) severance, change in control, bonus, incentive or any similar plan or arrangement maintained by a Purchased Subsidiary for the benefit of officers or senior management of such Purchased Subsidiary.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Assumed Debt" has the meaning set forth in **Section 2.3(a)(i)**.

"Purchaser Expense Reimbursement" has the meaning set forth in **Section 8.2(b)**.

"Purchaser Material Adverse Effect" has the meaning set forth in **Section 5.3(a)**.

"Purchaser's Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Purchaser immediately prior to the execution of the Original Agreement.

"Quitclaim Deeds" has the meaning set forth in **Section 7.2(c)(x)**.

"Receivables" has the meaning set forth in **Section 2.2(a)(iii)**.

"Rejectable Executory Contract" has the meaning set forth in **Section 6.6(b)**.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, discarding, burying, abandoning or disposing into the Environment of Hazardous Materials that is prohibited under, or reasonably likely to result in a Liability under, any applicable Environmental Law.

"Relevant Information" has the meaning set forth in **Section 6.16(g)(ii)**.

"Relevant Transactions" has the meaning set forth in **Section 6.16(g)(i)**.

"Ren Cen Lease" has the meaning set forth in **Section 6.30**.

"Representatives" means all officers, directors, employees, consultants, agents, lenders, accountants, attorneys and other representatives of a Person.

"Required Subdivision" has the meaning set forth in **Section 6.27(a)**.

"Restricted Cash" has the meaning set forth in **Section 2.2(a)(ii)**.

"Retained Liabilities" has the meaning set forth in **Section 2.3(b)**.

"Retained Plans" means any Parent Employee Benefit Plan and Policy that is not an Assumed Plan.

"Retained Subsidiaries" means all Subsidiaries of Sellers and their respective direct and indirect Subsidiaries, as of the Closing Date, other than the Purchased Subsidiaries.

"Retained Workers' Compensation Claims" has the meaning set forth in **Section 2.3(b)(xii)**.

"RHI" has the meaning set forth in **Section 6.30**.

"RHI Post-Closing Period" has the meaning set forth in **Section 6.30**.

"S Distribution" has the meaning set forth in the Preamble.

"S LLC" has the meaning set forth in the Preamble.

"Saginaw Landfill" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Metal Casting Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Nodular Iron Land" has the meaning set forth in **Section 6.27(b)**.

"Saginaw Service Contracts" has the meaning set forth in **Section 6.27(b)**.

"Sale Approval Order" has the meaning set forth in **Section 6.4(b)**.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the Sale Procedures and Sale Motion and enter the Sale Approval Order.

"Sale Procedures and Sale Motion" has the meaning set forth in **Section 6.4(b)**.

"Sale Procedures Order" has the meaning set forth in **Section 6.4(b)**.

"SEC" means the United States Securities and Exchange Commission.

"Secured Real Property Encumbrances" means all Encumbrances related to the Indebtedness of Sellers, which is secured by one or more parcels of the Owned Real Property, including Encumbrances related to the Indebtedness of Sellers under any synthetic lease arrangements at the White Marsh, Maryland GMPT - Baltimore manufacturing facility and the Memphis, Tennessee (SPO - Memphis) facility.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Seller Group" means any combined, unitary, consolidated or other affiliated group of which any Seller or Purchased Subsidiary is or has been a member for federal, state, provincial, local or foreign Tax purposes.

"Seller Key Personnel" means those individuals described on Section 1.1E of the Sellers' Disclosure Schedule.

"Seller Material Contracts" has the meaning set forth in **Section 4.16(a)**.

"Sellers' Disclosure Schedule" means the Schedule pertaining to, and corresponding to the Section references of this Agreement, delivered by Sellers to Purchaser immediately prior to the execution of this Agreement, as updated and supplemented pursuant to **Section 6.5**, **Section 6.6** and **Section 6.26**.

"Series A Preferred Stock" has the meaning set forth in **Section 5.4(b)**.

"Settlement Agreement" means the Settlement Agreement, dated February 21, 2008 (as amended, supplemented, replaced or otherwise altered from time to time), among Parent, the UAW and certain class representatives, on behalf of the class of plaintiffs in the class action of

Int'l Union, UAW, et al. v. General Motors Corp., Civil Action No. 07-14074 (E.D. Mich. filed Sept. 9, 2007).

"Shared Executory Contracts" has the meaning set forth in **Section 6.6(d)**.

"Software" means all software of any type (including programs, applications, middleware, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form (including source code, object code, executable code and user interface), databases and associated data and related documentation, in each case owned, acquired or licensed by any Seller.

"Software Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any right to use, modify, reproduce, distribute or create derivative works of any Software.

"Sponsor" means the United States Department of the Treasury.

"Sponsor Affiliate" has the meaning set forth in **Section 9.22**.

"Sponsor Shares" has the meaning set forth in **Section 5.4(c)**.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subdivision Master Lease" has the meaning set forth in **Section 6.27(a)**.

"Subdivision Properties" has the meaning set forth in **Section 6.27(a)**.

"Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity (in each case, other than a joint venture if such Person is not empowered to control the day-to-day operations of such joint venture) of which such Person (either alone or through or together with any other Subsidiary) owns, directly or indirectly, more than fifty percent (50%) of the Equity Interests, the holder of which is entitled to vote for the election of the board of directors or other governing body of such corporation, limited liability company, partnership or other legal entity.

"Superior Bid" has the meaning set forth in **Section 6.4(d)**.

"TARP" means the Troubled Assets Relief Program established by Sponsor under the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7001 of Division B, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time and any guidance issued by a regulatory authority thereunder and other related Laws in effect currently or in the future in the United States.

"Tax" or "Taxes" means any federal, state, provincial, local, foreign and other income, alternative minimum, accumulated earnings, personal holding company, franchise, capital stock,

net worth or gross receipts, income, alternative or add-on minimum, capital, capital gains, sales, use, ad valorem, franchise, profits, license, privilege, transfer, withholding, payroll, employment, social, excise, severance, stamp, occupation, premium, goods and services, value added, property (including real property and personal property taxes), environmental, windfall profits or other taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority, including any transferee, successor or secondary liability for any such tax and any Liability assumed by Contract or arising as a result of being or ceasing to be a member of any affiliated group or similar group under state, provincial, local or foreign Law, or being included or required to be included in any Tax Return relating thereto.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Taxing Authority" means, with respect to any Tax, the Governmental Authority thereof that imposes such Tax and the agency, court or other Person or body (if any) charged with the interpretation, administration or collection of such Tax for such Governmental Authority.

"Tax Return" means any return, report, declaration, form, election letter, statement or other information filed or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Trademark Licenses" means all Contracts naming any Seller as licensor or licensee and providing for the grant of any right concerning any Trademark together with any goodwill connected with and symbolized by any such Trademark or Trademark Contract, and the right to prepare for sale or lease and sell or lease any and all products, inventory or services now or hereafter owned or provided by any Seller or any other Person and now or hereafter covered by such Contracts.

"Trademarks" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers, and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof) and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks.

"Trade Secrets" means all trade secrets or Confidential Information, including any confidential technical and business information, program, process, method, plan, formula, product design, compilation of information, customer list, sales forecast, know-how, Software, and any other confidential proprietary intellectual property, and all additions and improvements to, and books and records describing or used in connection with, any of the foregoing, in each case, owned, acquired or licensed by any Seller.

"Trade Secret Licenses" means all Contracts naming a Seller as licensee or licensor and providing for the grant of any rights with respect to Trade Secrets.

"Transfer Taxes" means all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby and not otherwise exempted under the Bankruptcy Code, including relating to the transfer of the Transferred Real Property.

"Transfer Tax Forms" has the meaning set forth in **Section 7.2(c)(xi)**.

"Transferred Employee" has the meaning set forth in **Section 6.17(a)**.

"Transferred Entities" means all of the direct Subsidiaries of Sellers and joint venture entities or other entities in which any Seller has an Equity Interest, other than the Excluded Entities.

"Transferred Equity Interests" has the meaning set forth in **Section 2.2(a)(v)**.

"Transferred Real Property" has the meaning set forth in **Section 2.2(a)(vi)**.

"Transition Services Agreement" has the meaning set forth in **Section 7.2(c)(ix)**.

"Transition Team" has the meaning set forth in **Section 6.11(c)**.

"UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

"UAW Active Labor Modifications" means the modifications to the UAW Collective Bargaining Agreement, as agreed to in the 2009 Addendum to the 2007 UAW-GM National Agreement, dated May 17, 2009, the cover page of which is attached hereto as **Exhibit C** (the 2009 Addendum without attachments), which modifications were ratified by the UAW membership on May 29, 2009.

"UAW Collective Bargaining Agreement" means any written or oral Contract, understanding or mutually recognized past practice between Sellers and the UAW with respect to Employees, including the UAW Active Labor Modifications, but excluding the agreement to provide certain retiree medical benefits specified in the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between Parent and the UAW, and the Settlement Agreement. For purpose of clarity, the term "UAW Collective Bargaining Agreement" includes all special attrition programs, divestiture-related memorandums of understanding or implementation agreements relating to any unit or location where covered UAW-represented employees remain and any current local agreement between Parent and a UAW local relating to any unit or location where UAW-represented employees are employed as of the date of the Original Agreement. For purposes of clarity, nothing in this definition extends the coverage of the UAW-GM National Agreement to any Employee of S LLC, S Distribution, Harlem, a Purchased Subsidiary or one of Parent's Affiliates; nothing in this Agreement creates a direct employment relationship with a Purchased Subsidiary's employee or an Affiliate's Employee and Parent.

"UAW Retiree Settlement Agreement" means the UAW Retiree Settlement Agreement to be executed prior to the Closing, substantially in the form attached hereto as **Exhibit D**.

"Union" means any labor union, organization or association representing any employees (but not including the UAW) with respect to their employment with any of Sellers or their Affiliates.

"United States" or "U.S." means the United States of America, including its territories and insular possessions.

"UST Credit Bid Amount" has the meaning set forth in **Section 3.2(a)(i)**.

"UST Credit Facilities" means (i) the Existing UST Loan and Security Agreement and (ii) those certain promissory notes dated December 31, 2008, April 22, 2009, May 20, 2009, and May 27, 2009, issued by Parent to Sponsor as additional compensation for the extensions of credit under the Existing UST Loan and Security Agreement, in each case, as amended.

"UST Warrant" means the warrant issued by Parent to Sponsor in consideration for the extension of credit made available to Parent under the Existing UST Loan and Security Agreement.

"VEBA Shares" has the meaning set forth in **Section 5.4(c)**.

"VEBA Note" has the meaning set forth in **Section 7.3(g)(iv)**.

"VEBA Warrant" means warrants to acquire 15,151,515 shares of Common Stock issued pursuant to a warrant agreement, substantially in the form attached hereto as **Exhibit E**.

"Viability Plans" means (i) Parent's Restructuring Plan for Long-Term Viability, dated December 2, 2008; (ii) Parent's 2009-2014 Restructuring Plan, dated February 17, 2009; (iii) Parent's 2009-2014 Restructuring Plan: Progress Report, dated March 30, 2009; and (iv) Parent's Revised Viability Plan, all as described in Parent's Registration Statement on Form S-4 (Reg. No 333-158802), initially filed with the SEC on April 27, 2009, in each case, as amended, supplemented and/or superseded.

"WARN" means the Workers Adjustment and Retraining Notification Act of 1988, as amended, and similar foreign, state and local Laws.

"Willow Run Landlord" means the Wayne County Airport Authority, or any successor landlord under the Willow Run Lease.

"Willow Run Lease" means that certain Willow Run Airport Lease of Land dated October 11, 1985, as the same may be amended, by and between the Willow Run Landlord, as landlord, and Parent, as tenant, for certain premises located at the Willow Run Airport in Wayne and Washtenaw Counties, Michigan.

"Willow Run Lease Amendment" has the meaning set forth in **Section 6.27(e)**.

"Wind Down Facility" has the meaning set forth in **Section 6.9(b)**.

Section 1.2 Other Interpretive Provisions. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole (including the Sellers' Disclosure Schedule) and not to any particular provision of this Agreement, and all Article, Section, Sections of the Sellers' Disclosure Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation." The meanings given to terms defined herein are equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "Dollars" or "$" are deemed references to lawful money of the United States. Unless otherwise specified, references to any statute, listing rule, rule, standard, regulation or other Law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time, and to any section of any statute, listing rule, rule, standard, regulation or other Law, including any successor to such section. Where this Agreement states that a Party "shall" or "will" perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets; Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, other than as set forth in **Section 6.30**, **Section 6.34** and **Section 6.35**, at the Closing, Purchaser shall (a) purchase, accept and acquire from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances), Claims and other interests, the Purchased Assets and (b) assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities.

Section 2.2 Purchased and Excluded Assets.

(a) The "Purchased Assets" shall consist of the right, title and interest that Sellers possess and have the right to legally transfer in and to all of the properties, assets, rights, titles and interests of every kind and nature, owned, leased, used or held for use by Sellers (including indirect and other forms of beneficial ownership), whether tangible or intangible, real, personal or mixed, and wherever located and by whomever possessed, in each case, as the same may exist as of the Closing, including the following properties, assets, rights, titles and interests (but, in every case, excluding the Excluded Assets):

(i) all cash and cash equivalents, including all marketable securities, certificates of deposit and all collected funds or items in the process of collection at Sellers' financial institutions through and including the Closing, and all bank deposits, investment accounts and lockboxes related thereto, other than the Excluded Cash and Restricted Cash;

(ii) all restricted or escrowed cash and cash equivalents, including restricted marketable securities and certificates of deposit (collectively, "Restricted Cash") other than the Restricted Cash described in **Section 2.2(b)(ii)**;

(iii) all accounts and notes receivable and other such Claims for money due to Sellers, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor, other than intercompany receivables (collectively, "Receivables");

(iv) all intercompany obligations ("Intercompany Obligations") owed or due, directly or indirectly, to Sellers by any Subsidiary of a Seller or joint venture or other entity in which a Seller or a Subsidiary of a Seller has any Equity Interest;

(v) (A) subject to **Section 2.4**, all Equity Interests in the Transferred Entities (collectively, the "Transferred Equity Interests") and (B) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Transferred Entity;

(vi) all Owned Real Property and Leased Real Property (collectively, the "Transferred Real Property");

(vii) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property"), including the Personal Property located at the Excluded Real Property and identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule;

(viii) all inventories of vehicles, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto (collectively, "Inventory"), wherever located, including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(ix) (A) all Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property associated with the Discontinued Brands), and (B) all rights

and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing, and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing;

(x) subject to **Section 2.4**, all Contracts, other than the Excluded Contracts (collectively, the "Purchased Contracts"), including, for the avoidance of doubt, (A) the UAW Collective Bargaining Agreement and (B) any Executory Contract designated as an Assumable Executory Contract as of the applicable Assumption Effective Date;

(xi) subject to **Section 2.4**, all approvals, Contracts, authorizations, permits, licenses, easements, Orders, certificates, registrations, franchises, qualifications, rulings, waivers, variances or other forms of permission, consent, exemption or authority issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, including all pending applications therefor and all renewals and extensions thereof (collectively, "Permits"), other than to the extent that any of the foregoing relate exclusively to the Excluded Assets or Retained Liabilities;

(xii) all credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(xiii) all Claims (including Tax refunds) relating to the Purchased Assets or Assumed Liabilities, including the Claims identified on Section 2.2(a)(xiii) of the Sellers' Disclosure Schedule and all Claims against any Taxing Authority for any period, other than Bankruptcy Avoidance Actions and any of the foregoing to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xiv) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium), including Tax books and records and Tax Returns used or held for use in connection with the ownership or operation of the Purchased Assets or Assumed Liabilities, including the Purchased Contracts, customer lists, customer information and account records, computer files, data processing records, employment and personnel records, advertising and marketing data and records, credit records, records relating to suppliers, legal records and information and other data;

(xv) all goodwill and other intangible personal property arising in connection with the ownership, license, use or operation of the Purchased Assets or Assumed Liabilities;

(xvi) to the extent provided in **Section 6.17(e)**, all Assumed Plans;

(xvii) all insurance policies and the rights to the proceeds thereof, other than the Excluded Insurance Policies;

(xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period; and

(xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability.

(b) Notwithstanding anything to the contrary contained in this Agreement, Sellers shall retain all of their respective right, title and interest in and to, and shall not, and shall not be deemed to, sell, transfer, assign, convey or deliver to Purchaser, and the Purchased Assets shall not, and shall not be deemed to, include the following (collectively, the "Excluded Assets"):

(i) cash or cash equivalents in an amount equal to $950,000,000 (the "Excluded Cash");

(ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities;

(iii) all Receivables (other than Intercompany Obligations) exclusively related to any Excluded Assets or Retained Liabilities;

(iv) all of Sellers' Equity Interests in (A) S LLC, (B) S Distribution, (C) Harlem and (D) the Subsidiaries, joint ventures and the other entities in which any Seller has any Equity Interest and that are identified on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule (collectively, the "Excluded Entities");

(v) (A) all owned real property set forth on **Exhibit F** and such additional owned real property set forth on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (including, in each case, any structures, buildings or other improvements located thereon and appurtenances thereto) and (B) all real property leased or subleased that is subject to a Contract designated as an "Excluded Contract" (collectively, the "Excluded Real Property");

(vi) all Personal Property that is (A) located at the Transferred Real Property and identified on Section 2.2(b)(vi) of the Sellers' Disclosure Schedule, (B) located at the Excluded Real Property, except for those items identified on Section 2.2(a)(vii) of the Sellers' Disclosure Schedule or (C) subject to a Contract

designated as an Excluded Contract (collectively, the "Excluded Personal Property");

(vii) (A) all Contracts identified on Section 2.2(b)(vii) of the Sellers' Disclosure Schedule immediately prior to the Closing, (B) all pre-petition Executory Contracts designated as Rejectable Executory Contracts, (C) all pre-petition Executory Contracts (including, for the avoidance of doubt, the Delphi Transaction Agreements and GM Assumed Contracts) that have not been designated as or deemed to be Assumable Executory Contracts in accordance with **Section 6.6** or **Section 6.31**, or that are determined, pursuant to the procedures set forth in the Sale Procedures Order, not to be assumable and assignable to Purchaser, (D) all Collective Bargaining Agreements not set forth on the Assumable Executory Contract Schedule and (E) all non-Executory Contracts for which performance by a third-party or counterparty is substantially complete and for which a Seller owes a continuing or future obligation with respect to such non-Executory Contracts (collectively, the "Excluded Contracts"), including any accounts receivable arising out of or in connection with any Excluded Contract; it being understood and agreed by the Parties hereto that, notwithstanding anything to the contrary herein, in no event shall the UAW Collective Bargaining Agreement be designated or otherwise deemed or considered an Excluded Contract;

(viii) all books, records, ledgers, files, documents, correspondence, lists, plats, specifications, surveys, drawings, advertising and promotional materials, reports and other materials (in whatever form or medium) relating exclusively to the Excluded Assets or Retained Liabilities, and any books, records and other materials that any Seller is required by Law to retain;

(ix) the corporate charter, qualification to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates and any other documents relating to the organization, maintenance and existence of each Seller and each Excluded Entity;

(x) all Claims against suppliers, dealers and any other third parties relating exclusively to the Excluded Assets or Retained Liabilities;

(xi) all of Sellers' Claims under this Agreement, the Ancillary Agreements and the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551 (inclusive), 553, 558 and any other applicable provisions of the Bankruptcy Code, and any related Claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (the "Bankruptcy Avoidance Actions"), but in all cases, excluding all rights and Claims identified on Section 2.2(b)(xi) of the Sellers' Disclosure Schedule;

EXHIBIT C
Part 2

(xii) all credits, deferred charges, prepaid expenses, deposits and advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating exclusively to the Excluded Assets or Retained Liabilities;

(xiii) all insurance policies identified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds relate to any Purchased Asset or Assumed Liability;

(xiv) all Permits, to the extent that they relate exclusively to the Excluded Assets or Retained Liabilities;

(xv) all Retained Plans; and

(xvi) those assets identified on Section 2.2(b)(xvi) of the Sellers' Disclosure Schedule.

Section 2.3 Assumed and Retained Liabilities.

(a) The "Assumed Liabilities" shall consist only of the following Liabilities of Sellers:

(i) $7,072,488,605 of Indebtedness incurred under the DIP Facility, to be restructured pursuant to the terms of **Section 6.9** (the "Purchaser Assumed Debt");

(ii) all Liabilities under each Purchased Contract;

(iii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) any Purchased Subsidiary or (B) any joint venture or other entity in which a Seller or a Purchased Subsidiary has any Equity Interest (other than an Excluded Entity);

(iv) all Cure Amounts under each Assumable Executory Contract that becomes a Purchased Contract;

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case, other than (1) Liabilities of the type described in

Section 2.3(b)(iv), **Section 2.3(b)(vi)** and **Section 2.3(b)(ix)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(vi) all Transfer Taxes payable in connection with the sale, transfer, assignment, conveyance and delivery of the Purchased Assets pursuant to the terms of this Agreement;

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

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(x) all Liabilities of Sellers arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Seller, except for Retained Workers' Compensation Claims;

(xi) all Liabilities arising out of, relating to, in respect of, or in connection with the use, ownership or sale of the Purchased Assets after the Closing;

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** and (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(xiii) (A) all Employment-Related Obligations and (B) Liabilities under any Assumed Plan, in each case, relating to any Employee that is or was covered by the UAW Collective Bargaining Agreement, except for Retained Workers Compensation Claims;

(xiv) all Liabilities of Sellers underlying any construction liens that constitute Permitted Encumbrances with respect to Transferred Real Property; and

(xv) those other Liabilities identified on Section 2.3(a)(xv) of the Sellers' Disclosure Schedule.

(b) Each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability of any Seller, whether occurring or accruing before, at or after the Closing, other than the Assumed Liabilities. In furtherance and not in limitation of the foregoing, and in all cases with the exception of the Assumed Liabilities, neither Purchaser nor any of its Affiliates shall assume, or be deemed to have assumed, any Indebtedness, Claim or other Liability of any Seller or any predecessor, Subsidiary or Affiliate of any Seller whatsoever, whether occurring or accruing before, at or after the Closing, including the following (collectively, the "Retained Liabilities"):

(i) all Liabilities arising out of, relating to, in respect of or in connection with any Indebtedness of Sellers (other than Intercompany Obligations and the Purchaser Assumed Debt), including those items identified on Section 2.3(b)(i) of the Sellers' Disclosure Schedule;

(ii) all Intercompany Obligations owed or due, directly or indirectly, by Sellers to (A) another Seller, (B) any Excluded Subsidiary or (C) any joint venture or other entity in which a Seller or an Excluded Subsidiary has an Equity Interest (other than a Transferred Entity);

(iii) all Liabilities arising out of, relating to, in respect of or in connection with the Excluded Assets, other than Liabilities otherwise retained in this **Section 2.3(b)**;

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third-party Claims related to Hazardous Materials that were or are located at or that migrated or may migrate from any Transferred Real Property, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A),

(B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(v) except for Taxes assumed in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, all Liabilities with respect to any (A) Taxes arising in connection with Sellers' business, the Purchased Assets or the Assumed Liabilities and that are attributable to a Pre-Closing Tax Period (including any Taxes incurred in connection with the sale of the Purchased Assets, other than all Transfer Taxes), (B) other Taxes of any Seller and (C) Taxes of any Seller Group, including any Liability of any Seller or any Seller Group member for Taxes arising as a result of being or ceasing to be a member of any Seller Group (it being understood, for the avoidance of doubt, that no provision of this Agreement shall cause Sellers to be liable for Taxes of any Purchased Subsidiary for which Sellers would not be liable absent this Agreement);

(vi) all Liabilities for (A) costs and expenses relating to the preparation, negotiation and entry into this Agreement and the Ancillary Agreements (and the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which, for the avoidance of doubt, shall not include any Transfer Taxes), including Advisory Fees, (B) administrative fees, professional fees and all other expenses under the Bankruptcy Code and (C) all other fees and expenses associated with the administration of the Bankruptcy Cases;

(vii) all Employment-Related Obligations not otherwise assumed in **Section 2.3(a)** and **Section 6.17**, including those arising out of, relating to, in respect of or in connection with the employment, potential employment or termination of employment of any individual (other than any Employee that is or was covered by the UAW Collective Bargaining Agreement) (A) prior to or at the Closing (including any severance policy, plan or program that exists or arises, or may be deemed to exist or arise, as a result of, or in connection with, the transactions contemplated by this Agreement) or (B) who is not a Transferred Employee arising after the Closing and with respect to both clauses (A) and (B) above, including any Liability arising out of, relating to, in respect of or in connection with any Collective Bargaining Agreement (other than the UAW Collective Bargaining Agreement);

(viii) all Liabilities arising out of, relating to, in respect of or in connection with Claims for infringement or misappropriation of third party intellectual property rights;

(ix) all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date;

(x) all Liabilities to third parties for death, personal injury, other injury to Persons or damage to property, in each case, arising out of asbestos exposure;

(xi) all Liabilities to third parties for Claims based upon Contract, tort or any other basis;

(xii) all workers' compensation Claims with respect to Employees residing in or employed in, as the case may be as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(xiii) all Liabilities arising out of, relating to, in respect of or in connection with any Retained Plan;

(xiv) all Liabilities arising out of, relating to, in respect of or in connection with any Assumed Plan or Purchased Subsidiaries Employee Benefit Plan, but only to the extent such Liabilities result from the failure of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan to comply in all respects with TARP or such Liability related to any changes to or from the administration of such Assumed Plan or Purchased Subsidiaries Employee Benefit Plan prior to the Closing Date;

(xv) the Settlement Agreement, except as provided with respect to Liabilities under Section 5A of the UAW Retiree Settlement Agreement; and

(xvi) all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing by or attributable to Sellers.

Section 2.4 Non-Assignability.

(a) If any Contract, Transferred Equity Interest (or any interest therein), Permit or other asset, which by the terms of this Agreement, is intended to be included in the Purchased Assets is determined not capable of being assigned or transferred (whether pursuant to Sections 363 or 365 of the Bankruptcy Code) to Purchaser at the Closing without the consent of another party thereto, the issuer thereof or any third party (including a Governmental Authority) ("Non-Assignable Assets"), this Agreement shall not constitute an assignment thereof, or an attempted assignment thereof, unless and until any such consent is obtained. Subject to **Section 6.3**, Sellers shall use reasonable best efforts, and Purchaser shall use reasonable best efforts to cooperate with Sellers, to obtain the consents necessary to assign to Purchaser the Non-Assignable Assets before, at or after the Closing; provided, however, that neither Sellers nor Purchaser shall be required to make any expenditure, incur any Liability, agree to any modification to any Contract or forego or alter any rights in connection with such efforts.

(b) To the extent that the consents referred to in **Section 2.4(a)** are not obtained by Sellers, except as otherwise provided in the Ancillary Documents to which one or more Sellers is a party, Sellers' sole responsibility with respect to such Non-Assignable Assets shall be to use reasonable best efforts, at no cost to Sellers, to (i) provide to Purchaser the benefits of any Non-Assignable Assets; (ii) cooperate in any

reasonable and lawful arrangement designed to provide the benefits of any Non-Assignable Assets to Purchaser without incurring any financial obligation to Purchaser; and (iii) enforce for the account of Purchaser and at the cost of Purchaser any rights of Sellers arising from any Non-Assignable Asset against such party or parties thereto; provided, however, that any such efforts described in clauses (i) through (iii) above shall be made only with the consent, and at the direction, of Purchaser. Without limiting the generality of the foregoing, with respect to any Non-Assignable Asset that is a Contract of Leased Real Property for which a consent is not obtained on or prior to the Closing Date, Purchaser shall enter into a sublease containing the same terms and conditions as such lease (unless such lease by its terms prohibits such subleasing arrangement), and entry into and compliance with such sublease shall satisfy the obligations of the Parties under this **Section 2.4(b)** until such consent is obtained.

(c) If Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall perform, on behalf of the applicable Seller, for the benefit of the issuer thereof or the other party or parties thereto, the obligations (including payment obligations) of the applicable Seller thereunder or in connection therewith arising from and after the Closing Date and if Purchaser fails to perform to the extent required herein, Sellers, without waiving any rights or remedies that they may have under this Agreement or applicable Laws, may (i) suspend their performance under **Section 2.4(b)** in respect of the Non-Assignable Asset that is the subject of such failure to perform unless and until such situation is remedied, or (ii) perform at Purchaser's sole cost and expense, in which case, Purchaser shall reimburse Sellers' costs and expenses of such performance immediately upon receipt of an invoice therefor. To the extent that Purchaser is provided the benefits of any Non-Assignable Asset pursuant to **Section 2.4(b)**, Purchaser shall indemnify, defend and hold Sellers harmless from and against any and all Liabilities relating to such Non-Assignable Asset and arising from and after the Closing Date (other than such Damages that have resulted from the gross negligence or willful misconduct of Sellers).

(d) For the avoidance of doubt, the inability of any Contract, Transferred Equity Interest (or any other interest therein), Permit or other asset, which by the terms of this Agreement is intended to be included in the Purchased Assets to be assigned or transferred to Purchaser at the Closing shall not (i) give rise to a basis for termination of this Agreement pursuant to **ARTICLE VIII** or (ii) give rise to any right to any adjustment to the Purchase Price.

ARTICLE III
CLOSING; PURCHASE PRICE

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on the date that falls at least three (3) Business Days following the satisfaction and/or waiver of all conditions to the Closing set forth in **ARTICLE VII** (other than any of such conditions that by its nature is to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or on such other date as the Parties mutually agree, at the offices of Jenner & Block LLP, 919 Third Avenue, New York City, New York 10022-3908, or at such other place or such other date as the Parties may agree in

writing. The date on which the Closing actually occurs shall be referred to as the "Closing Date," and except as otherwise expressly provided herein, the Closing shall for all purposes be deemed effective as of 9:00 a.m., New York City time, on the Closing Date.

Section 3.2 Purchase Price.

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,022,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

(b) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (i) offset, pursuant to Section 363(k) of the Bankruptcy Code, the UST Credit Bid Amount against Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility; (ii) transfer to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the UST Warrant; and (iii) issue to Parent, in accordance with the instructions provided by Parent to Purchaser prior to the Closing, the Parent Shares and the Parent Warrants.

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) days of entry of the Claims Estimate Order, issue 10,000,000 additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price.

(ii) The number of Adjustment Shares shall be adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization,

merger, consolidation, reorganization or similar transaction with respect to the Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares.

(iii) At the Closing, Purchaser shall have authorized and, thereafter, shall reserve for issuance the Adjustment Shares that may be issued hereunder.

Section 3.3 Allocation. Following the Closing, Purchaser shall prepare and deliver to Sellers an allocation of the aggregate consideration among Sellers and, for any transactions contemplated by this Agreement that do not constitute an Agreed G Transaction pursuant to **Section 6.16**, Purchaser shall also prepare and deliver to the applicable Seller a proposed allocation of the Purchase Price and other consideration paid in exchange for the Purchased Assets, prepared in accordance with Section 1060, and if applicable, Section 338, of the Tax Code (the "Allocation"). The applicable Seller shall have thirty (30) days after the delivery of the Allocation to review and consent to the Allocation in writing, which consent shall not be unreasonably withheld, conditioned or delayed. If the applicable Seller consents to the Allocation, such Seller and Purchaser shall use such Allocation to prepare and file in a timely manner all appropriate Tax filings, including the preparation and filing of all applicable forms in accordance with applicable Law, including Forms 8594 and 8023, if applicable, with their respective Tax Returns for the taxable year that includes the Closing Date and shall take no position in any Tax Return that is inconsistent with such Allocation; provided, however, that nothing contained herein shall prevent the applicable Seller and Purchaser from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation, and neither the applicable Seller nor Purchaser shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation. If the applicable Seller does not consent to such Allocation, the applicable Seller shall notify Purchaser in writing of such disagreement within such thirty (30) day period, and thereafter, the applicable Seller shall attempt in good faith to promptly resolve any such disagreement. If the Parties cannot resolve a disagreement under this **Section 3.3**, such disagreement shall be resolved by an independent accounting firm chosen by Purchaser and reasonably acceptable to the applicable Seller, and such resolution shall be final and binding on the Parties. The fees and expenses of such accounting firm shall be borne equally by Purchaser, on the one hand, and the applicable Seller, on the other hand. The applicable Seller shall provide Purchaser, and Purchaser shall provide the applicable Seller, with a copy of any information described above required to be furnished to any Taxing Authority in connection with the transactions contemplated herein.

Section 3.4 Prorations.

(a) The following prorations relating to the Purchased Assets shall be made:

(i) Except as provided in **Section 2.3(a)(v)** and **Section 2.3(a)(vi)**, in the case of Taxes with respect to a Straddle Period, for purposes of Retained Liabilities, the portion of any such Tax that is allocable to Sellers with respect to any Purchased Asset shall be:

(A) in the case of Taxes that are either (1) based upon or related to income or receipts, or (2) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), other than Transfer Taxes, equal to the amount that would be payable if the taxable period ended on the Closing Date; and

(B) in the case of Taxes imposed on a periodic basis, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this clause (i) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the applicable Seller, Seller Group member, or Seller Subsidiary.

(ii) All charges for water, wastewater treatment, sewers, electricity, fuel, gas, telephone, garbage and other utilities relating to the Transferred Real Property shall be prorated as of the Closing Date, with Sellers being liable to the extent such items relate to the Pre-Closing Tax Period, and Purchaser being liable to the extent such items relate to the Post-Closing Tax Period.

(b) If any of the foregoing proration amounts cannot be determined as of the Closing Date due to final invoices not being issued as of the Closing Date, Purchasers and Sellers shall prorate such items as and when the actual invoices are issued to the appropriate Party. The Party owing amounts to the other by means of such prorations shall pay the same within thirty (30) days after delivery of a written request by the paying Party.

Section 3.5 Post-Closing True-up of Certain Accounts.

(a) Sellers shall promptly reimburse Purchaser in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including wire and similar transfers of funds, written or initiated by Sellers prior to the Closing in respect of any obligations that would have constituted Retained Liabilities at the Closing, and that clear or settle in accounts maintained by Purchaser (or its Affiliates) at or following the Closing.

(b) Purchaser shall promptly reimburse Sellers in U.S. Dollars for the aggregate amount of all checks, drafts and similar instruments of disbursement, including

wire and similar transfers of funds, written or initiated by Sellers following the Closing in respect of any obligations that would have constituted Assumed Liabilities at the Closing, and that clear or settle in accounts maintained by Sellers (or their Affiliates) at or following the Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the Parent SEC Documents or in the Sellers' Disclosure Schedule, each Seller represents and warrants severally, and not jointly, to Purchaser as follows:

Section 4.1 Organization and Good Standing. Each Seller and each Purchased Subsidiary is duly organized and validly existing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Sellers as a result of having filed the Bankruptcy Cases, each Seller and each Purchased Subsidiary has all requisite corporate, limited liability company, partnership or similar power, as the case may be, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Seller and each Purchased Subsidiary is duly qualified or licensed or admitted to do business, and is in good standing in (where such concept is recognized under applicable Law), the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, in each case, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Sellers have made available to Purchaser prior to the execution of this Agreement true and complete copies of Sellers' Organizational Documents, in each case, as in effect on the date of this Agreement.

Section 4.2 Authorization; Enforceability. Subject to the entry and effectiveness of the Sale Approval Order, each Seller has the requisite corporate or limited liability company power and authority, as the case may be, to (a) execute and deliver this Agreement and the Ancillary Agreements to which such Seller is a party; (b) perform its obligations hereunder and thereunder; and (c) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party. Subject to the entry and effectiveness of the Sale Approval Order, this Agreement constitutes, and each Ancillary Agreement, when duly executed and delivered by each Seller that is a party thereto, shall constitute, a valid and legally binding obligation of such Seller (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of Purchaser), enforceable against such Seller in accordance with its respective terms and conditions, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.3 Noncontravention; Consents.

(a) Subject, in the case of clauses (i), (iii) and (iv), to the entry and effectiveness of the Sale Approval Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by such Seller of the

transactions contemplated hereby and thereby, do not (i) violate any Law to which the Purchased Assets are subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of such Seller; (iii) result in a material breach or constitute a material default under, or create in any Person the right to terminate, cancel or accelerate any material obligation of such Seller pursuant to any material Purchased Contract (including any material License); or (iv) result in the creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets, except for any of the foregoing in the case of clauses (i), (iii) and (iv), that would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry and effectiveness of the Sale Approval Order, no consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority (other than the Bankruptcy Court) is required by any Seller for the consummation by each Seller of the transactions contemplated by this Agreement or by the Ancillary Agreements to which such Seller is a party or the compliance by such Seller with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority, the failure of which to be received or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Subsidiaries. Section 4.4 of the Sellers' Disclosure Schedule identifies each Purchased Subsidiary and the jurisdiction of organization thereof. There are no Equity Interests in any Purchased Subsidiary issued, reserved for issuance or outstanding. All of the outstanding shares of capital stock, if applicable, of each Purchased Subsidiary have been duly authorized, validly issued, are fully paid and nonassessable and are owned, directly or indirectly, by Sellers, free and clear of all Encumbrances other than Permitted Encumbrances. Sellers, directly or indirectly, have good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries and, upon delivery by Sellers to Purchaser of the outstanding Equity Interests of the Purchased Subsidiaries (either directly or indirectly) at the Closing, good and valid title to the outstanding Equity Interests of the Purchased Subsidiaries will pass to Purchaser (or, with respect to any Purchased Subsidiary that is not a direct Subsidiary of a Seller, the Purchased Subsidiary with regard to which it is a Subsidiary will continue to have good and valid title to such outstanding Equity Interests). None of the outstanding Equity Interests in the Purchased Subsidiaries has been conveyed in violation of, and none of the outstanding Equity Interests in the Purchased Subsidiaries has been issued in violation of (a) any preemptive or subscription rights, rights of first offer or first refusal or similar rights or (b) any voting trust, proxy or other Contract (including options or rights of first offer or first refusal) with respect to the voting, purchase, sale or other disposition thereof.

Section 4.5 Reports and Financial Statements; Internal Controls.

(a) (i) Parent has filed or furnished, or will file or furnish, as applicable, all forms, documents, schedules and reports, together with any amendments required to be made with respect thereto, required to be filed or furnished with the SEC from April 1, 2007 until the Closing (the "Parent SEC Documents"), and (ii) as of their respective

filing dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied or will comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Parent SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(b) (i) The consolidated financial statements of Parent included in the Parent SEC Documents (including all related notes and schedules, where applicable) fairly present or will fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and (ii) the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), subject, in the case of Parent SEC Documents filed or furnished during the period beginning on the date of the Original Agreement and ending on the Closing Date, to any modification by Parent of its reporting obligations under Section 12 or Section 15(d) of the Exchange Act as a result of the filing of the Bankruptcy Cases.

(c) Parent maintains a system of internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for inclusion in the Parent SEC Documents in accordance with GAAP and maintains records that (i) in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and its consolidated Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are made only in accordance with appropriate authorizations and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets. There are no (A) material weaknesses in the design or operation of the internal controls of Parent or (B) to the Knowledge of Sellers, any fraud, whether or not material, that involves management or other employees of Parent or any Purchased Subsidiary who have a significant role in internal control.

Section 4.6 Absence of Certain Changes and Events. From January 1, 2009 through the date hereof, except as otherwise contemplated, required or permitted by this Agreement, there has not been:

(a) (i) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value) with

respect to any Equity Interests in any Seller or any Key Subsidiary or any repurchase for value of any Equity Interests or rights of any Seller or any Key Subsidiary (except for dividends and distributions among its Subsidiaries) or (ii) any split, combination or reclassification of any Equity Interests in Sellers or any issuance or the authorization of any issuance of any other Equity Interests in respect of, in lieu of or in substitution for Equity Interests of Sellers;

(b) other than as is required by the terms of the Parent Employee Benefit Plans and Policies, the Settlement Agreement, the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement or as may be required by applicable Law, in each case, as may be permitted by TARP or under any enhanced restrictions on executive compensation agreed to by Parent and Sponsor, any (i) grant to any Seller Key Personnel of any increase in compensation, except increases required under employment Contracts in effect as of January 1, 2009, or as a result of a promotion to a position of additional responsibility, (ii) grant to any Seller Key Personnel of any increase in retention, change in control, severance or termination compensation or benefits, except as required under any employment Contracts in effect as of January 1, 2009, (iii) other than in the Ordinary Course of Business, adoption, termination of, entry into or amendment or modification of, in a material manner, any Benefit Plan, (iv) adoption, termination of, entry into or amendment or modification of, in a material manner, any employment, retention, change in control, severance or termination Contract with any Seller Key Personnel or (v) entry into or amendment, modification or termination of any Collective Bargaining Agreement or other Contract with any Union of any Seller or Purchased Subsidiary;

(c) any material change in accounting methods, principles or practices by any Seller, Purchased Subsidiary or Seller Group member or any material joint venture to which any Seller or Purchased Subsidiary is a party, in each case, materially affecting the consolidated assets or Liabilities of Parent, except to the extent required by a change in GAAP or applicable Law, including Tax Laws;

(d) any sale, transfer, pledge or other disposition by any Seller or any Purchased Subsidiary of any portion of its assets or properties not in the Ordinary Course of Business and with a sale price or fair value in excess of $100,000,000;

(e) aggregate capital expenditures by any Seller or any Purchased Subsidiary in excess of $100,000,000 in a single project or group of related projects or capital expenditures in excess of $100,000,000 in the aggregate;

(f) any acquisition by any Seller or any Purchased Subsidiary (including by merger, consolidation, combination or acquisition of any Equity Interests or assets) of any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeded $100,000,000;

(g) any discharge or satisfaction of any Indebtedness by any Seller or any Purchased Subsidiary in excess of $100,000,000, other than the discharge or satisfaction of any Indebtedness when due in accordance with its terms;

(h) any alteration, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Seller or any Key Subsidiary or any material joint venture to which any Seller or any Key Subsidiary is a party, or the adoption or alteration of a plan with respect to any of the foregoing;

(i) any amendment or modification to the material adverse detriment of any Key Subsidiary of any material Affiliate Contract or Seller Material Contract, or termination of any material Affiliate Contract or Seller Material Contract to the material adverse detriment of any Seller or any Key Subsidiary, in each case, other than in the Ordinary Course of Business;

(j) any event, development or circumstance involving, or any change in the financial condition, properties, assets, liabilities, business, or results of operations of Sellers or any circumstance, occurrence or development (including any adverse change with respect to any circumstance, occurrence or development existing on or prior to the end of the most recent fiscal year end) of Sellers that has had or would reasonably be expected to have a Material Adverse Effect; or

(k) any commitment by any Seller, any Key Subsidiary (in the case of clauses (a), (g) and (h) above) or any Purchased Subsidiary (in the case of clauses (b) through (f) and clauses (h) and (j) above) to do any of the foregoing.

Section 4.7 Title to and Sufficiency of Assets.

(a) Subject to the entry and effectiveness of the Sale Approval Order, at the Closing, Sellers will obtain good and marketable title to, or a valid and enforceable right by Contract to use, the Purchased Assets, which shall be transferred to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The tangible Purchased Assets of each Seller are in normal operating condition and repair, subject to ordinary wear and tear, and sufficient for the operation of such Seller's business as currently conducted, except where such instances of noncompliance with the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance with and is not in default under or in violation of any applicable Law, except where such non-compliance, default or violation would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained in this **Section 4.8(a)**, no representation or warranty shall be deemed to be made in this **Section 4.8(a)** in respect of

the matters referenced in **Section 4.5, Section 4.9, Section 4.10, Section 4.11** or **Section 4.13**, each of which matters is addressed by such other Sections of this Agreement.

(b) (i) Each Seller has all Permits necessary for such Seller to own, lease and operate the Purchased Assets and (ii) each Purchased Subsidiary has all Permits necessary for such entity to own, lease and operate its properties and assets, except in each case, where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. All such Permits are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect.

Section 4.9 Environmental Laws. Except as would not reasonably be expected to have a Material Adverse Effect, to the Knowledge of Sellers, (a) each Seller and each Purchased Subsidiary has conducted its business on the Transferred Real Property in compliance with all applicable Environmental Laws; (b) none of the Transferred Real Property currently contains any Hazardous Materials, which could reasonably be expected to give rise to an undisclosed Liability under applicable Environmental Laws; (c) as of the date of this Agreement, no Seller or Purchased Subsidiary has received any currently unresolved written notices, demand letters or written requests for information from any Governmental Authority indicating that such entity may be in violation of any Environmental Law in connection with the ownership or operation of the Transferred Real Property; and (d) since April 1, 2007, no Hazardous Materials have been transported in violation of any applicable Environmental Law, or in a manner reasonably foreseen to give rise to any Liability under any Environmental Law, from any Transferred Real Property as a result of any activity of any Seller or Purchased Subsidiary. Except as provided in **Section 4.8(b)** with respect to Permits under Environmental Laws, Purchaser agrees and understands that no representation or warranty is made in respect of environmental matters in any Section of this Agreement other than this **Section 4.9**.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10 of the Sellers' Disclosure Schedule sets forth all material Parent Employee Benefit Plans and Policies and Purchased Subsidiaries Employee Benefit Plans (collectively, the "Benefit Plans"). Sellers have made available, upon reasonable request, to Purchaser true, complete and correct copies of (i) each material Benefit Plan, (ii) the three (3) most recent annual reports on Form 5500 (including all schedules, auditor's reports and attachments thereto) filed with the IRS with respect to each such Benefit Plan (if any such report was required by applicable Law), (iii) the most recent actuarial or other financial report prepared with respect to such Benefit Plan, if any, (iv) each trust agreement and insurance or annuity Contract or other funding or financing arrangement relating to such Benefit Plan and (v) to the extent not subject to confidentiality restrictions, any material written communications received by Sellers or any Subsidiaries of Sellers from any Governmental Authority relating to a Benefit Plan, including any communication from the Pension Benefit Guaranty Corporation (the "PBGC"), in respect of any Benefit Plan, subject to Title IV of ERISA.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Benefit Plan has been administered in accordance with its terms, (ii) each

of Sellers, any of their Subsidiaries and each Benefit Plan is in compliance with the applicable provisions of ERISA, the Tax Code, all other applicable Laws (including Section 409A of the Tax Code, TARP or under any enhanced restrictions on executive compensation agreed to by Sellers with Sponsor) and the terms of all applicable Collective Bargaining Agreements, (iii) there are no (A) investigations by any Governmental Authority, (B) termination proceedings or other Claims (except routine Claims for benefits payable under any Benefit Plans) or (C) Claims, in each case, against or involving any Benefit Plan or asserting any rights to or Claims for benefits under any Benefit Plan that could give rise to any Liability, and there are not any facts or circumstances that could give rise to any Liability in the event of any such Claim and (iv) each Benefit Plan that is intended to be a Tax-qualified plan under Section 401(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is qualified and any trust established in connection with any Benefit Plan that is intended to be exempt from taxation under Section 501(a) of the Tax Code (or similar provisions for Tax-registered or Tax-favored plans of non-United States jurisdictions) is exempt from United States federal income Taxes under Section 501(a) of the Tax Code (or similar provisions under non-United States law). To the Knowledge of Sellers, no circumstance and no fact or event exists that would be reasonably expected to adversely affect the qualified status of any Benefit Plan.

(c) None of the Parent Employee Benefit Plans and Policies or any material Purchased Subsidiaries Employee Benefit Plans that is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) has failed to satisfy, as applicable, the minimum funding standards (as described in Section 302 of ERISA or Section 412 of the Tax Code), whether or not waived, nor has any waiver of the minimum funding standards of Section 302 of ERISA or Section 412 of the Tax Code been requested.

(d) No Seller or any ERISA Affiliate of any Seller (including any Purchased Subsidiary) (i) has any actual or contingent Liability (A) under any employee benefit plan subject to Title IV of ERISA other than the Benefit Plans (except for contributions not yet due), (B) to the PBGC (except for the payment of premiums not yet due), which Liability, in each case, has not been fully paid as of the date hereof, or, if applicable, which has not been accrued in accordance with GAAP or (C) under any "multiemployer plan" (as defined in Section 3(37) of ERISA), or (ii) will incur withdrawal Liability under Title IV of ERISA as a result of the consummation of the transactions contemplated hereby, except for Liabilities with respect to any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(e) Neither the execution of this Agreement or any Ancillary Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event, including termination of employment) will entitle any member of the board of directors of Parent or any Applicable Employee who is an officer or member of senior management of Parent to any increase in compensation or benefits, any grant of severance, retention, change in control or other similar compensation or benefits, any acceleration of the time of payment or vesting of any compensation or benefits (but not including, for this purpose, any retention, stay bonus or other incentive plan, program, arrangement that is a Retained Plan) or will require the securing or funding of any

compensation or benefits or limit the right of Sellers, any Subsidiary of Sellers or Purchaser or any Affiliates of Purchaser to amend, modify or terminate any Benefit Plan. Any new grant of severance, retention, change in control or other similar compensation or benefits to any Applicable Employee, and any payout to any Transferred Employee under any such existing arrangements, that would otherwise occur as a result of the execution of this Agreement or any Ancillary Agreement (alone or in conjunction with any other event, including termination of employment), has been waived by such Applicable Employee or otherwise cancelled.

(f) No amount or other entitlement currently in effect that could be received (whether in cash or property or the vesting of property) as a result of the actions contemplated by this Agreement and the Ancillary Agreements (alone or in combination with any other event) by any Person who is a "disqualified individual" (as defined in Treasury Regulation Section 1.280G-1) (each, a "Disqualified Individual") with respect to Sellers would be an "excess parachute payment" (as defined in Section 280G(b)(1) of the Tax Code). No Disqualified Individual or Applicable Employee is entitled to receive any additional payment (e.g., any Tax gross-up or any other payment) from Sellers or any Subsidiaries of Sellers in the event that the additional or excise Tax required by Section 409A or 4999 of the Tax Code, respectively is imposed on such individual.

(g) All individuals covered by the UAW Collective Bargaining Agreement are either Applicable Employees or employed by a Purchased Subsidiary.

(h) Section 4.10(h) of the Sellers' Disclosure Schedule lists all non-standard individual agreements currently in effect providing for compensation, benefits and perquisites for any current and former officer, director or top twenty-five (25) most highly paid employee of Parent and any other such material non-standard individual agreements with non-top twenty-five (25) employees.

Section 4.11 Labor Matters. There is not any labor strike, work stoppage or lockout pending, or, to the Knowledge of Sellers, threatened in writing against or affecting any Seller or any Purchased Subsidiary. Except as would not reasonably be expected to have a Material Adverse Effect: (a) none of Sellers or any Purchased Subsidiary is engaged in any material unfair labor practice; (b) there are not any unfair labor practice charges or complaints against Sellers or any Purchased Subsidiary pending, or, to the Knowledge of Sellers, threatened, before the National Labor Relations Board; (c) there are not any pending or, to the Knowledge of Sellers, threatened in writing, union grievances against Sellers or any Purchased Subsidiary as to which there is a reasonable possibility of adverse determination; (d) there are not any pending, or, to the Knowledge of Sellers, threatened in writing, charges against Sellers or any Purchased Subsidiary or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (e) no union organizational campaign is in progress with respect to the employees of any Seller or any Purchased Subsidiary and no question concerning representation of such employees exists; and (f) no Seller nor any Purchased Subsidiary has received written communication during the past five (5) years of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation of or

affecting Sellers or any Subsidiary of Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

Section 4.12 Investigations; Litigation. (a) To the Knowledge of Sellers, there is no investigation or review pending by any Governmental Authority with respect to any Seller that would reasonably be expected to have a Material Adverse Effect, and (b) there are no actions, suits, inquiries or proceedings, or to the Knowledge of Sellers, investigations, pending against any Seller, or relating to any of the Transferred Real Property, at law or in equity before, and there are no Orders of or before, any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Tax Matters. Except as would not reasonably be expected to have a Material Adverse Effect, (a) all Tax Returns required to have been filed by, with respect to or on behalf of any Seller, Seller Group member or Purchased Subsidiary have been timely filed (taking into account any extension of time to file granted or obtained) and are correct and complete in all respects, (b) all amounts of Tax required to be paid with respect to any Seller, Seller Group member or Purchased Subsidiary (whether or not shown on any Tax Return) have been timely paid or are being contested in good faith by appropriate proceedings and have been reserved for in accordance with GAAP in Parent's consolidated audited financial statements, (c) no deficiency for any amount of Tax has been asserted or assessed by a Taxing Authority in writing relating to any Seller, Seller Group member or Purchased Subsidiary that has not been satisfied by payment, settled or withdrawn, (d) there are no audits, Claims or controversies currently asserted or threatened in writing with respect to any Seller, Seller Group member or Purchased Subsidiary in respect of any amount of Tax or failure to file any Tax Return, (e) no Seller, Seller Group member or Purchased Subsidiary has agreed to any extension or waiver of the statute of limitations applicable to any Tax Return, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired, (f) no Seller, Seller Group member or Purchased Subsidiary is a party to or the subject of any ruling requests, private letter rulings, closing agreements, settlement agreements or similar agreements with any Taxing Authority for any periods for which the statute of limitations has not yet run, (g) no Seller, Seller Group member or Purchased Subsidiary (A) has any Liability for Taxes of any Person (other than any Purchased Subsidiary), including as a transferee or successor, or pursuant to any contractual obligation (other than pursuant to any commercial Contract not primarily related to Tax), or (B) is a party to or bound by any Tax sharing agreement, Tax allocation agreement or Tax indemnity agreement (in every case, other than this Agreement and those Tax sharing, Tax allocation or Tax indemnity agreements that will be terminated prior to Closing and with respect to which no post-Closing Liabilities will exist), (h) each of the Purchased Subsidiaries and each Seller and Seller Group member has withheld or collected all Taxes required to have been withheld or collected and, to the extent required, has paid such Taxes to the proper Taxing Authority, (i) no Seller, Seller Group member or Purchased Subsidiary will be required to make any adjustments in taxable income for any Tax period (or portion thereof) ending after the Closing Date, including pursuant to Section 481(a) or 263A of the Tax Code or any similar provision of foreign, provincial, state, local or other Law as a result of transactions or events occurring, or accounting methods employed, prior to the Closing, nor is any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to any Seller, Seller Group member or Purchased Subsidiary, (j) the Assumed Liabilities were incurred through the

Ordinary Course of Business, (k) there are no Tax Encumbrances on any of the Purchased Assets or the assets of any Purchased Subsidiary (other than Permitted Encumbrances for which appropriate reserves have been established (and to the extent that such liens relate to a period ending on or before December 31, 2008, the amount of any such Liability is accrued or reserved for as a Liability in accordance with GAAP in the audited consolidated balance sheet of Sellers at December 31, 2008)), (l) none of the Purchased Subsidiaries or Sellers has been a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify under Section 355(a) of the Tax Code, (m) none of the Purchased Subsidiaries, Sellers or Seller Group members has participated in any "listed transactions" or "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4, (n) there are no unpaid Taxes with respect to any Seller, Seller Group member or Purchased Asset for which Purchaser will have liability as a transferee or successor and (o) the most recent financial statements contained in the Parent SEC Documents reflect an adequate reserve for all Taxes payable by Sellers, the Purchased Subsidiaries and the members of all Seller Groups for all taxable periods and portions thereof through the date of such financial statements.

Section 4.14 Intellectual Property and IT Systems.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and each Purchased Subsidiary owns, controls, or otherwise possesses sufficient rights to use, free and clear of all Encumbrances (other than Permitted Encumbrances) all Intellectual Property necessary for the conduct of its business in substantially the same manner as conducted as of the date hereof; and (ii) all Intellectual Property owned by Sellers that is necessary for the conduct of the business of Sellers and each Purchased Subsidiary as conducted as of the date hereof is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, has not been abandoned or allowed to lapse, in whole or in part, and to the Knowledge of Sellers, is valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, all necessary registration, maintenance and renewal fees in connection with the Intellectual Property owned by Sellers have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Intellectual Property.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, no Intellectual Property owned by Sellers is the subject of any licensing or franchising Contract that prohibits or materially restricts the conduct of business as presently conducted by any Seller or Purchased Subsidiary or the transfer of such Intellectual Property.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the Intellectual Property or the conduct of Sellers' and the Purchased Subsidiaries' businesses does not infringe, misappropriate, dilute, or otherwise violate or conflict with the trademarks, patents, copyrights, inventions, trade secrets, proprietary

information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any Person; (ii) to the Knowledge of Sellers, no other Person is now infringing or in conflict with any Intellectual Property owned by Sellers or Sellers' rights thereunder; and (iii) no Seller or any Purchased Subsidiary has received any written notice that it is violating or has violated the trademarks, patents, copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or any other intellectual property rights of any third party.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no holding, decision or judgment has been rendered by any Governmental Authority against any Seller, which would limit, cancel or invalidate any Intellectual Property owned by Sellers.

(f) No action or proceeding is pending, or to the Knowledge of Sellers, threatened, on the date hereof that (i) seeks to limit, cancel or invalidate any Intellectual Property owned by Sellers or such Sellers' ownership interest therein; and (ii) if adversely determined, would reasonably be expected to have a Material Adverse Effect.

(g) Except as would not reasonably be expected to have a Material Adverse Effect, Sellers and the Purchased Subsidiaries have taken reasonable actions to (i) maintain, enforce and police their Intellectual Property; and (ii) protect their material Software, websites and other systems (and the information therein) from unauthorized access or use.

(h) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Seller and Purchased Subsidiary has taken reasonable steps to protect its rights in, and confidentiality of, all the Trade Secrets, and any other confidential information owned by such Seller or Purchased Subsidiary; and (ii) to the Knowledge of Sellers, such Trade Secrets have not been disclosed by Sellers to any Person except pursuant to a valid and appropriate non-disclosure, license or any other appropriate Contract that has not been breached.

(i) Except as would not reasonably be expected to have a Material Adverse Effect, there has not been any malfunction with respect to any of the Software, electronic data processing, data communication lines, telecommunication lines, firmware, hardware, Internet websites or other information technology equipment of any Seller or Purchased Subsidiary since April 1, 2007, which has not been remedied or replaced in all respects.

(j) Except as would not reasonably be expected to have a Material Adverse Effect: (i) the consummation of the transactions contemplated by this Agreement will not cause to be provided or licensed to any third Person, or give rise to any rights of any third Person with respect to, any source code that is part of the Software owned by Sellers; and (ii) Sellers have implemented reasonable disaster recovery and back-up plans with respect to the Software.

Section 4.15 Real Property. Each Seller owns and has valid title to the Transferred Real Property that is Owned Real Property owned by it and has valid leasehold or

subleasehold interests, as the case may be, in all of the Transferred Real Property that is Leased Real Property leased or subleased by it, in each case, free and clear of all Encumbrances, other than Permitted Encumbrances. Each of Sellers and the Purchased Subsidiaries has complied with the terms of each lease, sublease, license or other Contract relating to the Transferred Real Property to which it is a party, except any failure to comply that would not reasonably be expected to have a Material Adverse Effect.

Section 4.16 Material Contracts.

(a) Except for this Agreement, the Parent Employee Benefit Plans and Policies, except as filed with, or disclosed or incorporated in, the Parent SEC Documents or except as set forth on Section 4.16 of the Sellers' Disclosure Schedule, as of the date hereof, no Seller is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC); (ii) any non-compete or exclusivity agreement that materially restricts the operation of Sellers' core business; (iii) any asset purchase agreement, stock purchase agreement or other agreement entered into within the past six years governing a material joint venture or the acquisition or disposition of assets or other property where the consideration paid or received for such assets or other property exceeded $500,000,000 (whether in cash, stock or otherwise); (iv) any agreement or series of related agreements with any supplier of Sellers who directly support the production of vehicles, which provided collectively for payments by Sellers to such supplier in excess of $250,000,000 during the 12-month period ended December 31, 2008; (v) any agreement or series of related agreements with any supplier of Sellers who does not directly support the production of vehicles, which, provided collectively for payments by Sellers to such supplier in excess of $100,000,000 during the 12-month period ended April 30, 2009; (vi) any Contract relating to the lease or purchase of aircraft; (vii) any settlement agreement where a Seller has paid or may be required to pay an amount in excess of $100,000,000 to settle the Claims covered by such settlement agreement; (viii) any material Contract that will, following the Closing, as a result of transactions contemplated hereby, be between or among a Seller or any Retained Subsidiary, on the one hand, and Purchaser or any Purchased Subsidiary, on the other hand (other than the Ancillary Agreements); and (ix) agreements entered into in connection with a material joint venture (all Contracts of the type described in this **Section 4.16(a)** being referred to herein as "Seller Material Contracts").

(b) No Seller is in breach of or default under, or has received any written notice alleging any breach of or default under, the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Seller Material Contract or material License is in breach of or default under the terms of any Seller Material Contract or material License, where such breach or default would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Seller Material Contract or material License is a valid, binding and enforceable obligation of such Seller that is party thereto and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws

relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.17 Dealer Sales and Service Agreements for Continuing Brands. Parent is not in breach of or default under the terms of any United States dealer sales and service Contract for Continuing Brands other than any Excluded Continuing Brand Dealer Agreement (each, a "Dealer Agreement"), where such breach or default would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Sellers, no other party to any Dealer Agreement is in breach of or default under the terms of such Dealer Agreement, where such breach or default would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, each Dealer Agreement is a valid and binding obligation of Parent and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, except as enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 4.18 Sellers' Products.

(a) To the Knowledge of Sellers, since April 1, 2007, neither Sellers nor any Purchased Subsidiary has conducted or decided to conduct any material recall or other field action concerning any product developed, designed, manufactured, sold, provided or placed in the stream of commerce by or on behalf of any Seller or any Purchased Subsidiary.

(b) As of the date hereof, there are no material pending actions for negligence, manufacturing negligence or improper workmanship, or material pending actions, in whole or in part, premised upon product liability, against or otherwise naming as a party any Seller, Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, or to the Knowledge of Sellers, threatened in writing or of which Seller has received written notice that involve a product liability Claim resulting from the ownership, possession or use of any product manufactured, sold or delivered by any Seller, any Purchased Subsidiary or any predecessor-in-interest of any of the foregoing Persons, which would reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of Sellers and except as would not reasonably be expected to have a Material Adverse Effect, no supplier to any Seller has threatened in writing to cease the supply of products or services that could impair future production at a major production facility of such Seller.

Section 4.19 Certain Business Practices. Each of Sellers and the Purchased Subsidiaries is in compliance with the legal requirements under the Foreign Corrupt Practices Act, as amended (the "FCPA"), except for such failures, whether individually or in the aggregate, to maintain books and records or internal controls as required thereunder that are not

material. To the Knowledge of Sellers, since April 1, 2007, no Seller or Purchased Subsidiary, nor any director, officer, employee or agent thereof, acting on its, his or her own behalf or on behalf of any of the foregoing Persons, has offered, promised, authorized the payment of, or paid, any money, or the transfer of anything of value, directly or indirectly, to or for the benefit of: (a) any employee, official, agent or other representative of any foreign Governmental Authority, or of any public international organization; or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any act or decision of such recipient in the recipient's official capacity, or inducing such recipient to use his, her or its influence to affect any act or decision of such foreign government or department, agency or instrumentality thereof or of such public international organization, or securing any improper advantage, in the case of both clause (a) and (b) above, in order to assist any Seller or any Purchased Subsidiary to obtain or retain business for, or to direct business to, any Seller or any Purchased Subsidiary and under circumstances that would subject any Seller or any Purchased Subsidiary to material Liability under any applicable Laws of the United States (including the FCPA) or of any foreign jurisdiction where any Seller or any Purchased Subsidiary does business relating to corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses.

Section 4.20 Brokers and Other Advisors. No broker, investment banker, financial advisor, counsel (other than legal counsel) or other Person is entitled to any broker's, finder's or financial advisor's fee or commission (collectively, "Advisory Fees") in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers or any Affiliate of any Seller.

Section 4.21 Investment Representations.

(a) Each Seller is acquiring the Parent Shares for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Each Seller agrees that it shall not transfer any of the Parent Shares, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Each Seller is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Each Seller understands that the acquisition of the Parent Shares to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Each Seller and its officers have experience as an investor in the Equity Interests of companies such as the ones being transferred pursuant to this Agreement and each Seller acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Parent Shares to be acquired by it pursuant to the transactions contemplated by this Agreement.

(d) Each Seller further understands and acknowledges that the Parent Shares have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Parent Shares may not be sold, transferred, offered

for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Each Seller acknowledges that the offer and sale of the Parent Shares has not been accomplished by the publication of any advertisement.

Section 4.22 No Other Representations or Warranties of Sellers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN THIS **ARTICLE IV**, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26**, AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF THEM OR OTHER COMMUNICATIONS BETWEEN THEM OR ANY OF THEIR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 5.1 Organization and Good Standing. Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of

incorporation. Purchaser has the requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization; Enforceability.

(a) Purchaser has the requisite corporate power and authority to (i) execute and deliver this Agreement and the Ancillary Agreements to which it is a party; (ii) perform its obligations hereunder and thereunder; and (iii) consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party.

(b) This Agreement constitutes, and each of the Ancillary Agreements to which Purchaser is a party, when duly executed and delivered by Purchaser, shall constitute, a valid and legally binding obligation of Purchaser (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of each Seller that is a party thereto and the other applicable parties thereto), enforceable against Purchaser in accordance with its respective terms and conditions, except as may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer and other similar Laws relating to or affecting the enforcement of creditors' rights generally from time to time in effect and by general equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing.

Section 5.3 Noncontravention; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, and (subject to the entry of the Sale Approval Order) the consummation by Purchaser of the transactions contemplated hereby and thereby, do not (i) violate any Law to which Purchaser or its assets is subject; (ii) conflict with or result in a breach of any provision of the Organizational Documents of Purchaser; or (iii) create a breach, default, termination, cancellation or acceleration of any obligation of Purchaser under any Contract to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or subject, except for any of the foregoing in the cases of clauses (i) and (iii), that would not reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby or thereby or to perform any of its obligations under this Agreement or any Ancillary Agreement to which it is a party (a "Purchaser Material Adverse Effect").

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required by Purchaser for the consummation by Purchaser of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is a party or the compliance by Purchaser with any of the provisions hereof or thereof, except for (i) compliance with the applicable requirements of any Antitrust Laws and (ii) such consent, waiver, approval, Order, Permit, qualification or authorization of, or declaration or filing with, or notification to, any Governmental Authority, the failure of which to be received

or made would not, individually or in the aggregate, reasonably be expected to have a Purchaser Material Adverse Effect.

Section 5.4 Capitalization.

(a) As of the date hereof, Sponsor holds beneficially and of record 1,000 shares of common stock, par value $0.01 per share, of Purchaser, which constitutes all of the outstanding capital stock of Purchaser, and all such capital stock is validly issued, fully paid and nonassessable.

(b) Immediately following the Closing, the authorized capital stock of Purchaser (or, if a Holding Company Reorganization has occurred prior to the Closing, Holding Company) will consist of 2,500,000,000 shares of common stock, par value $0.01 per share ("Common Stock"), and 1,000,000,000 shares of preferred stock, par value $0.01 per share ("Preferred Stock"), of which 360,000,000 shares of Preferred Stock are designated as Series A Fixed Rate Cumulative Perpetual Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock").

(c) Immediately following the Closing, (i) Canada or one or more of its Affiliates will hold beneficially and of record 58,368,644 shares of Common Stock and 16,101,695 shares of Series A Preferred Stock (collectively, the "Canada Shares"), (ii) Sponsor or one or more of its Affiliates collectively will hold beneficially and of record 304,131,356 shares of Common Stock and 83,898,305 shares of Series A Preferred Stock (collectively, the "Sponsor Shares") and (iii) the New VEBA will hold beneficially and of record 87,500,000 shares of Common Stock and 260,000,000 shares of Series A Preferred Stock (collectively, the "VEBA Shares"). Immediately following the Closing, there will be no other holders of Common Stock or Preferred Stock.

(d) Except as provided under the Parent Warrants, VEBA Warrants, Equity Incentive Plans or as disclosed on the Purchaser's Disclosure Schedule, there are and, immediately following the Closing, there will be no outstanding options, warrants, subscriptions, calls, convertible securities, phantom equity, equity appreciation or similar rights, or other rights or Contracts (contingent or otherwise) (including any right of conversion or exchange under any outstanding security, instrument or other Contract or any preemptive right) obligating Purchaser to deliver or sell, or cause to be issued, delivered or sold, any shares of its capital stock or other equity securities, instruments or rights that are, directly or indirectly, convertible into or exercisable or exchangeable for any shares of its capital stock. There are no outstanding contractual obligations of Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any other Person. There are no voting trusts, shareholder agreements, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the shares of Common Stock to which Purchaser is a party or by which Purchaser is bound. Except as provided under the Equity Registration Rights Agreement or as disclosed in the Purchaser's Disclosure Schedule, Purchaser has not granted or agreed to grant any holders of shares of Common Stock or securities

convertible into shares of Common Stock registration rights with respect to such shares under the Securities Act.

(e) Immediately following the Closing, (i) all of the Canada Shares, the Parent Shares and the Sponsor Shares will be duly and validly authorized and issued, fully paid and nonassessable, and will be issued in accordance with the registration or qualification provisions of the Securities Act or pursuant to valid exemptions therefrom and (ii) none of the Canada Shares, the Parent Shares or the Sponsor Shares will be issued in violation of any preemptive rights.

Section 5.5 Valid Issuance of Shares. The Parent Shares, Adjustment Shares and the Common Stock underlying the Parent Warrants, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the related warrant agreement, as applicable, will be (a) validly issued, fully paid and nonassessable and (b) free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by or imposed by Sellers. Assuming the accuracy of the representations of Sellers in **Section 4.21**, the Parent Shares, Adjustment Shares and Parent Warrants will be issued in compliance with all applicable federal and state securities Laws.

Section 5.6 Investment Representations.

(a) Purchaser is acquiring the Transferred Equity Interests for its own account solely for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act or the applicable securities Laws of any jurisdiction. Purchaser agrees that it shall not transfer any of the Transferred Equity Interests, except in compliance with the Securities Act and with the applicable securities Laws of any other jurisdiction.

(b) Purchaser is an "Accredited Investor" as defined in Rule 501(a) promulgated under the Securities Act.

(c) Purchaser understands that the acquisition of the Transferred Equity Interests to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Purchaser and its officers have experience as an investor in Equity Interests of companies such as the ones being transferred pursuant to this Agreement and Purchaser acknowledges that it can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of its investment in the Transferred Equity Interests to be acquired by it pursuant to the transactions contemplated hereby.

(d) Purchaser further understands and acknowledges that the Transferred Equity Interests have not been registered under the Securities Act or under the applicable securities Laws of any jurisdiction and agrees that the Transferred Equity Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or under the applicable securities Laws of any jurisdiction, or, in each case, an applicable exemption therefrom.

(e) Purchaser acknowledges that the offer and sale of the Transferred Equity Interests has not been accomplished by the publication of any advertisement.

Section 5.7 Continuity of Business Enterprise. It is the present intention of Purchaser to directly, or indirectly through its Subsidiaries, continue at least one significant historic business line of each Seller, or use at least a significant portion of each Seller's historic business assets in a business, in each case, within the meaning of Treas. Reg. § 1.368-1(d).

Section 5.8 Integrated Transaction. Sponsor has contributed, or will, prior to the Closing, contribute the UST Credit Facilities, a portion of the DIP Facility that is owed as of the Closing and the UST Warrant to Purchaser solely for the purposes of effectuating the transactions contemplated by this Agreement.

Section 5.9 No Other Representations or Warranties of Sellers. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN **ARTICLE IV**, NONE OF SELLERS AND ANY PERSON ACTING ON BEHALF OF A SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLERS, ANY OF THEIR AFFILIATES, SELLERS' BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLERS CONTAINED IN **ARTICLE IV**, PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION, WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE (WHETHER BEFORE OR, IN CONNECTION WITH ANY SUPPLEMENT, MODIFICATION OR UPDATE TO THE SELLERS' DISCLOSURE SCHEDULE PURSUANT TO **SECTION 6.5**, **SECTION 6.6** OR **SECTION 6.26**, AFTER THE DATE HEREOF) TO PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING IN "DATA ROOMS" (INCLUDING ON-LINE DATA ROOMS), MANAGEMENT PRESENTATIONS, FUNCTIONAL "BREAK-OUT" DISCUSSIONS, RESPONSES TO QUESTIONS SUBMITTED ON BEHALF OF IT OR OTHER COMMUNICATIONS BETWEEN IT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLERS, THEIR AFFILIATES, OR ANY OF THEIR REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION OR (C) ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (D) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLERS' BUSINESS OR THE PURCHASED ASSETS.

ARTICLE VI
COVENANTS

Section 6.1 Access to Information.

(a) Sellers agree that, until the earlier of the Executory Contract Designation Deadline and the termination of this Agreement, Purchaser shall be entitled, through its Representatives or otherwise, to have reasonable access to the executive officers and Representatives of Sellers and the properties and other facilities, businesses, books, Contracts, personnel, records and operations (including the Purchased Assets and Assumed Liabilities) of Sellers and their Subsidiaries, including access to systems, data, databases for benefit plan administration; provided however, that no such investigation or examination shall be permitted to the extent that it would, in Sellers' reasonable determination, require any Seller, any Subsidiary of any Seller or any of their respective Representatives to disclose information subject to attorney-client privilege or in conflict with any confidentiality agreement to which any Seller, any Subsidiary of any Seller or any of their respective Representatives are bound (in which case, to the extent requested by Purchaser, Sellers will use reasonable best efforts to seek an amendment or appropriate waiver, or necessary consents, as may be required to avoid such conflict, or restructure the form of access, so as to permit the access requested); provided further, that notwithstanding the notice provisions in **Section 9.2** hereof, all such requests for access to the executive officers of Sellers shall be directed, prior to the Closing, to the Chief Financial Officer of Parent or his designee, and following the Closing, to the Chief Restructuring Officer of Parent or his or her designee. If any material is withheld pursuant to this **Section 6.1(a)**, Seller shall inform Purchaser in writing as to the general nature of what is being withheld and the reason for withholding such material.

(b) Any investigation and examination contemplated by this **Section 6.1** shall be subject to restrictions set forth in **Section 6.24** and under applicable Law. Sellers shall cooperate, and shall cause their Subsidiaries and each of their respective Representatives to cooperate, with Purchaser and its Representatives in connection with such investigation and examination, and each of Purchaser and its Representatives shall use their reasonable best efforts to not materially interfere with the business of Sellers and their Subsidiaries. Without limiting the generality of the foregoing, subject to **Section 6.1(a)**, such investigation and examination shall include reasonable access to Sellers' executive officers (and employees of Sellers and their respective Subsidiaries identified by such executive officers), offices, properties and other facilities, and books, Contracts and records (including any document retention policies of Sellers) and access to accountants of Sellers and each of their respective Subsidiaries (provided that Sellers and each of their respective Subsidiaries, as applicable, shall have the right to be present at any meeting between any such accountant and Purchaser or Representative of Purchaser, whether such meeting is in person, telephonic or otherwise) and Sellers and each of their respective Subsidiaries and their Representatives shall prepare and furnish to Purchaser's Representatives such additional financial and operating data and other information as Purchaser may from time to time reasonably request, subject, in each case, to the confidentiality restrictions outlined in this **Section 6.1**. Notwithstanding anything contained herein to the contrary, Purchaser shall consult with Sellers prior to conducting

EXHIBIT C
Part 3

any environmental investigations or examinations of any nature, including Phase I and Phase II site assessments and any environmental sampling in respect of the Transferred Real Property.

Section 6.2 Conduct of Business.

(a) Except as (i) otherwise expressly contemplated by or permitted under this Agreement, including the DIP Facility; (ii) disclosed on Section 6.2 of the Sellers' Disclosure Schedule; (iii) approved by the Bankruptcy Court (or any other court or other Governmental Authority in connection with any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent); or (iv) required by or resulting from any changes to applicable Laws, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, Sellers shall and shall cause each Purchased Subsidiary to (A) conduct their operations in the Ordinary Course of Business, (B) not take any action inconsistent with this Agreement or with the consummation of the Closing, (C) use reasonable best efforts to preserve in the Ordinary Course of Business and in all material respects the present relationships of Sellers and each of their Subsidiaries with their respective customers, suppliers and others having significant business dealings with them, (D) not take any action to cause any of Sellers' representations and warranties set forth in **ARTICLE IV** to be untrue in any material respect as of any such date when such representation or warranty is made or deemed to be made and (E) not take any action that would reasonably be expected to materially prevent or delay the Closing.

(b) Subject to the exceptions contained in clauses (i) through (iv) of **Section 6.2(a)**, each Seller agrees that, from and after the date of this Agreement and until the earlier of the Closing and the termination of this Agreement, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), such Seller shall not, and shall not permit any of the Key Subsidiaries (and in the case of clauses (i), (ix), (xiii) or (xvi), shall not permit any Purchased Subsidiary) to:

(i) take any action with respect to which any Seller has granted approval rights to Sponsor under any Contract, including under the UST Credit Facilities, without obtaining the prior approval of such action from Sponsor;

(ii) issue, sell, pledge, create an Encumbrance or otherwise dispose of or authorize the issuance, sale, pledge, Encumbrance or disposition of any Equity Interests of the Transferred Entities, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests;

(iii) declare, set aside or pay any dividend or make any distribution (whether in cash, securities or other property or by allocation of additional Indebtedness to any Seller or any Key Subsidiary without receipt of fair value with respect to any Equity Interest of Seller or any Key Subsidiary), except for dividends and distributions among the Purchased Subsidiaries;

(iv) directly or indirectly, purchase, redeem or otherwise acquire any Equity Interests or any rights to acquire any Equity Interests of any Seller or Key Subsidiary;

(v) materially change any of its financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as permitted by GAAP, a SEC rule, regulation or policy or applicable Law, or as modified by Parent as a result of the filing of the Bankruptcy Cases;

(vi) adopt any amendments to its Organizational Documents or permit the adoption of any amendment of the Organizational Documents of any Key Subsidiary or effect a split, combination or reclassification or other adjustment of Equity Interests of any Purchased Subsidiary or a recapitalization thereof;

(vii) sell, pledge, lease, transfer, assign or dispose of any Purchased Asset or permit any Purchased Asset to become subject to any Encumbrance, other than a Permitted Encumbrance, in each case, except in the Ordinary Course of Business or pursuant to a Contract in existence as of the date hereof (or entered into in compliance with this **Section 6.2**);

(viii) (A) incur or assume any Indebtedness for borrowed money or issue any debt securities, except for Indebtedness for borrowed money incurred by Purchased Subsidiaries under existing lines of credit (including through the incurrence of Intercompany Obligations) to fund operations of Purchased Subsidiaries and Indebtedness for borrowed money incurred by Sellers under the DIP Facility or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except for Indebtedness for borrowed money among any Seller and Subsidiary or among the Subsidiaries;

(ix) discharge or satisfy any Indebtedness in excess of $100,000,000 other than the discharge or satisfaction of any Indebtedness when due in accordance with its originally scheduled terms;

(x) other than as is required by the terms of a Parent Employee Benefit Plan and Policy (in effect on the date hereof and set forth on Section 4.10 of the Sellers' Disclosure Schedule), any Assumed Plan (in effect on the date hereof) the UAW Collective Bargaining Agreement or consistent with the expiration of a Collective Bargaining Agreement, the Settlement Agreement, the UAW Retiree Settlement Agreement or as may be required by applicable Law or TARP or under any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor, (A) increase the compensation or benefits of any Employee of Sellers or any Purchased Subsidiary (except for increases in salary or wages in the Ordinary Course of Business with respect to Employees who are not current or former directors or officers of Sellers or Seller Key Personnel), (B) grant any severance or termination pay to any Employee of Sellers or any Purchased

Subsidiary except for severance or termination pay provided under any Parent Employee Benefit Plan and Policy or as the result of a settlement of any pending Claim or charge involving a Governmental Authority or litigation with respect to Employees who are not current or former officers or directors of Sellers or Seller Key Personnel), (C) establish, adopt, enter into, amend or terminate any Benefit Plan (including any change to any actuarial or other assumption used to calculate funding obligations with respect to any Benefit Plan or any change to the manner in which contributions to any Benefit Plan are made or the basis on which such contributions are determined), except where any such action would reduce Sellers' costs or Liabilities pursuant to such plan, (D) grant any awards under any Benefit Plan (including any equity or equity-based awards), (E) increase or promise to increase or provide for the funding under any Benefit Plan, (F) forgive any loans to Employees of Sellers or any Purchased Subsidiary (other than as part of a settlement of any pending Claim or charge involving a Governmental Authority or litigation in the Ordinary Course of Business or with respect to obligations of Employees whose employment is terminated by Sellers or a Purchased Subsidiary in the Ordinary Course of Business, other than Employees who are current or former officers or directors of Sellers or Seller Key Personnel or directors of Sellers or a Purchased Subsidiary) or (G) exercise any discretion to accelerate the time of payment or vesting of any compensation or benefits under any Benefit Plan;

(xi) modify, amend, terminate or waive any rights under any Affiliate Contract or Seller Material Contract (except for any dealer sales and service Contracts or as contemplated by **Section 6.7**) in any material respect in a manner that is adverse to any Seller that is a party thereto, other than in the Ordinary Course of Business;

(xii) enter into any Seller Material Contract other than as contemplated by **Section 6.7**;

(xiii) acquire (including by merger, consolidation, combination or acquisition of Equity Interests or assets) any Person or business or division thereof (other than acquisitions of portfolio assets and acquisitions in the Ordinary Course of Business) in a transaction (or series of related transactions) where the aggregate consideration paid or received (including non-cash equity consideration) exceeds $100,000,000;

(xiv) alter, whether through a complete or partial liquidation, dissolution, merger, consolidation, restructuring, reorganization or in any other manner, the legal structure or ownership of any Key Subsidiary, or adopt or approve a plan with respect to any of the foregoing;

(xv) enter into any Contract that limits or otherwise restricts or that would reasonably be expected to, after the Closing, restrict or limit in any material respect (A) Purchaser or any of its Subsidiaries or any successor thereto or (B) any Affiliates of Purchaser or any successor thereto, in the case of each of

clause (A) or (B), from engaging or competing in any line of business or in any geographic area;

(xvi) enter into any Contracts for capital expenditures, exceeding $100,000,000 in the aggregate in connection with any single project or group of related projects;

(xvii) open or reopen any major production facility; and

(xviii) agree, in writing or otherwise, to take any of the foregoing actions.

Section 6.3 Notices and Consents.

(a) Sellers shall and shall cause each of their Subsidiaries to, and Purchaser shall use reasonable best efforts to, promptly give all notices to, obtain all material consents, approvals or authorizations from, and file all notifications and related materials with, any third parties (including any Governmental Authority) that may be or become necessary to be given or obtained by Sellers or their Affiliates, or Purchaser, respectively, in connection with the transactions contemplated by this Agreement.

(b) Each of Purchaser and Parent shall, to the extent permitted by Law, promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement and permit the other Party to review in advance any proposed substantive communication by such Party to any Governmental Authority. Neither Purchaser nor Parent shall agree to participate in any material meeting with any Governmental Authority in respect of any significant filings, investigation (including any settlement of the investigation), litigation or other inquiry unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting; provided, however, in the event either Party is prohibited by applicable Law or such Governmental Authority from participating in or attending any such meeting, then the Party who participates in such meeting shall keep the other Party apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Purchaser and Parent shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing, including, to the extent reasonably practicable, providing to the other Party in advance of submission, drafts of all material filings, submissions, correspondences or other written communications, providing the other Party with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Purchaser and Parent shall provide each other with copies of all material correspondences, filings or written communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement or the transactions contemplated by this Agreement.

(c) None of Purchaser, Parent or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Authorities in order to obtain any authorization, consent, Order or approval (other than normal filing fees and administrative fees that are imposed by Law on Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, Order or approval, such fees shall be for the account of Purchaser.

(d) Notwithstanding anything to the contrary contained herein, no Seller shall be required to make any expenditure or incur any Liability in connection with the requirements set forth in this **Section 6.3**.

Section 6.4 Sale Procedures; Bankruptcy Court Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing Bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Sellers and their respective Affiliates and Representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Alternative Transaction but only to the extent that Sellers determine in good faith that such actions are permitted or required by the Sale Procedures Order.

(b) On the Petition Date, Sellers filed with the Bankruptcy Court the Bankruptcy Cases under the Bankruptcy Code and a motion (and related notices and proposed Orders) (the "Sale Procedures and Sale Motion"), seeking entry of (i) the sale procedures order, in the form attached hereto as **Exhibit H** (the "Sale Procedures Order"), and (ii) the sale approval order, in the form attached hereto as **Exhibit I** (the "Sale Approval Order"). The Sale Approval Order shall declare that if there is an Agreed G Transaction, (A) this Agreement constitutes a "plan" of Parent and Purchaser solely for purposes of Sections 368 and 354 of the Tax Code and (B) the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers, are intended to constitute a reorganization of Parent pursuant to Section 368(a)(1)(G) of the Tax Code. To the extent reasonably practicable, Sellers shall consult with and provide Purchaser and the UAW a reasonable opportunity to review and comment on material motions, applications and supporting papers prepared by Sellers in connection with this Agreement prior to the filing or delivery thereof in the Bankruptcy Cases.

(c) Purchaser acknowledges that Sellers may receive bids ("Bids") from prospective purchasers (such prospective purchasers, the "Bidders") with respect to an Alternative Transaction, as provided in the Sale Procedures Order. All Bids (other than Bids submitted by Purchaser) shall be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(d) If Sellers receive any Bids, Sellers shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest or otherwise best Bid or Bids from the Bidders (the "Superior Bid"), which will be determined in accordance with the Sale Procedure Order.

(e) Sellers shall use their reasonable best efforts to obtain entry of the Sale Approval Order on the Bankruptcy Court's docket as soon as practicable, and in no event no later than July 10, 2009.

(f) Sellers shall use reasonable best efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the transactions contemplated by this Agreement, including serving on all required Persons in the Bankruptcy Cases (including all holders of Encumbrances and parties to the Purchased Contracts), a notice of the Sale Procedures and Sale Motion, the Sale Hearing and the objection deadline in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (as modified by Orders of the Bankruptcy Court), the Sale Procedures Order or other Orders of the Bankruptcy Court, including General Order M-331 issued by the Bankruptcy Court, and any applicable local rules of the Bankruptcy Court.

(g) Sellers shall provide Purchaser with a reasonable opportunity to review and comment on all motions, applications and supporting papers prepared by Sellers in connection with this Agreement (including forms of Orders and of notices to interested parties) prior to the filing or delivery thereof in the Bankruptcy Cases. All motions, applications and supporting papers prepared by Sellers and relating to the approval of this Agreement (including forms of Orders and of notices to interested parties) to be filed or delivered on behalf of Sellers shall be reasonably acceptable in form and substance to Purchaser. Sellers shall provide written notice to Purchaser of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. In the event the Sale Procedures Order and the Sale Approval Order is appealed, Sellers shall use their reasonable best efforts to defend such appeal.

(h) Purchaser agrees, to the extent reasonably requested by Sellers, to cooperate with and assist Sellers in seeking entry of the Sale Procedures Order and the Sale Approval Order by the Bankruptcy Court, including attending all hearings on the Sale Procedures and Sale Motion.

Section 6.5 Supplements to Purchased Assets. Purchaser shall, from the date hereof until the Executory Contract Designation Deadline, have the right to designate in writing additional Personal Property it wishes to designate as Purchased Assets if such Personal Property is located at a parcel of leased real property where the underlying lease has been designated as a Rejectable Executory Contract pursuant to **Section 6.6** following the Closing.

Section 6.6 Assumption or Rejection of Contracts.

(a) The Assumable Executory Contract Schedule sets forth a list of Executory Contracts entered into by Sellers that Sellers may assume and assign to Purchaser in accordance with this **Section 6.6(a)** (each, an "Assumable Executory Contract"). Any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule and Section 6.6(a)(ii) of the Sellers' Disclosure Schedule shall automatically be designated as an

Assumable Executory Contract and deemed to be set forth on the Assumable Executory Contract Schedule. Purchaser may, until the Executory Contract Designation Deadline, designate in writing any additional Executory Contract it wishes to designate as an Assumable Executory Contract and include on the Assumable Executory Contract Schedule, or any Assumable Executory Contract it no longer wishes to designate as an Assumable Executory Contract and remove from the Assumable Executory Contract Schedule; provided, however, that (i) Purchaser may not designate as an Assumable Executory Contract any (A) Rejectable Executory Contract, unless Sellers have consented to such designation in writing or (B) Contract that has previously been rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, and (ii) Purchaser may not remove from the Assumable Executory Contract Schedule (v) the UAW Collective Bargaining Agreement, (w) any Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule or Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, (x) any Contract that has been previously assumed by Sellers pursuant to Section 365 of the Bankruptcy Code, (y) any Deferred Termination Agreement (or the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) or (z) any Participation Agreement (or the related Continuing Brand Dealer Agreement). Except as otherwise provided above, for each Assumable Executory Contract, Purchaser must determine, prior to the Executory Contract Designation Deadline, the date on which it seeks to have the assumption and assignment become effective, which date may be the Closing Date or a later date (but not an earlier date). The term "Executory Contract Designation Deadline" shall mean the date that is thirty (30) calendar days following the Closing Date, or if such date is not a Business Day, the next Business Day, or if mutually agreed upon by the Parties, any later date up to and including the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization. For the avoidance of doubt, the Executory Contract Designation Deadline may be extended by mutual agreement of the Parties with respect to any single unassumed and unassigned Executory Contract, groups of unassumed and unassigned Executory Contracts or all of the unassumed and unassigned Executory Contracts.

(b) Sellers may, until the Closing, provide written notice (a "Notice of Intent to Reject") to Purchaser of Sellers' intent to designate any Executory Contract (that has not been designated as an Assumable Executory Contract) as a Rejectable Executory Contract (each a "Proposed Rejectable Executory Contract"). Following receipt of a Notice of Intent to Reject, Purchaser shall as soon as reasonably practicable, but in no event later than fifteen (15) calendar days following receipt of a Notice of Intent to Reject (the "Option Period"), provide Sellers written notice of Purchaser's designation of one or more Proposed Rejectable Executory Contracts identified in such Notice of Intent to Reject as an Assumable Executory Contract. Each Proposed Rejectable Executory Contract that has not been designated by Purchaser as an Assumable Executory Contract during the applicable Option Period shall automatically, without further action by Sellers, be designated as a Rejectable Executory Contract. A "Rejectable Executory Contract" is an Executory Contract that Sellers may, but are not obligated to, reject pursuant Section 365 of the Bankruptcy Code.

(c) Immediately following the Closing, each Executory Contract entered into by Sellers and then in existence that has not previously been designated as an Assumable

Executory Contract, a Rejectable Executory Contract or a Proposed Rejectable Executory Contract, and that has not otherwise been assumed or rejected by Sellers pursuant to Section 365 of the Bankruptcy Code, shall be deemed to be an Executory Contract subject to subsequent designation by Purchaser as an Assumable Executory Contract or a Rejectable Executory Contract (each a "Deferred Executory Contract").

(d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

(e) From and after the Closing and during the applicable period specified below, Purchaser shall be obligated to pay or cause to be paid all amounts due in respect of Sellers' performance (i) under each Proposed Rejectable Executory Contract, during the pendency of the applicable Option Period under such Proposed Rejectable Executory Contract, (ii) under each Deferred Executory Contract, for so long as such Contract remains a Deferred Executory Contract, (iii) under each Assumable Executory Contract,

as long as such Contract remains an Assumable Executory Contract and (iv) under each GM Assumed Contract, until the applicable Assumption Effective Date. At and after the Closing and until such time as any Shared Executory Contract is either (y) rejected by Sellers pursuant to the provision set forth in this **Section 6.6** or (z) assumed by Sellers and subsequently modified with Purchaser's consent so as to no longer be applicable to the affected Owned Real Property, Purchaser shall reimburse Sellers as and when requested by Sellers for Purchasers' and its Affiliates' allocable share of all costs and expenses incurred under such Shared Executory Contract.

(f) Sellers and Purchaser shall comply with the procedures set forth in the Sale Procedures Order with respect to the assumption and assignment or rejection of any Executory Contract pursuant to, and in accordance with, this **Section 6.6**.

(g) No designation of any Executory Contract for assumption and assignment or rejection in accordance with this **Section 6.6** shall give rise to any right to any adjustment to the Purchase Price.

(h) Without limiting the foregoing, if, following the Executory Contract Designation Deadline, Sellers or Purchaser identify an Executory Contract that has not previously been identified as a Contract for assumption and assignment, and such Contract is important to Purchaser's ability to use or hold the Purchased Assets or operate its businesses in connection therewith, Sellers will assume and assign such Contract and assign it to Purchaser without any adjustment to the Purchase Price; provided that Purchaser consents and agrees at such time to (i) assume such Executory Contract and (ii) and discharge all Cure Amounts in respect hereof.

Section 6.7 Deferred Termination Agreements; Participation Agreements.

(a) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into short-term deferred voluntary termination agreements in substantially the form attached hereto as **Exhibit J-1** (in respect of all Saturn Discontinued Brand Dealer Agreements), **Exhibit J-2** (in respect of all Hummer Discontinued Brand Dealer Agreements) and **Exhibit J-3** (in respect of all non-Saturn and non-Hummer Discontinued Brand Dealer Agreements and all Excluded Continuing Brand Dealer Agreements) that will, when executed by the relevant dealer counterparty thereto, modify the respective Discontinued Brand Dealer Agreements and selected Continuing Brand Dealer Agreements (collectively, the "Deferred Termination Agreements"). For the avoidance of doubt, (i) each Deferred Termination Agreement, and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement modified thereby, will automatically be an Assumable Executory Contract hereunder upon valid execution of such Deferred Termination Agreement by the parties thereto and (ii) all Discontinued Brand Dealer Agreements that are not modified by a Deferred Termination Agreement, and all Continuing Brand Dealer Agreements that are not modified by either a Deferred Termination Agreement or a Participation Agreement, will automatically be a Rejectable Executory Contract hereunder.

(b) Sellers shall, and shall cause their Affiliates to, use reasonable best efforts to enter into agreements, substantially in the form attached hereto as **Exhibit K** that will modify all Continuing Brand Dealer Agreements (other than the Continuing Brand Dealer Agreements that are proposed to be modified by Deferred Termination Agreements) (the "Participation Agreements"). For the avoidance of doubt, (i) all Participation Agreements, and the related Continuing Brand Dealer Agreements, will automatically be Assumable Executory Contracts hereunder upon valid execution of such Participation Agreement and (ii) all Continuing Brand Dealer Agreements that are proposed to be modified by a Participation Agreement and are not modified by a Participation Agreement will be offered Deferred Termination Agreements pursuant to **Section 6.7(a)**.

Section 6.8 [Reserved]

Section 6.9 Purchaser Assumed Debt; Wind Down Facility.

(a) Purchaser shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of the Purchaser Assumed Debt so as to be assumed by Purchaser immediately prior to the Closing. Purchaser shall use reasonable best efforts to enter into definitive financing agreements with respect to the Purchaser Assumed Debt so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $950,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at LIBOR plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof), and to be subject to mandatory repayment from the proceeds of asset sales (other than the sale of Parent Shares, Adjustment Shares, Parent Warrants and any securities received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

Section 6.10 Litigation and Other Assistance. In the event and for so long as any Party is actively contesting or defending against any action, investigation, charge, Claim or demand by a third party in connection with any transaction contemplated by this Agreement, the other Parties shall reasonably cooperate with the contesting or defending Party and its counsel in such contest or defense, make available its personnel and provide such testimony and access to its books, records and other materials as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party; provided, however, that no Party shall be required to provide the contesting or defending party with any access to its books, records or materials if such access would violate the attorney-client privilege or conflict with any confidentiality obligations to which the non-contesting or defending Party is subject. In addition, the Parties agree to cooperate in connection with the making or filing of claims, requests for information, document retrieval and other activities in connection with any

and all Claims made under insurance policies specified on Section 2.2(b)(xiii) of the Sellers' Disclosure Schedule to the extent any such Claim relates to any Purchased Asset or Assumed Liability. For the avoidance of doubt, this **Section 6.10** shall not apply to any action, investigation, charge, Claim or demand by any of Sellers or their Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand.

Section 6.11 Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all actions necessary, proper or advisable to consummate and make effective as promptly as practicable, the transactions contemplated by this Agreement in accordance with the terms hereof and to bring about the satisfaction of all other conditions to the other Parties' obligations hereunder; provided, however, that nothing in this Agreement shall obligate Sellers or Purchaser, or any of their respective Affiliates, to waive or modify any of the terms and conditions of this Agreement or any documents contemplated hereby, except as expressly set forth herein. The Parties acknowledge that Sponsor's acquisition of interest is a sovereign act and that no filings should be made by Sponsor or Purchaser in non-United States jurisdictions.

(b) The Parties shall negotiate the forms, terms and conditions of the Ancillary Agreements, to the extent the forms thereof are not attached to this Agreement, on the basis of the respective term sheets attached to this Agreement, in good faith, with such Ancillary Agreements to set forth terms on an Arms-Length Basis and incorporate usual and customary provisions for similar agreements.

(c) Until the Closing, Sellers shall maintain a team of appropriate personnel (each such team, a "Transition Team") to assist Purchaser and its Representatives in connection with Purchaser's efforts to complete prior to the Closing the activities described below. Sellers shall use their reasonable best efforts to cause the Transition Team to (A) meet with Purchaser and its Representatives on a regular basis at such times as Purchaser may reasonably request and (B) take such action and provide such information, including background and summary information, as Purchaser and its Representatives may reasonably request in connection with the following activities:

(i) evaluation and identification of all Contracts that Purchaser may elect to designate as Purchased Contracts or Excluded Contracts, consistent with its rights under this Agreement;

(ii) evaluation and identification of all assets and entities that Purchaser may elect to designate as Purchased Assets or Excluded Assets, consistent with its rights under this Agreement;

(iii) maintaining and obtaining necessary governmental consents, permits, authorizations, licenses and financial assurance for operation of the business by Purchaser following the Closing;

(iv) obtaining necessary third party consents for operation of the business by Purchaser following the Closing;

(v) implementing the optimal structure for Purchaser and its subsidiaries to acquire and hold the Purchased Assets and operate the business following the Closing;

(vi) implementing the assumption of all Assumed Plans and otherwise satisfying the obligations of Purchaser as provided in **Section 6.17** with respect to Employment Related Obligations; and

(vii) such other transition matters as Purchaser may reasonably determine are necessary for Purchaser to fulfill its obligations and exercise its rights under this Agreement.

Section 6.12 Notifications.

(a) Sellers shall give written notice to Purchaser as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE IV** being or becoming untrue or inaccurate in any material respect as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case, as of such date), (ii) the failure by Sellers to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Sellers under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.2** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Sellers' representations or warranties, a failure to perform any of the covenants or agreements of Sellers or a failure to have satisfied the conditions to the obligations of Sellers under this Agreement. Such notice shall be in form of a certificate signed by an executive officer of Parent setting forth the details of such event and the action which Parent proposes to take with respect thereto.

(b) Purchaser shall give written notice to Sellers as soon as practicable upon becoming aware of any event, circumstance, condition, fact, effect or other matter that resulted in, or that would reasonably be likely to result in (i) any representation or warranty set forth in **ARTICLE V** being or becoming untrue or inaccurate in any material respect with respect to Purchaser as of any date on or after the date hereof (as if then made, except to the extent such representation or warranty is expressly made only as of a specific date, in which case as of such date), (ii) the failure by Purchaser to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement or (iii) a condition to the Closing set forth in **Section 7.1** or **Section 7.3** becoming incapable of being satisfied; provided, however, that no such notification shall affect or cure a breach of any of Purchaser's representations or warranties, a failure to perform any of the covenants or agreements of Purchaser or a failure to have satisfied the conditions to the obligations of Purchaser under this Agreement. Such notice shall be in a form of a certificate signed by

an executive officer of Purchaser setting forth the details of such event and the action which Purchaser proposes to take with respect thereto.

Section 6.13 Actions by Affiliates. Each of Purchaser and Sellers shall cause their respective controlled Affiliates, and shall use their reasonable best efforts to ensure that each of their respective other Affiliates (other than Sponsor in the case of Purchaser) takes all actions reasonably necessary to be taken by such Affiliate in order to fulfill the obligations of Purchaser or Sellers, as the case may be, under this Agreement.

Section 6.14 Compliance Remediation. Except with respect to the Excluded Assets or Retained Liabilities, prior to the Closing, Sellers shall use reasonable best efforts to, and shall use reasonable best efforts to cause their Subsidiaries to use their reasonable best efforts to, cure in all material respects any instances of non-compliance with Laws or Orders, failures to possess or maintain Permits or defaults under Permits.

Section 6.15 Product Certification, Recall and Warranty Claims.

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

(b) From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. In connection with the foregoing clause (ii), (A) Purchaser shall continue to address Lemon Law Claims using the same procedural mechanisms previously utilized by the applicable Sellers and (B) for avoidance of doubt, Purchaser shall not assume Liabilities arising under the law of implied warranty or other analogous provisions of state Law, other than Lemon Laws, that provide consumer remedies in addition to or different from those specified in Sellers' express warranties.

(c) For the avoidance of doubt, Liabilities of the Transferred Entities arising from or in connection with products manufactured or sold by the Transferred Entities remain the responsibility of the Transferred Entities and shall be neither Assumed Liabilities nor Retained Liabilities for the purposes of this Agreement.

Section 6.16 Tax Matters; Cooperation.

(a) Prior to the Closing Date, Sellers shall prepare and timely file (or cause to be prepared and timely filed) all Tax Returns required to be filed prior to such date (taking into account any extension of time to file granted or obtained) that relate to Sellers, the Purchased Subsidiaries and the Purchased Assets in a manner consistent with

past practices (except as otherwise required by Law), and shall provide Purchaser prompt opportunity for review and comment and shall obtain Purchaser's written approval prior to filing any such Tax Returns. After the Closing Date, at Purchaser's election, Purchaser shall prepare, and the applicable Seller, Seller Subsidiary or Seller Group member shall timely file, any Tax Return relating to any Seller, Seller Subsidiary or Seller Group member for any Pre-Closing Tax Period or Straddle Period due after the Closing Date or other taxable period of any entity that includes the Closing Date, subject to the right of the applicable Seller to review any such material Tax Return. Purchaser shall prepare and file all other Tax Returns required to be filed after the Closing Date in respect of the Purchased Assets. Sellers shall prepare and file all other Tax Returns relating to the Post-Closing Tax Period of Sellers, subject to the prior review and approval of Purchaser, which approval may be withheld, conditioned or delayed with good reason. No Seller or Seller Group member shall be entitled to any payment or other consideration in addition to the Purchase Price with respect to the acquisition or use of any Tax items or attributes by Purchaser, any Purchased Subsidiary or Affiliates thereof. At Purchaser's request, any Seller or Seller Group member shall designate Purchaser or any of its Affiliates as a substitute agent for the Seller Group for Tax purposes. Purchaser shall be entitled to make all determinations, including the right to make or cause to be made any elections with respect to Taxes and Tax Returns of Sellers, Seller Subsidiaries, Seller Groups and Seller Group members with respect to Pre-Closing Tax Periods and Straddle Periods and with respect to the Tax consequences of the Relevant Transactions (including the treatment of such transactions as an Agreed G Transaction) and the other transactions contemplated by this Agreement, including (i) the "date of distribution or transfer" for purposes of Section 381(b) of the Tax Code, if applicable; (ii) the relevant Tax periods and members of the Seller Group and the Purchaser and its Affiliates; (iii) whether the Purchaser and/or any of its Affiliates shall be treated as a continuation of Seller Group; and (iv) any other determinations required under Section 381 of the Tax Code. Purchaser shall have the sole right to represent the interests, as applicable, of any Seller, Seller Group member or Purchased Subsidiary in any Tax proceeding in connection with any Tax Liability or any Tax item for any Pre-Closing Tax Period, Straddle Period or other Tax period affecting any such earlier Tax period. After the Closing, Purchaser shall have the right to assume control of any PLR or CA request filed by Sellers or any Affiliate thereof, including the right to represent Sellers and their Affiliates and to direct all professionals acting on their behalf in connection with such request, and no settlement, concession, compromise, commitment or other agreements in respect of such PLR or CA request shall be made without Purchaser's prior written consent.

(b) All Taxes required to be paid by any Seller or Seller Group member for any Pre-Closing Tax Period or any Straddle Period shall be timely paid. To the extent a Party hereto is liable for a Tax pursuant to this Agreement and such Tax is paid or payable by another Party or such other Party's Affiliates, the Party liable for such Tax shall make payment in the amount of such Tax to the other Party no later than three (3) days prior to the due date for payment of such Tax, unless a later time for payment is agreed to in writing by such other Party. To the extent that any Seller or Seller Group member receives or realizes the benefit of any Tax refund, abatement or credit that is a Purchased Asset, such Seller or Seller Group member receiving the benefit shall transfer

an amount equal to such refund, abatement or credit to Purchaser within fourteen (14) days of receipt or realization of the benefit.

(c) Purchaser and Sellers shall provide each other with such assistance and non-privileged information relating to the Purchased Assets as may reasonably be requested in connection with any Tax matter, including the matters contemplated by this **Section 6.16**, the preparation of any Tax Return or the performance of any audit, examination or other proceeding by any Taxing Authority, whether conducted in a judicial or administrative forum. Purchaser and Sellers shall retain and provide to each other all non-privileged records and other information reasonably requested by the other and that may be relevant to any such Tax Return, audit, examination or other proceeding.

(d) After the Closing, at Purchaser's election, Purchaser shall exercise exclusive control over the handling, disposition and settlement of any inquiry, examination or proceeding (including an audit) by a Governmental Authority (or that portion of any inquiry, examination or proceeding by a Governmental Authority) with respect to Sellers, any Subsidiary of Sellers or any Seller Group, provided that to the extent any such inquiry, examination or proceeding by a Governmental Authority could materially affect the Taxes due or payable by Sellers, Purchaser shall control the handling, disposition and settlement thereof, subject to reasonable consultation rights of Sellers. Each Party shall notify the other Party (or Parties) in writing promptly upon learning of any such inquiry, examination or proceeding. The Parties and their Affiliates shall cooperate with each other in any such inquiry, examination or proceeding as a Party may reasonably request. Neither Parent nor any of its Affiliates shall extend, without Purchaser's prior written consent, the statute of limitations for any Tax for which Purchaser or any of its Affiliates may be liable.

(e) Notwithstanding anything contained herein, Purchaser shall prepare and Sellers shall timely file all Tax Returns required to be filed in connection with the payment of Transfer Taxes.

(f) From the date of this Agreement to and including the Closing Date, except to the extent relating solely to an Excluded Asset or Retained Liability, no Seller, Seller Group member or Purchased Subsidiary shall, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld if not resulting in any Tax impact on Purchaser or any Purchased Asset), (i) make, change, or terminate any material election with respect to Taxes (including elections with respect to the use of Tax accounting methods) of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture to which any Seller or Purchased Subsidiary is a party, (ii) settle or compromise any Claim or assessment for Taxes (including refunds) that could be reasonably expected to result in any adverse consequence on Purchaser or any Purchased Asset following the Closing Date, (iii) agree to an extension of the statute of limitations with respect to the assessment or collection of the Taxes of any Seller, Seller Group member or Purchased Subsidiary or any material joint venture of which any Seller or Purchased Subsidiary is a party or (iv) make or surrender any Claim for a refund of a material amount of the Taxes of any of

Sellers or Purchased Subsidiaries or file an amended Tax Return with respect to a material amount of Taxes.

(g)

(i) Purchaser shall treat the transactions with respect to Parent described herein, in combination with the subsequent liquidation of Sellers (such transactions, collectively, the "Relevant Transactions"), as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Parent qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a "G Transaction") if (x) the IRS issues a private letter ruling ("PLR") or executes a closing agreement ("CA"), in each case reasonably acceptable to Purchaser, confirming that the Relevant Transactions shall qualify as a G Transaction for U.S. federal income Tax purposes, or (y) Purchaser determines to treat the Relevant Transactions as so qualifying (clause (x) or (y), an "Agreed G Transaction"). In connection with the foregoing, Sellers shall use their reasonable best efforts to obtain a PLR or execute a CA with respect to the Relevant Transactions at least seven (7) days prior to the Closing Date. At least three (3) days prior to the Closing Date, Purchaser shall advise Parent in writing as to whether Purchaser has made a determination regarding the treatment of the Relevant Transactions for U.S. federal income Tax purposes and, if applicable, the outcome of any such determination.

(ii) On or prior to the Closing Date, Sellers shall deliver to Purchaser all information in the possession of Sellers and their Affiliates that is reasonably related to the determination of whether the Relevant Transactions constitute an Agreed G Transaction ("Relevant Information"), and, after the Closing, Sellers shall promptly provide to Purchaser any newly produced or obtained Relevant Information. For the avoidance of doubt, the Parties shall cooperate in taking any actions and providing any information that Purchaser determines is necessary or appropriate in furtherance of the intended U.S. federal income Tax treatment of the Relevant Transactions and the other transactions contemplated by this Agreement.

(iii) If Purchaser has not determined as of the Closing Date whether to treat the Relevant Transactions as an Agreed G Transaction, Purchaser shall make such determination in accordance with this **Section 6.16** prior to the due date (including validly obtained extensions) for filing the corporate income Tax Return for Parent's U.S. affiliated group (as defined in Section 1504 of the Tax Code) for the taxable year in which the Closing Date occurs, and shall convey such decision in writing to Parent, which decision shall be binding on Parent.

(iv) If the Relevant Transactions constitute an Agreed G Transaction under this **Section 6.16**: (A) Sellers shall use their reasonable best efforts, and Purchaser shall use reasonable best efforts to assist Sellers, to effectuate such treatment and the Parties shall not take any action or position inconsistent with, or

fail to take any necessary action in furtherance of, such treatment (subject to **Section 6.16(g)(vi)**); (B) the Parties agree that this Agreement shall constitute a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code; (C) the board of directors of Parent and Purchaser shall, by resolution, approve the execution of this Agreement and expressly recognize its treatment as a "plan" of Parent and Purchaser for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Relevant Transactions as a G Transaction for federal income Tax purposes; (D) Sellers shall provide Purchaser with a statement setting forth the adjusted Tax basis of the Purchased Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Subsidiary that are available as of the Closing Date and after the close of any taxable year of any Seller or Seller Group member that impacts the numbers previously provided, all based on the best information available, but with no Liability for any errors or omissions in information; and (E) Sellers shall provide Purchaser with an estimate of the cancellation of Indebtedness income that Sellers and any Seller Group member anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(v) If the Relevant Transactions do not constitute an Agreed G Transaction under this **Section 6.16**, the Parties hereby agree, and Sellers hereby consent, to treat the sale of the Purchased Assets by Parent as a taxable asset sale for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**. In addition, the Parties hereby agree, and Sellers hereby consent, to treat the sales of the Purchased Assets by S Distribution and Harlem as taxable asset sales for all Tax purposes, to make any elections pursuant to Section 338 of the Tax Code requested by Purchaser, and to report consistently herewith for purposes of **Section 3.3**.

(vi) No Party shall take any position with respect to the Relevant Transactions that is inconsistent with the position determined in accordance with this **Section 6.16**, unless, and then only to the extent, otherwise required to do so by a Final Determination.

(vii) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Purchaser, no later than December 31, 2011, and each such liquidation may include a distribution of assets to a "liquidating trust" within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Purchaser.

(viii) Effective no later than the Closing Date, Purchaser shall be treated as a corporation for federal income Tax purposes.

Section 6.17 Employees; Benefit Plans; Labor Matters.

(a) *Transferred Employees.* Effective as of the Closing Date, Purchaser or one of its Affiliates shall make an offer of employment to each Applicable Employee. Notwithstanding anything herein to the contrary and except as provided in an individual employment Contract with any Applicable Employee or as required by the terms of an Assumed Plan, offers of employment to Applicable Employees whose employment rights are subject to the UAW Collective Bargaining Agreement as of the Closing Date, shall be made in accordance with the applicable terms and conditions of the UAW Collective Bargaining Agreement and Purchaser's obligations under the Labor Management Relations Act of 1974, as amended. Each offer of employment to an Applicable Employee who is not covered by the UAW Collective Bargaining Agreement shall provide, until at least the first anniversary of the Closing Date, for (i) base salary or hourly wage rates initially at least equal to such Applicable Employee's base salary or hourly wage rate in effect as of immediately prior to the Closing Date and (ii) employee pension and welfare benefits, Contracts and arrangements that are not less favorable in the aggregate than those listed on Section 4.10 of the Sellers' Disclosure Schedule, but not including any Retained Plan, equity or equity-based compensation plans or any Benefit Plan that does not comply in all respects with TARP. For the avoidance of doubt, each Applicable Employee on layoff status, leave status or with recall rights as of the Closing Date, shall continue in such status and/or retain such rights after Closing in the Ordinary Course of Business. Each Applicable Employee who accepts employment with Purchaser or one of its Affiliates and commences working for Purchaser or one of its Affiliates shall become a "Transferred Employee." To the extent such offer of employment by Purchaser or its Affiliates is not accepted, Sellers shall, as soon as practicable following the Closing Date, terminate the employment of all such Applicable Employees. Nothing in this **Section 6.17(a)** shall prohibit Purchaser or any of its Affiliates from terminating the employment of any Transferred Employee after the Closing Date, subject to the terms and conditions of the UAW Collective Bargaining Agreement. It is understood that the intent of this **Section 6.17(a)** is to provide a seamless transition from Sellers to Purchaser of any Applicable Employee subject to the UAW Collective Bargaining Agreement. Except for Applicable Employees with non-standard individual agreements providing for severance benefits, until at least the first anniversary of the Closing Date, Purchaser further agrees and acknowledges that it shall provide to each Transferred Employee who is not covered by the UAW Collective Bargaining Agreement and whose employment is involuntarily terminated by Purchaser or its Affiliates on or prior to the first anniversary of the Closing Date, severance benefits that are not less favorable than the severance benefits such Transferred Employee would have received under the applicable Benefit Plans listed on Section 4.10 of the Sellers' Disclosure Schedule. Purchaser or one of its Affiliates shall take all actions necessary such that Transferred Employees shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual (except in the case of a defined benefit pension plan sponsored by Purchaser or any of its Affiliates in which Transferred Employees may commence participation after the Closing that is not an Assumed Plan), in any employee benefit plans (excluding equity compensation plans or programs) covering Transferred Employees after the Closing to the same extent as such Transferred Employee was

entitled as of immediately prior to the Closing Date to credit for such service under any similar employee benefit plans, programs or arrangements of any of Sellers or any Affiliate of Sellers; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such Transferred Employee or the funding for any such benefit. Such benefits shall not be subject to any exclusion for any pre-existing conditions to the extent such conditions were satisfied by such Transferred Employees under a Parent Employee Benefit Plan as of the Closing Date, and credit shall be provided for any deductible or out-of-pocket amounts paid by such Transferred Employee during the plan year in which the Closing Date occurs.

(b) *Employees of Purchased Subsidiaries.* As of the Closing Date, those employees of Purchased Subsidiaries who participate in the Assumed Plans, may, subject to the applicable Collective Bargaining Agreement, for all purposes continue to participate in such Assumed Plans, in accordance with their terms in effect from time to time. For the avoidance of any doubt, Purchaser shall continue the employment of any current Employee of any Purchased Subsidiary covered by the UAW Collective Bargaining Agreement on the terms and conditions of the UAW Collective Bargaining Agreement in effect immediately prior to the Closing Date, subject to its terms; provided, however, that nothing in this Agreement shall be construed to terminate the coverage of any UAW-represented Employee in an Assumed Plan if such Employee was a participant in the Assumed Plan immediately prior to the Closing Date. Further provided, that nothing in this Agreement shall create a direct employment relationship between Parent or Purchaser and an Employee of a Purchased Subsidiary or an Affiliate of Parent.

(c) *No Third Party Beneficiaries.* Nothing contained herein, express or implied, (i) is intended to confer or shall confer upon any Employee or Transferred Employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, (ii) except as set forth in **Section 9.11**, is intended to confer or shall confer upon any individual or any legal Representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement or (iii) shall be deemed to confer upon any such individual or legal Representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal Representative shall be entitled to look only to the express terms of any such plans, program or arrangement for his or her rights thereunder. Nothing herein is intended to override the terms and conditions of the UAW Collective Bargaining Agreement.

(d) *Plan Authority.* Nothing contained herein, express or implied, shall prohibit Purchaser or its Affiliates, as applicable, from, subject to applicable Law and the terms of the UAW Collective Bargaining Agreement, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (e.g., utilization review or pre-certification requirements), and/or making other changes in the administration or in the design, coverage and benefits provided to such Transferred Employees. Without reducing the obligations of Purchaser as set forth in **Section 6.17(a)**, no provision of this Agreement

shall be construed as a limitation on the right of Purchaser or its Affiliates, as applicable, to suspend, amend, modify or terminate any employee benefit plan, subject to the terms of the UAW Collective Bargaining Agreement. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan, and (ii) no provision of this Agreement shall be construed as limiting Purchaser's or its Affiliate's, as applicable, discretion and authority to interpret the respective employee benefit and compensation plans, agreements arrangements, and programs, in accordance with their terms and applicable Law.

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies.* As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(f) *UAW Collective Bargaining Agreement.* Parent shall assume and assign to Purchaser, as of the Closing, the UAW Collective Bargaining Agreement and all rights and Liabilities of Parent relating thereto (including Liabilities for wages, benefits and other compensation, unfair labor practices, grievances, arbitrations and contractual obligations). With respect to the UAW Collective Bargaining Agreement, Purchaser agrees to (i) recognize the UAW as the exclusive collective bargaining representative for the Transferred Employees covered by the terms of the UAW Collective Bargaining Agreement, (ii) offer employment to all Applicable Employees covered by the UAW Collective Bargaining Agreement with full recognition of all seniority rights, (iii) negotiate with the UAW over the terms of any successor collective bargaining agreement upon the expiration of the UAW Collective Bargaining Agreement and upon timely

demand by the UAW, (iv) with the agreement of the UAW or otherwise as provided by Law and to the extent necessary, adopt or assume or replace, effective as of the Closing Date, employee benefit plans, policies, programs, agreements and arrangements specified in or covered by the UAW Collective Bargaining Agreement as required to be provided to the Transferred Employees covered by the UAW Collective Bargaining Agreement, and (v) otherwise abide by all terms and conditions of the UAW Collective Bargaining Agreement. For the avoidance of doubt, the provisions of this **Section 6.17(f)** are not intended to (A) give, and shall not be construed as giving, the UAW or any Transferred Employee any enhanced or additional rights or (B) otherwise restrict the rights that Purchaser and its Affiliates have, under the terms of the UAW Collective Bargaining Agreement.

(g) *UAW Retiree Settlement Agreement.* Prior to the Closing, Purchaser and the UAW shall have entered into the UAW Retiree Settlement Agreement.

(h) *Assumption of Existing Internal VEBA.* Purchaser or one of its Affiliates shall, effective as of the Closing Date, assume from Sellers the sponsorship of the voluntary employees' beneficiary association trust between Sellers and State Street Bank and Trust Company dated as of December 17, 1997, that is funded and maintained by Sellers ("Existing Internal VEBA") and, in connection therewith, Purchaser shall, or shall cause one of its Affiliates to, (i) succeed to all of the rights, title and interest (including the rights of Sellers, if any) as plan sponsor, plan administrator or employer) under the Existing Internal VEBA, (ii) assume any responsibility or Liability relating to the Existing Internal VEBA and each Contract established thereunder or relating thereto, and (iii) to operate the Existing Internal VEBA in accordance with, and to otherwise comply with the Purchaser's obligations under, the New UAW Retiree Settlement Agreement between Purchaser and the UAW, effective as of the Closing and subject to approval by a court having jurisdiction over this matter, including the obligation to direct the trustee of the Existing Internal VEBA to transfer the UAW's share of assets in the Existing Internal VEBA to the New VEBA. The Parties shall cooperate in the execution of any documents, the adoption of any corporate resolutions or the taking of any other reasonable actions to effectuate such succession of the settlor rights, title, and interest with respect to the Existing Internal VEBA. For avoidance of doubt, Purchaser shall not assume any Liabilities relating to the Existing Internal VEBA except with respect to such Contracts set forth in Section 6.17(h) of the Sellers' Disclosure Schedule.

(i) *Wage and Tax Reporting.* Sellers and Purchaser agree to apply, and cause their Affiliates to apply, the standard procedure for successor employers set forth in Revenue Procedure 2004-53 for wage and employment Tax reporting.

(j) *Non-solicitation.* Sellers shall not, for a period of two (2) years from the Closing Date, without Purchaser's written consent, solicit, offer employment to or hire any Transferred Employee.

(k) *Cooperation.* Purchaser and Sellers shall provide each other with such records and information as may be reasonably necessary, appropriate and permitted under applicable Law to carry out their obligations under this **Section 6.17**; provided, that all

records, information systems data bases, computer programs, data rooms and data related to any Assumed Plan or Liabilities of such, assumed by Purchaser, shall be transferred to Purchaser.

(l) *Union Notifications.* Purchaser and Sellers shall reasonably cooperate with each other in connection with any notification required by Law to, or any required consultation with, or the provision of documents and information to, the employees, employee representatives, the UAW and relevant Governmental Authorities and governmental officials concerning the transactions contemplated by this Agreement, including any notice to any of Sellers' retired Employees represented by the UAW, describing the transactions contemplated herein.

(m) *Union-Represented Employees (Non-UAW).*

(i) Effective as of the Closing Date, Purchaser or one of its Affiliates shall assume the collective bargaining agreements, as amended, set forth on Section 6.17(m)(i) of the Sellers' Disclosure Schedule (collectively, the "Non-UAW Collective Bargaining Agreements") and make offers of employment to each current employee of Parent who is covered by them in accordance with the applicable terms and conditions of such Non-UAW Collective Bargaining Agreements, such assumption and offers conditioned upon (A) the non-UAW represented employees' ratification of the amendments thereto (including termination of the application of the Supplemental Agreements Covering Health Care Program to retirees and the reduction to retiree life insurance coverage) and (B) Bankruptcy Court approval of Settlement Agreements between Purchaser and such Unions and Proposed Memorandum of Understanding Regarding Retiree Health Care and Life Insurance between Sellers and such Unions, as identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule and satisfaction of all conditions stated therein. Each such non-UAW hourly employee on layoff status, leave status or with recall rights as of the Closing Date shall continue in such status and/or retain such rights after the Closing in the Ordinary Course of Business, subject to the terms of the applicable Non-UAW Collective Bargaining Agreement. Other than as set forth in this **Section 6.17(m)**, no non-UAW collective bargaining agreement shall be assumed by Purchaser.

(ii) Section 6.17(m)(ii) of the Sellers' Disclosure Schedule sets forth agreements relating to post-retirement health care and life insurance coverage for non-UAW retired employees (the "Non-UAW Settlement Agreements"), including those agreements covering retirees who once belonged to Unions that no longer have any active employees at Sellers. Conditioned on both the approval of the Bankruptcy Court and the non-UAW represented employees' ratification of the amendments to the applicable Non-UAW Collective Bargaining Agreement providing for such coverage as described in **Section 6.17(m)(i)** above, Purchaser or one of its Affiliates shall assume and enter into the agreements identified on Section 6.17(m)(ii) of the Sellers' Disclosure Schedule. Except as set forth in those agreements identified on Section 6.17(m)(i) and Section 6.17(m)(ii) of the Sellers' Disclosure Schedule, Purchaser shall not assume any Liability to provide

post-retirement health care or life insurance coverage for current or future hourly non-UAW retirees.

(iii) Other than as expressly set forth in this **Section 6.17(m)**, Purchaser assumes no Employment-Related Obligations for non-UAW hourly Employees. For the avoidance of doubt, (A) the provisions of **Section 6.17(f)** shall not apply to this **Section 6.17(m)** and (B) the provisions of this **Section 6.17(m)** are not intended to (y) give, and shall not be construed as giving, any non-UAW Union or the covered employee or retiree of any Non-UAW Collective Bargaining Agreement any enhanced or additional rights or (z) otherwise restrict the rights that Purchaser and its Affiliates have under the terms of the Non-UAW Collective Bargaining Agreements identified on Section 6.17(m)(i) of the Sellers' Disclosure Schedule.

Section 6.18 TARP. From and after the date hereof and until such time as all amounts under the UST Credit Facilities have been paid in full, forgiven or otherwise extinguished or such longer period as may be required by Law, subject to any applicable Order of the Bankruptcy Court, each of Sellers and Purchaser shall, and shall cause each of their respective Subsidiaries to, take all necessary action to ensure that it complies in all material respects with TARP or any enhanced restrictions on executive compensation agreed to by Sellers and Sponsor prior to the Closing.

Section 6.19 Guarantees; Letters of Credit. Purchaser shall use its reasonable best efforts to cause Purchaser or one or more of its Subsidiaries to be substituted in all respects for each Seller and Excluded Entity, effective as of the Closing Date, in respect of all Liabilities of each Seller and Excluded Entity under each of the guarantees, letters of credit, letters of comfort, bid bonds and performance bonds (a) obtained by any Seller or Excluded Entity for the benefit of the business of Sellers and their Subsidiaries and (b) which is assumed by Purchaser as an Assumed Liability. As a result of such substitution, each Seller and Excluded Entity shall be released of its obligations of, and shall have no Liability following the Closing from, or in connection with any such guarantees, letters of credit, letters of comfort, bid bonds and performance bonds.

Section 6.20 Customs Duties. Purchaser shall reimburse Sellers for all customs-related duties, fees and associated costs incurred by Sellers on behalf of Purchaser with respect to periods following the Closing, including all such duties, fees and costs incurred in connection with co-loaded containers that clear customs intentionally or unintentionally under any Seller's importer or exporter identification numbers and bonds or guarantees with respect to periods following the Closing.

Section 6.21 Termination of Intellectual Property Rights. Each Seller agrees that any rights of any Seller, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests and including transfers resulting from this **Section 6.21**), whether owned or licensed, shall terminate as of the Closing. Before and after the Closing, each Seller agrees to use its reasonable best efforts to cause the Retained Subsidiaries to do the following, but only to the extent that such Seller can do so

without incurring any Liabilities to such Retained Subsidiaries or their equity owners or creditors as a result thereof: (a) enter into a written Contract with Purchaser that expressly terminates any rights of such Retained Subsidiaries, including any rights arising under Contracts, if any, to any and all of the Intellectual Property transferred to Purchaser pursuant to this Agreement (including indirect transfers resulting from the transfer of the Transferred Equity Interests), whether owned or licensed; and (b) assign to Purchaser or its designee(s): (i) all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, used, acquired, or licensed by any Seller, all applications, registrations and recordings thereof (including applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by or associated with such marks, in each case, that are owned by such Retained Subsidiaries and that contain or are confusingly similar with (whether in whole or in part) any of the Trademarks; and (ii) all other intellectual property owned by such Retained Subsidiaries. Nothing in this **Section 6.21** shall preserve any rights of Sellers or the Retained Subsidiaries, or any third parties, that are otherwise terminated or extinguished pursuant to this Agreement or applicable Law, and nothing in this **Section 6.21** shall create any rights of Sellers or the Retained Subsidiaries, or any third parties, that do not already exist as of the date hereof. Notwithstanding anything to the contrary in this **Section 6.21**, Sellers may enter into (and may cause or permit any of the Purchased Subsidiaries to enter into) any of the transactions contemplated by Section 6.2 of the Sellers' Disclosure Schedule.

Section 6.22 Trademarks.

(a) At or before the Closing (i) Parent shall take any and all actions that are reasonably necessary to change the corporate name of Parent to a new name that bears no resemblance to Parent's present corporate name and that does not contain, and is not confusingly similar with, any of the Trademarks; and (ii) to the extent that the corporate name of any Seller (other than Parent) or any Retained Subsidiary resembles Parent's present corporate name or contains or is confusingly similar with any of the Trademarks, Sellers (including Parent) shall take any and all actions that are reasonably necessary to change such corporate names to new names that bear no resemblance to Parent's present corporate name, and that do not contain and are not confusingly similar with any of the Trademarks.

(b) As promptly as practicable following the Closing, but in no event later than ninety (90) days after the Closing (except as set forth in this **Section 6.22(b)**), Sellers shall cease, and shall cause the Retained Subsidiaries to cease, using the Trademarks in any form, whether by removing, permanently obliterating, covering, or otherwise eliminating all Trademarks that appear on any of their assets, including all signs, promotional or advertising literature, labels, stationery, business cards, office forms and packaging materials. During such time period, Sellers and the Retained Subsidiaries may continue to use Trademarks in a manner consistent with their usage of the Trademarks as of immediately prior to the Closing, but only to the extent reasonably necessary for them to continue their operations as contemplated by the Parties as of the

Closing. If requested by Purchaser within a reasonable time after the Closing, Sellers and Retained Subsidiaries shall enter into a written agreement that specifies quality control of such Trademarks and their underlying goods and services. For signs and the like that exist as of the Closing on the Excluded Real Property, if it is not reasonably practicable for Sellers or the Retained Subsidiaries to remove, permanently obliterate, cover or otherwise eliminate the Trademarks from such signs and the like within the time period specified above, then Sellers and the Retained Subsidiaries shall do so as soon as practicable following such time period, but in no event later than one-hundred eighty (180) days following the Closing.

(c) From and after the date of this Agreement and, until the earlier of the Closing or termination of this Agreement, each Seller shall use its reasonable best efforts to protect and maintain the Intellectual Property owned by Sellers that is material to the conduct of its business in a manner that is consistent with the value of such Intellectual Property.

(d) At or prior to the Closing, Sellers shall provide a true, correct and complete list setting forth all worldwide patents, patent applications, trademark registrations and applications and copyright registrations and applications included in the Intellectual Property owned by Sellers.

Section 6.23 Preservation of Records. The Parties shall preserve and keep all books and records that they own immediately after the Closing relating to the Purchased Assets, the Assumed Liabilities and Sellers' operation of the business related thereto prior to the Closing for a period of six (6) years following the Closing Date or for such longer period as may be required by applicable Law, unless disposed of in good faith pursuant to a document retention policy. During such retention period, duly authorized Representatives of a Party shall, upon reasonable notice, have reasonable access during normal business hours to examine, inspect and copy such books and records held by the other Parties for any proper purpose, except as may be prohibited by Law or by the terms of any Contract (including any confidentiality agreement); provided that to the extent that disclosing any such information would reasonably be expected to constitute a waiver of attorney-client, work product or other legal privilege with respect thereto, the Parties shall take all reasonable best efforts to permit such disclosure without the waiver of any such privilege, including entering into an appropriate joint defense agreement in connection with affording access to such information. The access provided pursuant to this **Section 6.23** shall be subject to such additional confidentiality provisions as the disclosing Party may reasonably deem necessary.

Section 6.24 Confidentiality. During the Confidentiality Period, Sellers and their Affiliates shall treat all trade secrets and all other proprietary, legally privileged or sensitive information related to the Transferred Entities, the Purchased Assets and/or the Assumed Liabilities (collectively, the "Confidential Information"), whether furnished before or after the Closing, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it is or was furnished, as confidential, preserve the confidentiality thereof, not use or disclose to any Person such Confidential Information and instruct their Representatives who have had access to such information to keep confidential such Confidential Information. The "Confidentiality Period"

shall be a period commencing on the date of the Original Agreement and (a) with respect to a trade secret, continuing for as long as it remains a trade secret and (b) for all other Confidential Information, ending four (4) years from the Closing Date. Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Sellers, any of their Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed, including any applicable requirements of the SEC or any other Governmental Authority responsible for securities Law regulation and compliance or any stock market or stock exchange on which any Seller's securities are listed.

Section 6.25 Privacy Policies. At or prior to the Closing, Purchaser shall, or shall cause its Subsidiaries to, establish Privacy Policies that are substantially similar to the Privacy Policies of Parent and the Purchased Subsidiaries as of immediately prior to the Closing, and Purchaser or its Affiliates, as applicable, shall honor all "opt-out" requests or preferences made by individuals in accordance with the Privacy Policies of Parent and the Purchased Subsidiaries and applicable Law; provided that such Privacy Policies and any related "opt-out" requests or preferences are delivered or otherwise made available to Purchaser prior to the Closing, to the extent not publicly available.

Section 6.26 Supplements to Sellers' Disclosure Schedule. At any time and from time to time prior to the Closing, Sellers shall have the right to supplement, modify or update Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule (a) to reflect changes and developments that have arisen after the date of the Original Agreement and that, if they existed prior to the date of the Original Agreement, would have been required to be set forth on such Sellers' Disclosure Schedule or (b) as may be necessary to correct any disclosures contained in such Sellers' Disclosure Schedule or in any representation and warranty of Sellers that has been rendered inaccurate by such changes or developments. No supplement, modification or amendment to Section 4.1 through Section 4.22 of the Sellers' Disclosure Schedule shall without the prior written consent of Purchaser, (i) cure any inaccuracy of any representation and warranty made in this Agreement by Sellers or (ii) give rise to Purchaser's right to terminate this Agreement unless and until this Agreement shall be terminable by Purchaser in accordance with **Section 8.1(f)**.

Section 6.27 Real Property Matters.

(a) Sellers and Purchaser acknowledge that certain real properties (the "Subdivision Properties") may need to be subdivided or otherwise legally partitioned in accordance with applicable Law (a "Required Subdivision") so as to permit the affected Owned Real Property to be conveyed to Purchaser separate and apart from adjacent Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule contains a list of the Subdivision Properties that was determined based on the current list of Excluded Real Property. Section 6.27 of the Sellers' Disclosure Schedule may be updated at any time prior to the Closing to either (i) add additional Subdivision Properties or (ii) remove any Subdivision Properties, which have been determined to not require a Required Subdivision or for which a Required Subdivision has been obtained. Purchaser shall pay for all costs incurred to complete all Required Subdivisions. Sellers shall cooperate in good faith with Purchaser in connection with the completion with all Required

Subdivisions, including executing all required applications or other similar documents with Governmental Authorities. To the extent that any Required Subdivision for a Subdivision Property is not completed prior to Closing, then at Closing, Sellers shall lease to Purchaser only that portion of such Subdivision Property that constitutes Owned Real Property pursuant to the Master Lease Agreement (Subdivision Properties) substantially in the form attached hereto as **Exhibit L** (the "Subdivision Master Lease"). Upon completion of a Required Subdivision affecting an Owned Real Property that is subject to the Subdivision Master Lease, the Subdivision Master Lease shall be terminated as to such Owned Real Property and such Owned Real Property shall be conveyed to Purchaser by Quitclaim Deed for One Dollar ($1.00) in stated consideration.

(b) Sellers and Purchaser acknowledge that the Saginaw Nodular Iron facility in Saginaw, Michigan (the "Saginaw Nodular Iron Land") contains a wastewater treatment facility (the "Existing Saginaw Wastewater Facility") and a landfill (the "Saginaw Landfill") that currently serve the Owned Real Property commonly known as the GMPT - Saginaw Metal Casting facility (the "Saginaw Metal Casting Land"). The Saginaw Nodular Iron Land has been designated as an Excluded Real Property under Section 2.2(b)(v) of the Sellers' Disclosure Schedule. At the Closing (or within sixty (60) days after the Closing with respect to the Saginaw Landfill), Sellers shall enter into one or more service agreements with one or more third party contractors (collectively, the "Saginaw Service Contracts") to operate the Existing Saginaw Wastewater Facility and the Saginaw Landfill for the benefit of the Saginaw Metal Casting Land. The terms and conditions of the Saginaw Service Contracts shall be mutually acceptable to Purchaser and Sellers; provided that the term of each Saginaw Service Contract shall not extend beyond December 31, 2012, and Purchaser shall have the right to terminate any Saginaw Service Contract upon prior written notice of not less than forty-five (45) days. At any time during the term of the Saginaw Service Contracts, Purchaser may elect to purchase the Existing Saginaw Wastewater Facility, the Saginaw Landfill, or both, for One Dollar ($1.00) in stated consideration; provided that (i) Purchaser shall pay all costs and fees related to such purchase, including the costs of completing any Required Subdivision necessary to effectuate the terms of this **Section 6.27(b)**, (ii) Sellers shall convey title to the Existing Saginaw Wastewater Facility, the Saginaw Landfill and/or such other portion of the Saginaw Nodular Iron Land as is required by Purchaser to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill, including lagoons, but not any other portion of the Saginaw Nodular Iron Land, to Purchaser by quitclaim deed and (iii) Sellers shall grant Purchaser such easements for utilities over the portion of the Saginaw Nodular Iron Land retained by Sellers as may be required to operate the Existing Saginaw Wastewater Facility and/or the Saginaw Landfill.

(c) Sellers and Purchaser acknowledge that access to certain Excluded Real Property owned by Sellers or other real properties owned by Excluded Entities and certain Owned Real Property that may hereafter be designated as Excluded Real Property on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (a "Landlocked Parcel") is provided over land that is part of the Owned Real Property. To the extent that direct access to a public right-of-way is not obtained for any Landlocked Parcel by the Closing, then at Closing, Purchaser, in its sole election, shall for each such Landlocked Parcel either (i) grant an access easement over a mutually agreeable portion of the adjacent

Owned Real Property for the benefit of the Landlocked Parcel until such time as the Landlocked Parcel obtains direct access to the public right-of-way, pursuant to the terms of a mutually acceptable easement agreement, or (ii) convey to the owner of the affected Landlocked Parcel by quitclaim deed such portion of the adjacent Owned Real Property as is required to provide the Landlocked Parcel with direct access to a public right-of-way.

(d) At and after Closing, Sellers and Purchasers shall cooperate in good faith to investigate and resolve all issues reasonably related to or arising in connection with Shared Executory Contracts that involve the provision of water, water treatment, electricity, fuel, gas, telephone and other utilities to both Owned Real Property and Excluded Real Property.

(e) Parent shall use reasonable best efforts to cause the Willow Run Landlord to execute, within thirty (30) days after the Closing, or at such later date as may be mutually agreed upon, an amendment to the Willow Run Lease which extends the term of the Willow Run Lease until December 31, 2010 with three (3) one-month options to extend, all at the current rental rate under the Willow Run Lease (the "Willow Run Lease Amendment"). In the event that the Willow Run Lease Amendment is approved and executed by the Willow Run Landlord, then Purchaser shall designate the Willow Run Lease as an Assumable Executory Contract and Parent and Purchaser, or one of its designated Subsidiaries, shall enter into an assignment and assumption of the Willow Run Lease substantially in the form attached hereto as **Exhibit M** (the "Assignment and Assumption of Willow Run Lease").

Section 6.28 Equity Incentive Plans. Within a reasonable period of time following the Closing, Purchaser, through its board of directors, will adopt equity incentive plans to be maintained by Purchaser for the benefit of officers, directors, and employees of Purchaser that will provide the opportunity for equity incentive benefits for such persons ("Equity Incentive Plans").

Section 6.29 Purchase of Personal Property Subject to Executory Contracts. With respect to any Personal Property subject to an Executory Contract that is nominally an unexpired lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Sellers and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such personal property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty's allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Sellers and such counterparty.

Section 6.30 Transfer of Riverfront Holdings, Inc. Equity Interests or Purchased Assets; Ren Cen Lease. Notwithstanding anything to the contrary set forth in this Agreement, in lieu of or in addition to the transfer of Sellers' Equity Interest in Riverfront Holdings, Inc., a Delaware corporation ("RHI"), Purchaser shall have the right at the Closing or at any time during the RHI Post-Closing Period, to require Sellers to cause RHI to transfer good and marketable title to, or a valid and enforceable right by Contract to use, all or any portion of the assets of RHI

to Purchaser. Purchaser shall, at its option, have the right to cause Sellers to postpone the transfer of Sellers' Equity Interest in RHI and/or title to the assets of RHI to Purchaser up until the earlier of (i) January 31, 2010 and (ii) the Business Day immediately prior to the date of the confirmation hearing for Sellers' plan of liquidation or reorganization (the "RHI Post-Closing Period"); provided, however, that (a) Purchaser may cause Sellers to effectuate said transfers at any time and from time to time during the RHI-Post Closing Period upon at least five (5) Business Days' prior written notice to Sellers and (b) at the closing, RHI, as landlord, and Purchaser, or one of its designated Subsidiaries, as tenant, shall enter into a lease agreement substantially in the form attached hereto as **Exhibit N** (the "Ren Cen Lease") for the premises described therein.

Section 6.31 Delphi Agreements. Notwithstanding anything to the contrary in this Agreement, including **Section 6.6**:

(a) Subject to and simultaneously with the consummation of the transactions contemplated by the MDA or of an Acceptable Alternative Transaction (in each case, as defined in the Delphi Motion), (i) the Delphi Transaction Agreements shall, effective immediately upon and simultaneously with such consummation, (A) be deemed to be Assumable Executory Contracts and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the date of such consummation.

(b) The LSA Agreement shall, effective at the Closing, (i) be deemed to be an Assumable Executory Contract and (B) be assumed and assigned to Purchaser and (ii) the Assumption Effective Date with respect thereto shall be deemed to be the Closing Date. To the extent that any such agreement is not an Executory Contract, such agreement shall be deemed to be a Purchased Contract.

Section 6.32 GM Strasbourg S.A. Restructuring. The Parties acknowledge and agree that General Motors International Holdings, Inc., a direct Subsidiary of Parent and the direct parent of GM Strasbourg S.A., may, prior to the Closing, dividend its Equity Interest in GM Strasbourg S.A. to Parent, such that following such dividend, GM Strasbourg S.A. will become a wholly-owned direct Subsidiary of Parent. Notwithstanding anything to the contrary in this Agreement, the Parties further acknowledge and agree that following the consummation of such restructuring at any time prior to the Closing, GM Strasbourg S.A. shall automatically, without further action by the Parties, be designated as an Excluded Entity and deemed to be set forth on Section 2.2(b)(iv) of the Sellers' Disclosure Schedule.

Section 6.33 Holding Company Reorganization. The Parties agree that Purchaser may, with the prior written consent of Sellers, reorganize prior to the Closing such that Purchaser may become a direct or indirect, wholly-owned Subsidiary of Holding Company on such terms and in such manner as is reasonably acceptable to Sellers, and Purchaser may assign all or a portion of its rights and obligations under this Agreement to Holding Company (or one or more newly formed, direct or indirect, wholly-owned Subsidiaries of Holding Company) in accordance with **Section 9.5**. In connection with any restructuring effected pursuant to this **Section 6.33**, the Parties further agree that, notwithstanding anything to the contrary in this Agreement (a) Parent shall receive securities of Holding Company with the same rights and

privileges, and in the same proportions, as the Parent Shares and the Parent Warrants, in each case, in lieu of the Parent Shares and Parent Warrants, as Purchase Price hereunder, (b) Canada, New VEBA and Sponsor shall receive securities of Holding Company with the same rights and privileges, and in the same proportions, as the Canada Shares, VEBA Shares, VEBA Warrant and Sponsor Shares, as applicable, in each case, in connection with the Closing and (c) New VEBA shall receive the VEBA Note issued by the same entity that becomes the obligor on the Purchaser Assumed Debt.

Section 6.34 Transfer of Promark Global Advisors Limited and Promark Investment Trustees Limited Equity Interests. Notwithstanding anything to the contrary set forth in this Agreement, in the event approval by the Financial Services Authority (the "FSA Approval") of the transfer of Sellers' Equity Interests in Promark Global Advisors Limited and Promark Investments Trustees Limited (together, the "Promark UK Subsidiaries") has not been obtained as of the Closing Date, Sellers shall, at their option, have the right to postpone the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries until such time as the FSA Approval is obtained. If the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries is postponed pursuant to this **Section 6.34**, then (a) Sellers and Purchaser shall effectuate the transfer of Sellers' Equity Interests in the Promark UK Subsidiaries no later than five (5) Business Days following the date that the FSA Approval is obtained and (b) Sellers shall enter into a transitional services agreement with Promark Global Advisors, Inc. in the form provided by Promark Global Advisors, Inc., which shall include terms and provisions regarding: (i) certain transitional services to be provided by Promark Global Advisors, Inc. to the Promark UK Subsidiaries, (ii) the continued availability of director and officer liability insurance for directors and officers of the Promark UK Subsidiaries and (iii) certain actions on the part of the Promark UK Subsidiaries to require the prior written consent of Promark Global Advisors, Inc., including changes to employee benefits or compensation, declaration of dividends, material financial transactions, disposition of material assets, entry into material agreements, changes to existing business plans, changes in management and the boards of directors of the Promark UK Subsidiaries and other similar actions.

Section 6.35 Transfer of Equity Interests in Certain Subsidiaries. Notwithstanding anything to the contrary set forth in this Agreement, the Parties may mutually agree to postpone the transfer of Sellers' Equity Interests in those Transferred Entities as are mutually agreed upon by the Parties ("Delayed Closing Entities") to a date following the Closing.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver (to the extent permitted by applicable Law), prior to or at the Closing, of each of the following conditions:

(a) The Bankruptcy Court shall have entered the Sale Approval Order and the Sale Procedures Order on terms acceptable to the Parties and reasonably acceptable to the UAW, and each shall be a Final Order and shall not have been vacated, stayed or

reversed; provided, however, that the conditions contained in this **Section 7.1(a)** shall be satisfied notwithstanding the pendency of an appeal if the effectiveness of the Sale Approval Order has not been stayed.

(b) No Order or Law of a United States Governmental Authority shall be in effect that declares this Agreement invalid or unenforceable or that restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated by this Agreement.

(c) Sponsor shall have delivered, or caused to be delivered to Sellers and Purchaser an equity registration rights agreement, substantially in the form attached hereto as **Exhibit O** (the "Equity Registration Rights Agreement"), duly executed by Sponsor.

(d) Canada shall have delivered, or caused to be delivered to Sellers and Purchaser the Equity Registration Rights Agreement, duly executed by Canada.

(e) The Canadian Debt Contribution shall have been consummated.

(f) The New VEBA shall have delivered, or caused to be delivered to Sellers and Purchaser, the Equity Registration Rights Agreement, duly executed by the New VEBA.

(g) Purchaser shall have received (i) consents from Governmental Authorities, (ii) Permits and (iii) consents from non-Governmental Authorities, in each case with respect to the transactions contemplated by this Agreement and the ownership and operation of the Purchased Assets and Assumed Liabilities by Purchaser from and after the Closing, sufficient in the aggregate to permit Purchaser to own and operate the Purchased Assets and Assumed Liabilities from and after the Closing in substantially the same manner as owned and operated by Sellers immediately prior to the Closing (after giving effect to (A) the implementation of the Viability Plans; (B) Parent's announced shutdown, which began in May 2009; and (C) the Bankruptcy Cases (or any other bankruptcy, insolvency or similar proceeding filed by or in respect of any Subsidiary of Parent).

(h) Sellers shall have executed and delivered definitive financing agreements restructuring the Wind Down Facility in accordance with the provisions of **Section 6.9(b)**.

Section 7.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Purchaser waive the conditions contained in **Section 7.2(d)** or **Section 7.2(e)**:

(a) Each of the representations and warranties of Sellers contained in **ARTICLE IV** of this Agreement shall be true and correct (disregarding for the purposes of such determination any qualification as to materiality or Material Adverse Effect) as of

EXHIBIT C
Part 4

the Closing Date as if made on the Closing Date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by Sellers prior to or at the Closing.

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser:

(i) a certificate executed as of the Closing Date by a duly authorized representative of Sellers, on behalf of Sellers and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.2(a)** and **Section 7.2(b)** have been satisfied;

(ii) the Equity Registration Rights Agreement, duly executed by Parent;

(iii) stock certificates or membership interest certificates, if any, evidencing the Transferred Equity Interests (other than in respect of the Equity Interests held by Sellers in RHI, Promark Global Advisors Limited, Promark Investments Trustees Limited and the Delayed Closing Entities, which the Parties agree may be transferred following the Closing in accordance with **Section 6.30**, **Section 6.34** and **Section 6.35**), duly endorsed in blank or accompanied by stock powers (or similar documentation) duly endorsed in blank, in proper form for transfer to Purchaser, including any required stamps affixed thereto;

(iv) an omnibus bill of sale, substantially in the form attached hereto as **Exhibit P** (the "Bill of Sale"), together with transfer tax declarations and all other instruments of conveyance that are necessary to effect transfer to Purchaser of title to the Purchased Assets, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(v) an omnibus assignment and assumption agreement, substantially in the form attached hereto as **Exhibit Q** (the "Assignment and Assumption Agreement"), together with all other instruments of assignment and assumption that are necessary to transfer the Purchased Contracts and Assumed Liabilities to Purchaser, each in a form reasonably satisfactory to the Parties and duly executed by the appropriate Seller;

(vi) a novation agreement, substantially in the form attached hereto as **Exhibit R** (the "Novation Agreement"), duly executed by Sellers and the appropriate United States Governmental Authorities;

(vii) a government related subcontract agreement, substantially in the form attached hereto as **Exhibit S** (the "Government Related Subcontract Agreement"), duly executed by Sellers;

(viii) an omnibus intellectual property assignment agreement, substantially in the form attached hereto as **Exhibit T** (the "Intellectual Property Assignment Agreement"), duly executed by Sellers;

(ix) a transition services agreement, substantially in the form attached hereto as **Exhibit U** (the "Transition Services Agreement"), duly executed by Sellers;

(x) all quitclaim deeds or deeds without warranty (or equivalents for those parcels of Owned Real Property located in jurisdictions outside of the United States), in customary form, subject only to Permitted Encumbrances, conveying the Owned Real Property to Purchaser (the "Quitclaim Deeds"), duly executed by the appropriate Seller;

(xi) all required Transfer Tax or sales disclosure forms relating to the Transferred Real Property (the "Transfer Tax Forms"), duly executed by the appropriate Seller;

(xii) an assignment and assumption of the leases and subleases underlying the Leased Real Property, in substantially the form attached hereto as **Exhibit V** (the "Assignment and Assumption of Real Property Leases"), together with such other instruments of assignment and assumption that are necessary to transfer the leases and subleases underlying the Leased Real Property located in jurisdictions outside of the United States, each duly executed by Sellers; provided, however, that if it is required for the assumption and assignment of any lease or sublease underlying a Leased Real Property that a separate assignment and assumption for such lease or sublease be executed, then a separate assignment and assumption of such lease or sublease shall be executed in a form substantially similar to **Exhibit V** or as otherwise required to assume or assign such Leased Real Property;

(xiii) an assignment and assumption of the lease in respect of the premises located at 2485 Second Avenue, New York, New York, substantially in the form attached hereto as **Exhibit W** (the "Assignment and Assumption of Harlem Lease"), duly executed by Harlem;

(xiv) an omnibus lease agreement in respect of the lease of certain portions of the Excluded Real Property that is owned real property, substantially in the form attached hereto as **Exhibit X** (the "Master Lease Agreement"), duly executed by Parent;

(xv) *[Reserved]*;

(xvi) the Saginaw Service Contracts, if required, duly executed by the appropriate Seller;

(xvii) any easement agreements required under **Section 6.27(c)**, duly executed by the appropriate Seller;

(xviii) the Subdivision Master Lease, if required, duly executed by the appropriate Sellers;

(xix) a certificate of an officer of each Seller (A) certifying that attached to such certificate are true and complete copies of (1) such Seller's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of such Seller, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which such Seller is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(e)**, and (B) certifying as to the incumbency of the officer(s) of such Seller executing this Agreement and the Ancillary Agreements to which such Seller is a party;

(xx) a certificate in compliance with Treas. Reg. §1.1445-2(b)(2) that each Seller is not a foreign person as defined under Section 897 of the Tax Code;

(xxi) a certificate of good standing for each Seller from the Secretary of State of the State of Delaware;

(xxii) their written agreement to treat the Relevant Transactions and the other transactions contemplated by this Agreement in accordance with Purchaser's determination in **Section 6.16**;

(xxiii) payoff letters and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements), each in a form reasonably satisfactory to the Parties and duly executed by the holders of the secured Indebtedness; and

(xxiv) all books and records of Sellers described in **Section 2.2(a)(xiv)**.

(d) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by the applicable Sellers and assigned to Purchaser, and shall be in full force and effect.

(e) The UAW Retiree Settlement Agreement shall have been executed and delivered by the UAW and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

(f) The Canadian Operations Continuation Agreement shall have been executed and delivered by the parties thereto in the form previously distributed among them.

Section 7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment or written waiver, prior to or at the Closing, of each of the following conditions; provided, however, that in no event may Sellers waive the conditions contained in **Section 7.3(h)** or **Section 7.3(i)**:

(a) Each of the representations and warranties of Purchaser contained in **ARTICLE V** of this Agreement shall be true and correct (disregarding for the purpose of such determination any qualification as to materiality or Purchaser Material Adverse Effect) as of the Closing Date as if made on such date (except for representations and warranties that speak as of a specific date or time, which representations and warranties shall be true and correct only as of such date or time), except to the extent that any breaches of such representations and warranties, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers:

(i) Parent Warrant A (including the related warrant agreement), duly executed by Purchaser;

(ii) Parent Warrant B (including the related warrant agreement), duly executed by Purchaser;

(iii) a certificate executed as of the Closing Date by a duly authorized representative of Purchaser, on behalf of Purchaser and not in such authorized representative's individual capacity, certifying that the conditions set forth in **Section 7.3(a)** and **Section 7.3(b)** are satisfied;

(iv) stock certificates evidencing the Parent Shares, duly endorsed in blank or accompanied by stock powers duly endorsed in blank, in proper form for transfer, including any required stamps affixed thereto;

(v) the Equity Registration Rights Agreement, duly executed by Purchaser;

(vi) the Bill of Sale, together with all other documents described in **Section 7.2(c)(iv)**, each duly executed by Purchaser or its designated Subsidiaries;

(vii) the Assignment and Assumption Agreement, together with all other documents described in **Section 7.2(c)(v)**, each duly executed by Purchaser or its designated Subsidiaries;

(viii) the Novation Agreement, duly executed by Purchaser or its designated Subsidiaries;

(ix) the Government Related Subcontract Agreement, duly executed by Purchaser or its designated Subsidiary;

(x) the Intellectual Property Assignment Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xi) the Transition Services Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xii) the Transfer Tax Forms, duly executed by Purchaser or its designated Subsidiaries, to the extent required;

(xiii) the Assignment and Assumption of Real Property Leases, together with all other documents described in **Section 7.2(c)(xii)**, each duly executed by Purchaser or its designated Subsidiaries;

(xiv) the Assignment and Assumption of Harlem Lease, duly executed by Purchaser or its designated Subsidiaries;

(xv) the Master Lease Agreement, duly executed by Purchaser or its designated Subsidiaries;

(xvi) *[Reserved]*;

(xvii) the Subdivision Master Lease, if required, duly executed by Purchaser or its designated Subsidiaries;

(xviii) any easement agreements required under **Section 6.27(c)**, duly executed by Purchaser or its designated Subsidiaries;

(xix) a certificate of a duly authorized representative of Purchaser (A) certifying that attached to such certificate are true and complete copies of (1) Purchaser's Organizational Documents, each as amended through and in effect on the Closing Date and (2) resolutions of the board of directors of Purchaser, authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Purchaser is a party, the consummation of the transactions contemplated by this Agreement and such Ancillary Agreements and the matters set forth in **Section 6.16(g)**, and (B) certifying as to the incumbency of the officer(s) of Purchaser executing this Agreement and the Ancillary Agreements to which Purchaser is a party; and

(xx) a certificate of good standing for Purchaser from the Secretary of State of the State of Delaware.

(d) *[Reserved]*

(e) Purchaser shall have filed a certificate of designation for the Preferred Stock, substantially in the form attached hereto as **Exhibit Y**, with the Secretary of State of the State of Delaware.

(f) Purchaser shall have offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (iii) transferred to Sellers the UST Warrant and (iv) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(g) Purchaser shall have delivered, or caused to be delivered, to Canada, Sponsor and/or the New VEBA, as applicable:

(i) certificates representing the Canada Shares, the Sponsor Shares and the VEBA Shares in accordance with the applicable equity subscription agreements in effect on the date hereof;

(ii) the Equity Registration Rights Agreement, duly executed by Purchaser;

(iii) the VEBA Warrant (including the related warrant agreement), duly executed by Purchaser; and

(iv) a note, in form and substance consistent with the terms set forth on **Exhibit Z** attached hereto, to the New VEBA (the "VEBA Note").

(h) The UAW Collective Bargaining Agreement shall have been ratified by the membership, shall have been assumed by Purchaser, and shall be in full force and effect.

(i) The UAW Retiree Settlement Agreement shall have been executed and delivered, shall be in full force and effect, and shall have been approved by the Bankruptcy Court as part of the Sale Approval Order.

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Sellers or Purchaser, if (i) the Closing shall not have occurred on or before August 15, 2009, or such later date as the Parties may agree in writing, such date not to be later than September 15, 2009 (as extended, the "End Date"), and (ii) the Party seeking to terminate this Agreement pursuant to this **Section 8.1(b)** shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure of the transactions contemplated hereby to close on or before such date;

(c) by either Sellers or Purchaser, if the Bankruptcy Court shall not have entered the Sale Approval Order by July 10, 2009;

(d) by either Sellers or Purchaser, if any court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or the sale of a material portion of the Purchased Assets;

(e) by Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform has not been cured by the End Date, provided that (i) Sellers shall have given Purchaser written notice, delivered at least thirty (30) days prior to such termination, stating Sellers' intention to terminate this Agreement pursuant to this **Section 8.1(e)** and the basis for such termination and (ii) Sellers shall not have the right to terminate this Agreement pursuant to this **Section 8.1(e)** if Sellers are then in material breach of any its representations, warranties, covenants or other agreements set forth herein;

(f) by Purchaser, if Sellers shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in **Section 7.2(a)** or **Section 7.2(b)** to be fulfilled, (ii) cannot be cured by the End Date, provided that (i) Purchaser shall have given Sellers written notice, delivered at least thirty (30) days prior to such termination, stating Purchaser's intention to terminate this Agreement pursuant to this **Section 8.1(f)** and the basis for such termination and (iii) Purchaser shall not have the right to terminate this Agreement pursuant to this **Section 8.1(f)** if Purchaser is then in material breach of any its representations, warranties, covenants or other agreements set forth herein; or

(g) by either Sellers or Purchaser, if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction.

Section 8.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated pursuant to **Section 8.1**, this Agreement shall become null and void and have no effect, and all obligations of the Parties hereunder shall terminate, except for those obligations of the Parties set forth this **Section 8.2** and **ARTICLE IX**, which shall remain in full force and effect; provided that nothing

herein shall relieve any Party from Liability for any material breach of any of its representations, warranties, covenants or other agreements set forth herein. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement shall, to the extent practicable, be withdrawn from the agency or other Person to which they were made.

(b) If this Agreement is terminated by Sellers or Purchaser pursuant to **Section 8.1(a)** through **Section 8.1(d)** or **Section 8.1(g)** or by Purchaser pursuant to **Section 8.1(f)**, Sellers, severally and not jointly, shall reimburse Purchaser for its reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby (the "Purchaser Expense Reimbursement"). The Purchaser Expense Reimbursement shall be paid as an administrative expense Claim of Sellers pursuant to Section 503(b)(1) of the Bankruptcy Code.

(c) Except as expressly provided for in this **Section 8.2**, any termination of this Agreement pursuant to **Section 8.1** shall be without Liability to Purchaser or Sellers, including any Liability by Sellers to Purchaser for any break-up fee, termination fee, expense reimbursement or other compensation as a result of a termination of this Agreement.

(d) If this Agreement is terminated for any reason, Purchaser shall, and shall cause each of its Affiliates and Representatives to, treat and hold as confidential all Confidential Information, whether documentary, electronic or oral, labeled or otherwise identified as confidential, and regardless of the form of communication or the manner in which it was furnished. For purposes of this **Section 8.2(d)**, Confidential Information shall be deemed not to include any information that (i) is now available to or is hereafter disclosed in a manner making it available to the general public, in each case, through no act or omission of Purchaser, any of its Affiliates or any of their Representatives, or (ii) is required by Law to be disclosed.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Survival of Representations, Warranties, Covenants and Agreements and Consequences of Certain Breaches. The representations and warranties of the Parties contained in this Agreement shall be extinguished by and shall not survive the Closing, and no Claims may be asserted in respect of, and no Party shall have any Liability for any breach of, the representations and warranties. All covenants and agreements contained in this Agreement, including those covenants and agreements set forth in **ARTICLE II** and **ARTICLE VI**, shall survive the Closing indefinitely.

Section 9.2 Notices. Any notice, request, instruction, consent, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) upon delivery when personally delivered; (b) on the delivery date after having been sent by a nationally or internationally recognized overnight courier service (charges prepaid); (c) at the time received

when sent by registered or certified mail, return receipt requested, postage prepaid; or (d) at the time when confirmation of successful transmission is received (or the first Business Day following such receipt if the date of such receipt is not a Business Day) ~~if sent by facsimile,~~ in each case, to the recipient at the address or facsimile number, as applicable, indicated below:

If to any Seller:

General Motors Corporation
300 Renaissance Center
Tower 300, 25th Floor, Room D55
M/C 482-C25-D81
Detroit, Michigan 48265-3000
Attn: General Counsel
Tel.: 313-667-3450
Facsimile: 248-267-4584

With copies to:

Jenner & Block LLP
330 North Wabash Avenue
Chicago, Illinois 60611-7603
Attn: Joseph P. Gromacki
Michael T. Wolf
Tel.: 312-222-9350
Facsimile: 312-527-0484

and

Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Harvey R. Miller
Stephen Karotkin
Raymond Gietz
Tel.: 212-310-8000
Facsimile: 212-310-8007

If to Purchaser:

NGMCO, Inc.
c/o The United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C. 20220
Attn: Chief Counsel Office of Financial Stability
Facsimile: 202-927-9225

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attn: John J. Rapisardi
R. Ronald Hopkinson
Tel.: 212-504-6000
Facsimile: 212-504-6666

provided, however, if any Party shall have designated a different addressee and/or contact information by notice in accordance with this **Section 9.2**, then to the last addressee as so designated.

Section 9.3 Fees and Expenses; No Right of Setoff. Except as otherwise provided in this Agreement, including **Section 8.2(b)**, Purchaser, on the one hand, and each Seller, on the other hand, shall bear its own fees, costs and expenses, including fees and disbursements of counsel, financial advisors, investment bankers, accountants and other agents and representatives, incurred in connection with the negotiation and execution of this Agreement and each Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby. In furtherance of the foregoing, Purchaser shall be solely responsible for (a) all expenses incurred by it in connection with its due diligence review of Sellers and their respective businesses, including surveys, title work, title inspections, title searches, environmental testing or inspections, building inspections, Uniform Commercial Code lien and other searches and (b) any cost (including any filing fees) incurred by it in connection with notarization, registration or recording of this Agreement or an Ancillary Agreement required by applicable Law. No Party nor any of its Affiliates shall have any right of holdback or setoff or assert any Claim or defense with respect to any amounts that may be owed by such Party or its Affiliates to any other Party (or Parties) hereto or its or their Affiliates as a result of and with respect to any amount that may be owing to such Party or its Affiliates under this Agreement, any Ancillary Agreement or any other commercial arrangement entered into in between or among such Parties and/or their respective Affiliates.

Section 9.4 Bulk Sales Laws. Each Party hereto waives compliance by the other Parties with any applicable bulk sales Law.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations provided by this Agreement may be assigned or delegated by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment or delegation without such prior written consent shall be null and void; provided, however, that, without the consent of Sellers, Purchaser may assign or direct the transfer on its behalf on or prior to the Closing of all, or any portion, of its rights to purchase, accept and acquire the Purchased Assets and its obligations to assume and thereafter pay or perform as and when due, or otherwise discharge, the Assumed Liabilities, to Holding Company or one or more newly-formed, direct or indirect, wholly-owned Subsidiaries of Holding Company or Purchaser; provided, further, that no such assignment or delegation shall relieve Purchaser of any of its obligations under this Agreement. Subject to the preceding sentence and except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.6 Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by a duly authorized representative or officer of each of the Parties.

Section 9.7 Waiver. At any time prior to the Closing, each Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein (to the extent permitted by Law). Any such waiver or extension by a Party (i) shall be valid only if, and to the extent, set forth in a written instrument signed by a duly authorized representative or officer of the Party to be bound and (ii) shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of, or estoppel with respect to, any other terms, covenants, conditions, rights or privileges, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 9.8 Severability. Whenever possible, each term and provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law. If any term or provision of this Agreement, or the application thereof to any Person or any circumstance, is held to be illegal, invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision and (b) the remainder of this Agreement or such term or provision and the application of such term or provision to other Persons or circumstances shall remain in full force and effect and shall not be affected by such illegality, invalidity or unenforceability, nor shall such invalidity or unenforceability affect the legality, validity or enforceability of such term or provision, or the application thereof, in any jurisdiction.

Section 9.9 Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

Section 9.10 Headings. The descriptive headings of the Articles, Sections and paragraphs of, and Schedules and Exhibits to, this Agreement, and the table of contents, table of Exhibits and table of Schedules contained in this Agreement, are included for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit, modify or affect any of the provisions hereof.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective permitted successors and

assigns; provided, that (a) for all purposes each of Sponsor, the New VEBA, and Canada shall be express third-party beneficiaries of this Agreement and (b) for purposes of **Section 2.2(a)(x)** and **(xvi)**, **Section 2.2(b)(vii)**, **Section 2.3(a)(x)**, **(xii)**, **(xiii)** and **(xv)**, **Section 2.3(b)(xv)**, **Section 4.6(b)**, **Section 4.10**, **Section 5.4(c)**, **Section 6.2(b)(x)**, **(xv)** and **(xvii)**, **Section 6.4(a)**, **Section 6.4(b)**, **Section 6.6(a)**, **(d)**, **(f)** and **(g)**, **Section 6.11(c)(i)** and **(vi)**, **Section 6.17**, **Section 7.1(a)** and **(f)**, **Section 7.2(d)** and **(e)** and **Section 7.3(g)**, **(h)** and **(i)**, the UAW shall be an express third-party beneficiary of this Agreement. Subject to the preceding sentence, nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.12 Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise) shall in all respects be governed by and construed (a) to the extent applicable, in accordance with the Bankruptcy Code, and (b) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 9.13 Venue and Retention of Jurisdiction. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein); provided, however, that this **Section 9.13** shall not be applicable in the event the Bankruptcy Cases have closed, in which case the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York for any litigation arising out of or in connection with this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in the federal courts in the Southern District of New York and state courts of the State of New York located in the Borough of Manhattan in the City of New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein).

Section 9.14 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

Section 9.15 Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Sellers.

Section 9.16 Enforcement of Agreement. The Parties agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the

Parties shall, without the posting of a bond, be entitled, subject to a determination by a court of competent jurisdiction, to an injunction or injunctions to prevent any such failure of performance under, or breaches of, this Agreement, and to enforce specifically the terms and provisions hereof and thereof, this being in addition to all other remedies available at law or in equity, and each Party agrees that it will not oppose the granting of such relief on the basis that the requesting Party has an adequate remedy at law.

Section 9.17 Entire Agreement. This Agreement (together with the Ancillary Agreements, the Sellers' Disclosure Schedule and the Exhibits) contains the final, exclusive and entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 9.18 Publicity. Prior to the first public announcement of this Agreement and the transactions contemplated hereby, Sellers, on the one hand, and Purchaser, on the other hand, shall consult with each other regarding, and share with each other copies of, their respective communications plans, including draft press releases and related materials, with regard to such announcement. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party or Parties, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the Party intending to make such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers list securities; provided, that the Party intending to make such release shall use reasonable best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party or Parties, as applicable, with respect to the text thereof; provided, further, that, notwithstanding anything to the contrary contained in this section, no Party shall be prohibited from publishing, disseminating or otherwise making public, without the prior written approval of the other Party or Parties, as applicable, any materials that are derived from or consistent with the materials included in the communications plan referred to above. In an effort to coordinate consistent communications, the Parties shall agree upon procedures relating to all press releases and public announcements concerning this Agreement and the transactions contemplated hereby.

Section 9.19 No Successor or Transferee Liability. Except where expressly prohibited under applicable Law or otherwise expressly ordered by the Bankruptcy Court, upon the Closing, neither Purchaser nor any of its Affiliates or stockholders shall be deemed to (a) be the successor of Sellers; (b) have, de facto, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) other than as set forth in this Agreement, be liable for any acts or omissions of Sellers in the conduct of Sellers' business or arising under or related to the Purchased Assets. Without limiting

the generality of the foregoing, and except as otherwise provided in this Agreement, neither Purchaser nor any of its Affiliates or stockholders shall be liable for any Claims against Sellers or any of their predecessors or Affiliates, and neither Purchaser nor any of its Affiliates or stockholders shall have any successor, transferee or vicarious Liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to Sellers' business or any obligations of Sellers arising prior to the Closing, except as provided in this Agreement, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers' business prior to the Closing.

Section 9.20 Time Periods. Unless otherwise specified in this Agreement, an action required under this Agreement to be taken within a certain number of days or any other time period specified herein shall be taken within the applicable number of calendar days (and not Business Days); provided, however, that if the last day for taking such action falls on a day that is not a Business Day, the period during which such action may be taken shall be automatically extended to the next Business Day.

Section 9.21 Sellers' Disclosure Schedule. The representations and warranties of Sellers set forth in this Agreement are made and given subject to the disclosures contained in the Sellers' Disclosure Schedule. Inclusion of information in the Sellers' Disclosure Schedule shall not be construed as an admission that such information is material to the business, operations or condition of the business of Sellers, the Purchased Assets or the Assumed Liabilities, taken in part or as a whole, or as an admission of Liability of any Seller to any third party. The specific disclosures set forth in the Sellers' Disclosure Schedule have been organized to correspond to Section references in this Agreement to which the disclosure may be most likely to relate; provided, however, that any disclosure in the Sellers' Disclosure Schedule shall apply to, and shall be deemed to be disclosed for, any other Section of this Agreement to the extent the relevance of such disclosure to such other Section is reasonably apparent on its face.

Section 9.22 No Binding Effect. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement shall (i) be binding on or create any obligation on the part of Sponsor, the United States Government or any branch, agency or political subdivision thereof (a "Sponsor Affiliate") or the Government of Canada, or any crown corporation, agency or department thereof (a "Canada Affiliate") or (ii) require Purchaser to initiate any Claim or other action against Sponsor or any Sponsor Affiliate or otherwise attempt to cause Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate to comply with or abide by the terms of this Agreement. No facts, materials or other information received or action taken by any Person who is an officer, director or agent of Purchaser by virtue of such Person's affiliation with or employment by Sponsor, any Sponsor Affiliate, Government of Canada or any Canada Affiliate shall be attributed to Purchaser for purposes of this Agreement or shall form the basis of any claim against such Person in their individual capacity.

[Remainder of the page left intentionally blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq A. Malik
Title: Vice President and Treasurer

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of June 30, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (the "Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) **Section 2.3(a)(v)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Cases through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers' estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases, to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers' Liabilities in clauses (A) and (B) above include all of Sellers' Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes and other Liabilities mentioned in the Bankruptcy Court's Order - Docket No. 174), in each case, other than (1) Liabilities of the type described in **Section 2.3(b)(iv)**, **Section 2.3(b)(vi)**, **Section 2.3(b)(ix)** and **Section 2.3(b)(xii)**, (2) Liabilities arising under any dealer sales and service Contract and any Contract related thereto, to the extent such Contract has been designated as

a Rejectable Executory Contract, and (3) Liabilities otherwise assumed in this **Section 2.3(a)**;

(b) **Section 2.3(a)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance (for avoidance of doubt, Purchaser shall not assume, or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs);

(c) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, (A) the states set forth on **Exhibit G** and (B) if the State of Michigan (1) fails to authorize Purchaser and its Affiliates operating within the State of Michigan to be a self-insurer for purposes of administering workers' compensation Claims or (2) requires Purchaser and its Affiliates operating within the State of Michigan to post collateral, bonds or other forms of security to secure workers' compensation Claims, the State of Michigan (collectively, "Retained Workers' Compensation Claims");

(d) **Section 6.6(d)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (d) All Assumable Executory Contracts shall be assumed and assigned to Purchaser on the date (the "Assumption Effective Date") that is the later of (i) the date designated by the Purchaser and (ii) the date following expiration of the objection deadline if no objection, other than to the Cure Amount, has been timely filed or the date of resolution of any objection unrelated to Cure Amount, as provided in the Sale Procedures Order; provided, however, that in the case of each (A) Assumable Executory Contract identified on Section 6.6(a)(i) of the Sellers' Disclosure Schedule, (2) Deferred Termination Agreement (and the related Discontinued Brand Dealer Agreement or Continuing Brand Dealer Agreement)

designated as an Assumable Executory Contract and (3) Participation Agreement (and the related Continuing Brand Dealer Agreement) designated as an Assumable Executory Contract, the Assumption Effective Date shall be the Closing Date and (B) Assumable Executory Contract identified on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule, the Assumption Effective Date shall be a date that is no later than the date set forth with respect to such Executory Contract on Section 6.6(a)(ii) of the Sellers' Disclosure Schedule. As soon as reasonably practicable following a determination that an Executory Contract shall be designated as an Assumable Executory Contract hereunder, Sellers shall use reasonable best efforts to notify each third party to such Executory Contract of their intention to assume and assign such Executory Contract in accordance with the terms of this Agreement and the Sale Procedures Order. On the Assumption Effective Date for any Assumable Executory Contract, such Assumable Executory Contract shall be deemed to be a Purchased Contract hereunder. If it is determined under the procedures set forth in the Sale Procedures Order that Sellers may not assume and assign to Purchaser any Assumable Executory Contract, such Executory Contract shall cease to be an Assumable Executory Contract and shall be an Excluded Contract and a Rejectable Executory Contract. Except as provided in **Section 6.31**, notwithstanding anything else to the contrary herein, any Executory Contract that has not been specifically designated as an Assumable Executory Contract as of the Executory Contract Designation Deadline applicable to such Executory Contract, including any Deferred Executory Contract, shall automatically be deemed to be a Rejectable Executory Contract and an Excluded Contract hereunder. Sellers shall have the right, but not the obligation, to reject, at any time, any Rejectable Executory Contract; provided, however, that Sellers shall not reject any Contract that affects both Owned Real Property and Excluded Real Property (whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule), including any such Executory Contract that involves the provision of water, water treatment, electric, fuel, gas, telephone and other utilities to any facilities located at the Excluded Real Property, whether designated on **Exhibit F** or now or hereafter designated on Section 2.2(b)(v) of the Sellers' Disclosure Schedule (the "Shared Executory Contracts"), without the prior written consent of Purchaser.

Section 3. Effectiveness of Amendment. Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. Ratification of Purchase Agreement; Incorporation by Reference. Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGM 20, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT, dated as of July 5, 2009 (this "Amendment"), is made by and among General Motors Corporation, a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), Chevrolet-Saturn of Harlem, Inc., a Delaware corporation ("Harlem," and collectively with Parent, S LLC and S Distribution, "Sellers," and each a "Seller"), and NGMCO, Inc., a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings LLC, a Delaware limited liability company ("Purchaser").

WHEREAS, Sellers and Purchaser have entered into that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009 (as amended, the "Purchase Agreement");

WHEREAS, Sellers and Purchaser have entered into that certain First Amendment to Amended and Restated Master and Purchase Agreement; and

WHEREAS, the Parties desire to amend the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Section 1. *Capitalized Terms.* All capitalized terms used but not defined herein shall have the meanings specified in the Purchase Agreement.

Section 2. *Amendments to Purchase Agreement.*

(a) The following new definition of "Advanced Technology Credits" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Credits" has the meaning set forth in **Section 6.36.**

(b) The following new definition of "Advanced Technology Projects" is hereby included in **Section 1.1** of the Purchase Agreement:

> "Advanced Technology Projects" means development, design, engineering and production of advanced technology vehicles and components, including the vehicles known as "the Volt", "the Cruze" and components, transmissions and systems for vehicles employing hybrid technologies.

(c) The definition of "Ancillary Agreements" is hereby amended and restated in its entirety to read as follows:

"Ancillary Agreements" means the Parent Warrants, the UAW Active Labor Modifications, the UAW Retiree Settlement Agreement, the VEBA Warrant, the Equity Registration Rights Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the Transition Services Agreement, the Quitclaim Deeds, the Assignment and Assumption of Real Property Leases, the Assignment and Assumption of Harlem Lease, the Master Lease Agreement, the Subdivision Master Lease (if required), the Saginaw Service Contracts (if required), the Assignment and Assumption of Willow Run Lease, the Ren Cen Lease, the VEBA Note and each other agreement or document executed by the Parties pursuant to this Agreement or any of the foregoing and each certificate and other document to be delivered by the Parties pursuant to **ARTICLE VII.**

(d) The following new definition of "Excess Estimated Unsecured Claim Amount" is hereby included in **Section 1.1** of the Purchase Agreement:

"Excess Estimated Unsecured Claim Amount" has the meaning set forth in **Section 3.2(c)(i).**

(e) The definition of "Permitted Encumbrances" is hereby amended and restated in its entirety to read as follows:

"Permitted Encumbrances" means all (i) purchase money security interests arising in the Ordinary Course of Business; (ii) security interests relating to progress payments created or arising pursuant to government Contracts in the Ordinary Course of Business; (iii) security interests relating to vendor tooling arising in the Ordinary Course of Business; (iv) Encumbrances that have been or may be created by or with the written consent of Purchaser; (v) mechanic's, materialmen's, laborer's, workmen's, repairmen's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings; (vi) liens for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable or delinquent (or which may be paid without interest or penalties); (vii) with respect to the Transferred Real Property that is Owned Real Property, other than Secured Real Property Encumbrances at and following the Closing: (a) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose, the existence of which, individually or in the aggregate, would not materially and adversely interfere with the present use of the affected property; (b) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Owned Real Property; (c) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Owned Real Property, which, individually or in the aggregate, would not materially and adversely interfere with the present use

of the applicable Owned Real Property; and (d) such other Encumbrances, the existence of which, individually or in the aggregate, would not materially and adversely interfere with or affect the present use or occupancy of the applicable Owned Real Property; (viii) with respect to the Transferred Real Property that is Leased Real Property: (1) matters that a current ALTA/ACSM survey, or a similar cadastral survey in any country other than the United States, would disclose; (2) rights of the public, any Governmental Authority and adjoining property owners in streets and highways abutting or adjacent to the applicable Leased Real Property; (3) easements, licenses, rights-of-way, covenants, servitudes, restrictions, encroachments, site plans, subdivision plans and other Encumbrances of public record or that would be disclosed by a current title commitment of the applicable Leased Real Property or which have otherwise been imposed on such property by landlords; (ix) in the case of the Transferred Equity Interests, all restrictions and obligations contained in any Organizational Document, joint venture agreement, shareholders agreement, voting agreement and related documents and agreements, in each case, affecting the Transferred Equity Interests; (x) except to the extent otherwise agreed to in the Ratification Agreement entered into by Sellers and GMAC on June 1, 2009 and approved by the Bankruptcy Court on the date thereof or any other written agreement between GMAC or any of its Subsidiaries and any Seller, all Claims (in each case solely to the extent such Claims constitute Encumbrances) and Encumbrances in favor of GMAC or any of its Subsidiaries in, upon or with respect to any property of Sellers or in which Sellers have an interest, including any of the following: (1) cash, deposits, certificates of deposit, deposit accounts, escrow funds, surety bonds, letters of credit and similar agreements and instruments; (2) owned or leased equipment; (3) owned or leased real property; (4) motor vehicles, inventory, equipment, statements of origin, certificates of title, accounts, chattel paper, general intangibles, documents and instruments of dealers, including property of dealers in-transit to, surrendered or returned by or repossessed from dealers or otherwise in any Seller's possession or under its control; (5) property securing obligations of Sellers under derivatives Contracts; (6) rights or property with respect to which a Claim or Encumbrance in favor of GMAC or any of its Subsidiaries is disclosed in any filing made by Parent with the SEC (including any filed exhibit); and (7) supporting obligations, insurance rights and Claims against third parties relating to the foregoing; and (xi) all rights of setoff and/or recoupment that are Encumbrances in favor of GMAC and/or its Subsidiaries against amounts owed to Sellers and/or any of their Subsidiaries with respect to any property of Sellers or in which Sellers have an interest as more fully described in clause (x) above; it being understood that nothing in this clause (xi) or preceding clause (x) shall be deemed to modify, amend or otherwise change any agreement as between GMAC or any of its Subsidiaries and any Seller.

(f) The following new definition of "Purchaser Escrow Funds" is hereby included in **Section 1.1** of the Purchase Agreement:

"Purchaser Escrow Funds" has the meaning set forth in **Section 2.2(a)(xx)**.

(g) **Section 2.2(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xii) all credits, Advanced Technology Credits, deferred charges, prepaid expenses, deposits, advances, warranties, rights, guarantees, surety bonds, letters of credit, trust arrangements and other similar financial arrangements, in each case, relating to the Purchased Assets or Assumed Liabilities, including all warranties, rights and guarantees (whether express or implied) made by suppliers, manufacturers, contractors and other third parties under or in connection with the Purchased Contracts;

(h) **Section 2.2(a)(xviii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xviii) any rights of any Seller, Subsidiary of any Seller or Seller Group member to any Tax refunds, credits or abatements that relate to any Pre-Closing Tax Period or Straddle Period;

(i) **Section 2.2(a)(xix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (xix) any interest in Excluded Insurance Policies, only to the extent such interest relates to any Purchased Asset or Assumed Liability; and

(j) A new **Section 2.2(a)(xx)** is hereby added to the Purchase Agreement to read as follows:

> (xx) all cash and cash equivalents, including all marketable securities, held in (1) escrow pursuant to, or as contemplated by that certain letter agreement dated as of June 30, 2009, by and between Parent, Citicorp USA, Inc., as Bank Representative, and Citibank, N.A., as Escrow Agent or (2) any escrow established in contemplation or for the purpose of the Closing, that would otherwise constitute a Purchased Asset pursuant to **Section 2.2(a)(i)** (collectively, "Purchaser Escrow Funds");

(k) **Section 2.2(b)(i)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (i) cash or cash equivalents in an amount equal to $1,175,000,000 (the "Excluded Cash");

(l) **Section 2.2(b)(ii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> (ii) all Restricted Cash exclusively relating to the Excluded Assets or Retained Liabilities, which for the avoidance of doubt, shall not be deemed to include Purchaser Escrow Funds;

(m) **Section 2.3(a)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) all Liabilities arising under any Environmental Law (A) relating to the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the Closing;

(n) **Section 2.3(a)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all Liabilities (A) specifically assumed by Purchaser pursuant to **Section 6.17** or (B) arising out of, relating to or in connection with the salaries and/or wages and vacation of all Transferred Employees that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date;

(o) **Section 2.3(b)(iv)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(iv) all Liabilities (A) associated with noncompliance with Environmental Laws (including for fines, penalties, damages and remedies); (B) arising out of, relating to, in respect of or in connection with the transportation, off-site storage or off-site disposal of any Hazardous Materials generated or located at any Transferred Real Property; (C) arising out of, relating to, in respect of or in connection with third party Claims related to Hazardous Materials that were or are located at or that were Released into the Environment from Transferred Real Property prior to the Closing, except as otherwise required under applicable Environmental Laws; (D) arising under Environmental Laws related to the Excluded Real Property, except as provided under Section 18.2(e) of the Master Lease Agreement or as provided under the "Facility Idling Process" section of Schedule A of the Transition Services Agreement; or (E) for environmental Liabilities with respect to real property formerly owned, operated or leased by Sellers (as of the Closing), which, in the case of clauses (A), (B) and (C), arose prior to or at the Closing, and which, in the case of clause (D) and (E), arise prior to, at or after the Closing;

(p) **Section 2.3(b)(xii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(xii) all workers' compensation Claims with respect to Employees residing or employed in, as the case may be and as defined by applicable Law, the states set forth on **Exhibit G** (collectively, "Retained Workers' Compensation Claims");

(q) **Section 3.2(a)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(a) The purchase price (the "Purchase Price") shall be equal to the sum of:

(i) a Bankruptcy Code Section 363(k) credit bid in an amount equal to: (A) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing pursuant to the UST Credit Facilities, and (B) the amount of Indebtedness of Parent and its Subsidiaries as of the Closing under the DIP Facility, less $8,247,488,605 of Indebtedness under the DIP Facility (such amount, the "UST Credit Bid Amount");

(ii) the UST Warrant (which the Parties agree has a value of no less than $1,000);

(iii) the valid issuance by Purchaser to Parent of (A) 50,000,000 shares of Common Stock (collectively, the "Parent Shares") and (B) the Parent Warrants; and

(iv) the assumption by Purchaser or its designated Subsidiaries of the Assumed Liabilities.

For the avoidance of doubt, immediately following the Closing, the only indebtedness for borrowed money (or any guarantees thereof) of Sellers and their Subsidiaries to Sponsor, Canada and Export Development Canada is amounts under the Wind Down Facility.

(r) **Section 3.2(c)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(c)

(i) Sellers may, at any time, seek an Order of the Bankruptcy Court (the "Claims Estimate Order"), which Order may be the Order confirming Sellers' Chapter 11 plan, estimating the aggregate allowed general unsecured claims against Sellers' estates. If in the Claims Estimate Order, the Bankruptcy Court makes a finding that the estimated aggregate allowed general unsecured claims against Sellers' estates exceed $35,000,000,000, then Purchaser will, within five (5) Business Days of entry of the Claims Estimate Order, issue additional shares of Common Stock (the "Adjustment Shares") to Parent, as an adjustment to the Purchase Price, based on the extent by which such estimated aggregate general unsecured claims exceed $35,000,000,000 (such amount, the "Excess Estimated Unsecured Claim Amount;" in the event this amount exceeds $7,000,000,000 the Excess Estimated Unsecured Claim Amount will be reduced to a cap of $7,000,000,000). The number of Adjustment Shares to be issued will be equal to the number of shares, rounded up to the next whole share, calculated by multiplying (i) 10,000,000 shares of Common Stock (adjusted to take into account any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation, reorganization or similar transaction with respect to the

Common Stock, effected from and after the Closing and before issuance of the Adjustment Shares) and (ii) a fraction, (A) the numerator of which is Excess Estimated Unsecured Claim Amount (capped at $7,000,000,000) and (B) the denominator of which is $7,000,000,000.

(ii) At the Closing, Purchaser will have authorized and, thereafter, will reserve for issuance the maximum number of shares of Common Stock issuable as Adjustment Shares.

(s) **Section 6.9(b)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(b) Sellers shall use reasonable best efforts to agree with Sponsor on the terms of a restructuring of $1,175,000,000 of Indebtedness accrued under the DIP Facility (as restructured, the "Wind Down Facility") to provide for such Wind Down Facility to be non-recourse, to accrue payment-in-kind interest at the Eurodollar Rate (as defined in the Wind-Down Facility) plus 300 basis points, to be secured by all assets of Sellers (other than the Parent Shares, Adjustment Shares, Parent Warrants and any securities or proceeds received in respect thereof). Sellers shall use reasonable best efforts to enter into definitive financing agreements with respect to the Wind Down Facility so that such agreements are in effect as promptly as practicable but in any event no later than the Closing.

(t) **Section 6.17(e)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(e) *Assumption of Certain Parent Employee Benefit Plans and Policies*. As of the Closing Date, Purchaser or one of its Affiliates shall assume (i) the Parent Employee Benefit Plans and Policies set forth on Section 6.17(e) of the Sellers' Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto, except for any that do not comply in all respects with TARP or as otherwise provided in **Section 6.17(h)** and (ii) all employee benefit plans, programs, policies, agreements or arrangements (whether written or oral) in which Employees who are covered by the UAW Collective Bargaining Agreement participate and all assets, trusts, insurance and other Contracts relating thereto (collectively, the "Assumed Plans"), and Sellers and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its Affiliates as the sponsor of such Assumed Plans including all assets, trusts, insurance policies and other Contracts relating thereto. Other than with respect to any Employee who was or is covered by the UAW Collective Bargaining Agreement, Purchaser shall have no Liability with respect to any modifications or changes to Benefit Plans contemplated by Section 6.17(e) of the Sellers' Disclosure Schedule, or changes made by Parent prior to the Closing Date, and Purchaser shall not assume any Liability with respect to any such decisions or actions related thereto, and Purchaser shall only assume the Liabilities for benefits provided pursuant to the written terms and conditions of

the Assumed Plan as of the Closing Date. Notwithstanding the foregoing, the assumption of the Assumed Plans is subject to Purchaser taking all necessary action, including reduction of benefits, to ensure that the Assumed Plans comply in all respects with TARP. Notwithstanding the foregoing, but subject to the terms of any Collective Bargaining Agreement to which Purchaser or one of its Affiliates is a party, Purchaser and its Affiliates may, in its sole discretion, amend, suspend or terminate any such Assumed Plan at any time in accordance with its terms.

(u) A new **Section 6.17(n)** is hereby added to the Purchase Agreement to read as follows:

(n) *Harlem Employees*. With respect to non-UAW employees of Harlem, Purchaser or one of its Affiliates may make offers of employment to such individuals at its discretion. With respect to UAW-represented employees of Harlem and such other non-UAW employees who accept offers of employment with Purchaser or one of its Affiliates, in addition to obligations under the UAW Collective Bargaining Agreement with respect to UAW-represented employees, Purchaser shall assume all Liabilities arising out of, relating to or in connection with the salaries and/or wages and vacation of all such individuals that are accrued and unpaid (or with respect to vacation, unused) as of the Closing Date. With respect to non-UAW employees of Harlem who accept such offers of employment, Purchaser or one of its Affiliates shall take all actions necessary such that such individuals shall be credited for their actual and credited service with Sellers and each of their respective Affiliates, for purposes of eligibility, vesting and benefit accrual in any employee benefit plans (excluding equity compensation plans or programs) covering such individuals after the Closing; provided, however, that such crediting of service shall not operate to duplicate any benefit to any such individual or the funding for any such benefit. Purchaser or one of its Affiliates, in its sole discretion, may assume certain employee benefit plans maintained by Harlem by delivering written notice (which such notice shall indentify such employee benefit plans of Harlem to be assumed) to Sellers of such assumption on or before the Closing, and upon delivery of such notice, such employee benefit plans shall automatically be deemed to be set forth on Section 6.17(e) of the Sellers' Disclosure Schedules. All such employee benefit plans that are assumed by Purchaser or one of its Affiliates pursuant to the preceding sentence shall be deemed to be Assumed Plans for purposes of this Agreement.

(v) A new **Section 6.36** is hereby added to the Purchase Agreement to read as follows:

Section 6.36 Advanced Technology Credits. The Parties agree that Purchaser shall, to the extent permissible by applicable Law (including all rules, regulations and policies pertaining to Advanced Technology Projects), be entitled to receive full credit for expenditures incurred by Sellers prior to the Closing towards Advanced Technology Projects for the purpose of any current or future program sponsored by a Governmental Authority providing financial assistance in

connection with any such project, including any program pursuant to Section 136 of the Energy Independence and Security Act of 2007 ("Advanced Technology Credits"), and acknowledge that the Purchase Price includes and represents consideration for the full value of such expenditures incurred by Sellers.

(w) **Section 7.2(c)(vi)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vi) *[Reserved]*;

(x) **Section 7.2(c)(vii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(vii) *[Reserved]*;

(y) **Section 7.3(c)(viii)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(viii) *[Reserved]*;

(z) **Section 7.3(c)(ix)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(ix) *[Reserved]*;

(aa) **Section 7.3(f)** of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

(f) Purchaser shall have (i) offset the UST Credit Bid Amount against the amount of Indebtedness of Parent and its Subsidiaries owed to Purchaser as of the Closing under the UST Credit Facilities and the DIP Facility pursuant to a Bankruptcy Code Section 363(k) credit bid and delivered releases and waivers and related Encumbrance-release documentation (including, if applicable, UCC-3 termination statements) with respect to the UST Credit Bid Amount, in a form reasonably satisfactory to the Parties and duly executed by Purchaser in accordance with the applicable requirements in effect on the date hereof, (ii) transferred to Sellers the UST Warrant and (iii) issued to Parent, in accordance with instructions provided by Parent, the Purchaser Shares and the Parent Warrants (duly executed by Purchaser).

(bb) **Exhibit R** to the Purchase Agreement is hereby deleted in its entirety.

(cc) **Exhibit S** to the Purchase Agreement is hereby deleted in its entirety.

(dd) **Exhibit U** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit U** attached hereto.

(ee) **Exhibit X** to the Purchase Agreement is hereby replaced in its entirety with **Exhibit X** attached hereto.

(ff) Section 2.2(b)(iv) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 2.2(b)(iv) of the Sellers' Disclosure Schedule attached hereto.

(gg) Section 4.4 of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 4.4 of the Sellers' Disclosure Schedule attached hereto.

(hh) Section 6.6(a)(i) of the Sellers' Disclosure Schedule is hereby replaced in its entirety with Section 6.6(a)(i) of the Sellers' Disclosure Schedule attached hereto.

Section 3. *Effectiveness of Amendment.* Upon the execution and delivery hereof, the Purchase Agreement shall thereupon be deemed to be amended and restated as set forth in Section 2, as fully and with the same effect as if such amendments and restatements were originally set forth in the Purchase Agreement.

Section 4. *Ratification of Purchase Agreement; Incorporation by Reference.* Except as specifically provided for in this Amendment, the Purchase Agreement is hereby confirmed and ratified in all respects and shall be and remain in full force and effect in accordance with its terms. This Amendment is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement, including **Article IX** thereof, which sections are hereby incorporated into this Amendment, mutatis mutandis, as if they were set forth in their entirety herein.

Section 5. *Counterparts.* This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement. All signatures of the Parties may be transmitted by facsimile or electronic delivery, and each such facsimile signature or electronic delivery signature (including a pdf signature) will, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and be binding upon such Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment to be executed by its duly authorized officer, in each case as of the date first written above.

GENERAL MOTORS CORPORATION

By: _____
Name: Frederick A. Henderson
Title: President and Chief Executive Officer

SATURN LLC

By: _____
Name: Jill Lajdziak
Title: President

SATURN DISTRIBUTION CORPORATION

By: _____
Name: Jill Lajdziak
Title: President

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: Michael Garrick
Title: President

NGMCO, INC.

By: _____
Name: Sadiq Malik
Title: Vice President and Treasurer

EXHIBIT D

C. Brooks Cutter, SBN 121407
KERSHAW CUTTER & RATINOFF LLP
980 9th Street, 19th Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Mark L. Brown
THE LAKIN LAW FIRM
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, DOES 1 through 50, inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, Kelly Castillo, Nichole Brown, and Barbara Glisson, individually and on behalf of all others similarly situated, for their Class Action Complaint against General Motors Corporation (hereinafter "GM"), allege the following:

CASE OVERVIEW

1. Plaintiffs bring this action on behalf of themselves and a class of Saturn vehicle owners in the States of California, Florida, Georgia, Illinois, Massachusetts, Michigan, Missouri,

New Jersey, New York, North Carolina, Ohio, and Oklahoma (the "Class States") whose defectively designed Saturn Vti transmissions have experienced a failure that GM failed or refused to fully remedy.

2. GM manufactures and sells vehicles worldwide under the Saturn brand name, among others.

3. From 2002 until at least 2004, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (now diminished) value of the vehicle.

4. Upon information and belief, GM was aware when it introduced the Vti transmission in 2002 of the inherent design flaws and problems with the Vti, and GM was aware that the Vti transmissions it sold were likely to experience premature failure. Despite this exclusive knowledge, GM failed to disclose this material information to consumers.

5. Many owners of Saturn Vti transmissions have had to repair or replace their Vti transmissions three or more times, and many Saturn customers have been left without transportation because they are unable to afford the costly transmission repairs or replacements needed to return their vehicles to operating condition.

6. Often such customers have attempted to trade in their Saturn vehicles, only to be offered a trade-in amount by the Saturn dealership that was less than the cost of a Vti transmission repair/replacement and which was significantly less than the anticipated fair market value of the vehicle. This despite the fact that when the Vue was introduced in 2002, it had a minimum manufacturer's suggested retail price (MSRP) of more than $16,000.00.

7. Although GM recently has publicly acknowledged an unusually high failure rate on vehicles with the Vti transmission, GM has failed or refused to remedy the problem. For customers with vehicles within the written warranty period, GM has done no more than to temporarily repair the Vti transmissions or to replace them with other similarly defective and inherently failure-prone Vti transmissions. GM has refused to take any action at all to remedy

this concealed defect for those customers with vehicles outside a voluntarily extended warranty period. In no case has GM adequately remedied the defect for any member of the proposed Class by providing a vehicle not containing a defective Vti transmission.

8. In short, GM is believed to have sold vehicles in which it knew the transmissions were likely to fail prematurely, and when such failure occurs, it renders the vehicles virtually worthless absent costly transmission repairs or replacement.

JURISDICTION AND VENUE

9. Plaintiff Kelly Castillo is a resident of Meadow Vista (Placer County), California who purchased a 2003 Saturn Vue in Roseville (Placer County), California.

10. GM is a Delaware corporation with its principal place of business in the State of Michigan.

11. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1132(d) because (a) it is a class action; (b) there are more than 100 class members; (c) the amount in controversy exceeds $5 million, exclusive of interest and costs; and (d) at least one member of the Class is a citizen of a State different from at least one Defendant.

12. Personal jurisdiction over GM is proper because GM transacts substantial business within this State, has made contracts or promises substantially connected with this State, and has otherwise subjected itself to the general jurisdiction of this Court and the other courts in this State.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district, such as the purchase by plaintiff Kelly Castillo and many other class members of their Saturn vehicles from GM in this district.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. The Saturn Vti transmission is a "continuously variable" transmission (CVT). Unlike a conventional automatic transmission, which uses traditional gears to shift at a few fixed points, a CVT shifts through the use of a belt or chain that runs through pulleys that move closer together or farther apart.

15. Rather than using a chain, which is more durable than a belt, the Saturn Vti utilizes a steel belt, known as a "thrust belt." Due to the inherently defective design of the Vti transmission, the thrust belt and the Vti transmission are extraordinarily prone to premature failure. For example, upon information and belief, the transmission is defectively designed in that the engine and/or the pump are underpowered to apply sufficient pressure on the thrust belt. As a result the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails.

16. When the thrust belt and/or the transmission fails, either it causes hesitation in the movement or acceleration of the vehicle, leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile. In either event, this failure requires costly repairs or transmission replacement. On information and belief, the average repair or replacement cost to the consumer exceeds five thousand dollars ($5,000.00).

17. Upon information and belief, this design defect and the accompanying inherent risk of premature transmission failure could have been avoided by using a chain instead of a belt and/or by increasing the power to the transmission, perhaps among other remedies.

18. The defectively designed/manufactured Vti transmissions at issue in this action are contained in 4-cylinder Saturn Vues and Saturn Ions in model years 2002-2004 and perhaps among other Saturn vehicle models.

19. Upon information and belief, GM was aware when it introduced the Vti transmission that it was inherently prone to premature failure. For example, in 1999 or 2000, GM recognized that "concerns exist over the durability of the belt under continuous high-load operations."

20. So concerned was GM over the quality and durability of the Vti transmission, and so plagued was the Vti with problems, that its initial launch was delayed by several months.

21. Despite this delay in the launch of the Vti, upon information and belief, Saturn did not undertake adequate or customary quality control measures to ensure that the Vti was sufficiently tested and refined for full-scale production and sale to consumers. For example, upon information and belief, GM and/or its suppliers bypassed the production startup phase in which

small quantities of vehicles or components typically are tested and quality-controlled prior to initiation of full-scale production.

22. GM did not inform the Class that GM had bypassed the "startup" phase of production, or that it had failed to undertake adequate or customary quality control measures concerning the Vti transmission. Nor did GM inform regarding belt durability.

23. In April of 2003, GM further recognized excessive durability problems with the Vti transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the Vti.

24. In early 2004, GM again recognized durability problems with the Vti transmission when it voluntarily extended the warranty on vehicles containing the Vti from 3 years / 36,000 miles to 5 years / 75,000 miles. However, this temporary remedy was illusory because repairs under the voluntarily extended warranty failed to replace the defectively designed Vti transmission with a durable non-Vti transmission, and any replacement Vti transmissions carried the same defects and inherent elevated risk of premature failure.

25. Transmissions are designed to, and ordinarily do, function for periods (and mileages) substantially in excess of those specified in GM's Saturn warranties, and given past experience, consumers legitimately expect to enjoy the use of an automobile without worry that the transmission would fail for significantly longer than the limited times and mileages identified in Saturn's express warranties, including the voluntarily extended warranty.

26. Upon information and belief, GM, through (1) its own records of customers complaints, (2) dealership repair records, (3) records from the national Highway Traffic Safety Administration (NHTSA), and (4) other various sources, was well aware of the alarming failure rate of Vti transmissions but failed to notify customers of the nature and extent of the problems with the Vti transmission and failed to provide an adequate remedy.

27. Members of the class could not have discovered the latent Vti transmission defects through any reasonable inspection of their vehicles prior to purchase.

28. GM failed adequately to research, design, test and/or manufacture the Vti transmission before warranting, advertising, promoting, marketing, and selling it as suitable and

safe for use in an intended and/or reasonably foreseeable manner.

29. GM advertised, promoted, marketed, warranted, and sold through the stream of commerce to Plaintiffs and the Class vehicles containing Vti transmissions that GM knew or reasonably should have know were dangerously defective, and which otherwise would not perform in accordance with Plaintiff's and the Class members' reasonable expectations that the vehicles would not suffer an inherent, dangerous, disabling defect, and that the vehicles would be safe and suitable for their intended and reasonably foreseeable use.

30. GM expressly warranted the affected vehicles to be free from defects in materials or workmanship for a period of 36 months or 36,000 miles.

31. Buyers, lessees, and other owners of the affected vehicles were without access to the information concealed by GM as described herein, and therefor reasonably relied on GM's representations and warranties regarding the quality, durability, and other material characteristics of their vehicles. Had these buyers and lessees known of the defect and the danger, they would have taken steps to avoid that danger and/or would have paid less for their vehicles than the amounts they actually paid, or would not have purchased the vehicles.

32. By concealing the safety risk associated with the vehicles, GM has forced consumers to bear the risk of injury to themselves and other persons, as well as to property, as a result of the transmission failure, as well as the financial loss associated with the diminished value of their vehicles. Had GM revealed this information, consumers would not buy or lease, or would pay substantially less for, vehicles equipped with the defective Vti transmissions.

33. As a result of GM's misconduct, Plaintiffs and the Class have suffered actual damages in that their Saturn vehicles are hazardous to drive, if operable at all, resulting in loss of use, costly repairs, and substantially diminished value, including without limitation diminished resale value. Further, the defective Vti transmission is not a discreet, modular or incidental part of the vehicle but, rather, is an essential part of the drive train and is integral to the safe operation of the vehicle.

34. The cost to repair or replace the defective Vti transmission is expected to be between $4,000.00 and $8,000.00 per vehicle. Because of the relatively small size of Plaintiff's

and the Class members' claims based on repair costs and/or loss of vehicle market value, and because most have only modest resources as compared to GM, it is unlikely that individual Class members could afford to seek recovery against GM. A class action is, therefore, the only reasonable means by which Class members can obtain relief.

35. GM's knowledge of the fact that the Vti transmission is inherently defective and prone to sudden failure, and that it would need costly repairs and/or replacement, gave GM more than adequate opportunity to cure the problem, which opportunity it failed to timely undertake. Upon information and belief, GM was alerted to this problem by:

a) GM's own testing and knowledge prior to the launch of the Vti transmission in 2002, including without limitation that which led to the delays in initial production;

b) Excessive warranty claims relating to premature transmission failure;

c) Reports of transmission failure to the National Highway Traffic Safety Administration (NHTSA);

d) Additional complaints registered directly from consumers;

e) Reports from GM's dealerships and authorized repair facilities regarding the nature and frequency of the premature transmission failure;

f) Discussions in internet chat rooms, forums, and list serves sponsored by GM or, if not sponsored by GM, monitored by GM's employees; and

g) Other sources.

TOLLING OF STATUTES OF LIMITATION

36. Any applicable statute of limitations has been tolled by GM's knowing and active concealment and denial of the facts as alleged herein. Plaintiffs and the Class have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and the Class could not earlier have reasonably discovered the true, latent defective nature of the Vti transmission.

37. GM was and is under a continuing duty to disclose to Plaintiffs and the Class the true character, quality, and nature of the Vti transmission. Because of GM's knowing, affirmative, and/or active concealment of the true character, quality and nature of the Vti transmission problems with the vehicles at issue, GM is estopped from relying on any statutes of

limitation in defense of this action.

CLASS REPRESENTATIVE ALLEGATIONS

Kelly Castillo

38. Plaintiff Kelly Castillo purchased a new 2003 Saturn Vue with a Vti transmission in January of 2007 from a Saturn dealership in Roseville, California for approximately $23,000.00.

39. Ms. Castillo had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle. The Saturn dealership in Roseville claimed to be unable to diagnose the problems and did not repair or replace the transmission during the voluntarily extended warranty period.

40. However, when the vehicle reached approximately 80,000 miles (just outside the warranty coverage) in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost of approximately $4,200.00 to Ms. Castillo.

Nichole Brown

41. Plaintiff Nichole Brown, a resident of the State of Georgia, purchased her 2003 Saturn Vue with a Vti transmission for about $12,888.00 in or about December of 2006, when it had slightly over 75,000 miles.

42. The Vti transmission failed in or about July of 2007, when the vehicle had approximately 78,000 miles. The Saturn dealership in Georgia quoted her a price of approximately $6,000 to replace the transmission.

43. Ms. Brown instead had the transmission replaced by an independent mechanic at a cost of approximately $4,000.00.

44. After the failure of the Vti transmission, Ms. Brown learned that the Vti transmission in her vehicle had previously been repaired or replaced by a Saturn dealership in October of 2006, meaning that the newly repaired or replaced transmission had only about 2 months of previous usage at the time she purchased it, and only a few thousand miles at the time

of failure.

Barbara Glisson

45. Plaintiff Barbara Glisson, a resident of the State of Oklahoma, purchased a new 2003 Saturn Vue with a Vti transmission in September of 2003 from a Saturn dealership in Jacksonville, Florida for approximately $25,000, plus $1,495 for an "extended warranty service contract."

46. The Vti transmission in Ms. Glisson's vehicle failed for the first time in February of 2005, when the vehicle had approximately 33,000 miles. A Saturn dealership in Tulsa, Oklahoma replaced the transmission under warranty at that time.

47. The Vti transmission failed a second time a little more than a year later, in March of 2006, when the vehicle had approximately 68,000 miles and the second transmission had only about 35,000 miles. A Saturn dealership in Tulsa, Oklahoma overhauled the Vti transmission case, again under warranty.

48. The vehicle now has approximately 107,000 miles and is experiencing its third transmission failure. The Saturn dealership in Tulsa has once again diagnosed the vehicle as needing a transmission replacement, and the dealership quoted a price of more than $5,500.00 to do so. Ms. Glisson has not yet had the vehicle repaired following the third transmission failure.

CLASS ACTION ALLEGATIONS

49. Plaintiffs brings this class action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements for maintaining this action under both state and federal law.

50. The class of persons on whose behalf this action is brought is defined as follows (the "Class"):

> All persons in the States of Illinois, California, Florida, Georgia, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, and Oklahoma who have owned a Saturn vehicle containing a Vti transmission which experienced a failure that GM failed or refused to fully remedy.

Excluded from the Class are: (1) members of the federal judiciary in the foregoing states, and (2) GM, its employees, and any entity in which GM has a controlling interest, including officers and directors and the members of their immediate families. Also excluded from the Class are individuals and entities with claims against GM for personal injuries as a result of the defect alleged herein.

51. The members of the Class, being geographically dispersed and numbering at least in the tens of thousands, are so numerous that joinder of them in a single action is impracticable. According to GM's website, GM sold approximately 75,000 Vues in 2002, 82,000 in 2003, 87,000 in 2004, and 92,000 in 2005. GM sold approximately 6,000 Ions in 2002, 117,000 in 2003, 104,000 in 2004, and 101,000 in 2005.[1] Even if only a small fraction of these vehicles contained the Vti transmission, the Class would number in the tens of thousands.

52. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class, as (a) the claims of Plaintiffs are substantially similar (if not identical to) those of absent Class members, (b) there are questions of law or fact that are common to the Class and that overwhelmingly predominate over any individual issues, such that by prevailing on his own claims, Plaintiffs necessarily will establish Defendants' liability as to all Class members, (c) without the Class representation provided by Plaintiff, virtually no Class members will receive legal representation or redress for their injuries, (d) Class counsel have the necessary financial resources to adequately and vigorously litigate this class action, and (e) Plaintiffs and Class counsel are aware of their fiduciary responsibilities to the Class Members and are determined diligently to discharge those duties by vigorously seeking the maximum possible recovery for the Class.

53. Numerous questions of law and fact that are common to all class members, including, *inter alia*:

(a) Whether Saturn vehicles containing the Vti transmission are defective in that: they fail to perform in accordance with the reasonable expectations of ordinary consumers; they are not fit and safe for their ordinary, intended, and foreseeable use; their risks and dangers outweigh their benefits, if any;

[1] http://www.gm.com/company/investor_information/sales_prod/hist_sales.html.

and/or they would not be offered for sale by a reasonably careful manufacturer or seller who knew of their defective nature;

(b) Whether GM knew of the defective and unreasonably dangerous nature of vehicles equipped with the Vti transmission at the time those vehicles were sold;

(c) Whether GM represented, through its advertising, warranties and other representations, that the Vti-equipped Saturn vehicles had characteristics that they did not actually have, or omitted to disclose material facts and actual characteristics regarding the Vti-equipped Saturn vehicles;

(d) Whether GM made any affirmations of fact or promises relating to the Vti-equipped vehicles that became a basis of the bargain between seller and buyer, and thereby created an express warranty that the vehicles would conform to those affirmations or promises

(e) Whether the Vti-equipped vehicles conform(ed) to GM's express warranties;

(f) Whether the Vti-equipped vehicles are merchantable, pass without objection in the trade, and are fit for their ordinary and intended purposes;

(g) Whether the Vti-equipped vehicles have the value represented by GM;

(h) Whether Plaintiffs and the Class are entitled to compensatory damages; and

(i) Whether GM's active concealment and failure to disclose the inherently defective nature of the Vti transmission constituted fraud or misrepresentation.

54. These common questions of law or fact predominate over any questions or issues affecting individual Class members.

55. A class action is an appropriate method for the fair and efficient adjudication of this controversy, given that:

(a) Common questions of law and fact overwhelmingly predominate over any individual questions that may arise, such that there would be enormous economies to the Court and the parties in litigating the common issues on a classwide instead of a repetitive individual basis;

(b) The size of each Class member's relatively small claim is too insignificant to make individual litigation an economically viable alternative, such that as a practical matter there is no "alternative" means of adjudication to a class action;

(c) Few Class members have any interest in individually controlling the

prosecution of separate actions (and any who do may opt out);

(d) Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by Class members;

(e) Despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this class action to be litigated on a cost-effective basis, especially when compared with repetitive individual litigation; and

(f) No unusual difficulties are likely to be encountered in the management of this class action insofar as GM's liability turns on substantial questions of law or fact that are common to the Class and that predominate over any individual questions.

FIRST CAUSE OF ACTION

STATUTORY CONSUMER FRAUD
(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State, Excluding Commercial Entities in Florida, Michigan, Missouri, and Ohio)

56. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

57. This Cause of Action is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State, excluding commercial entities in Florida, Michigan, Missouri, and Ohio.

58. At all relevant times there have been in effect substantially similar consumer protection statutes in each of the Class States (the "Consumer Protection Statutes"). Each of the Consumer Protection Statutes prohibits unfair or deceptive practices.[2]

[2] The claims in this Cause of Action are brought on behalf of the Class Members under the Consumer Protection Statutes in their respective states. Those statutes are: the California Consumers Legal Remedies Act ("CLRA"), Cal.Civ.Code §§ 1750, *et seq.*, and the California Unfair Competition Law ("UCL"), Cal.Bus.& Prof.Code §§ 17200, *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.* (Florida); Georgia Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.* (Georgia); Illinois Consumer Fraud Act, 815 ILCS 505/1, *et seq.* (Illinois); Mass Gen. L. ch. 93A, § 1, *et seq.* (Massachusetts); Mich. Stat. Ann § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); N.J. Rev. Stat. § 56:8-1, *et seq.*; N.J. Rev. Stat. § 56:8-2, *et seq.* (New Jersey); Mo. Rev. Stat. § 407.010, *et seq.* (Missouri); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); N.C. Gen. Stat. § 75-1.1, *et seq.* (North Carolina); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio); and the Oklahoma Consumer Protection Act, Okla. Stat. Tit. 15, § 751, *et seq.* (Oklahoma).

59. Plaintiffs and members of the Class are "consumers," the Saturn vehicles at issue are "goods" or "merchandise," and the purchase of the Saturn vehicles at issue is a "consumer transaction" within the meaning of the Consumer Protection Statutes.

60. The vehicles at issue in this action were defectively designed and/or manufactured, as further described above.

61. As a result of the defective design and/or manufacture of the vehicles, the Vti transmission is inherently prone to premature failure. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (diminished) value of the vehicle, and may create unreasonably hazardous driving conditions when the failure occurs while the vehicle is being driven.

62. Upon information and belief, GM had exclusive knowledge of the defect at the time the vehicles were sold, as further described above.

63. Despite GM's knowledge of the defect in the vehicles, GM failed or refused to disclose the existence of this defect (a material fact that GM was obliged to disclose) to Plaintiffs and members of the Class at the time they purchased their vehicles.

64. GM intended, and continues to intend, that Plaintiffs and the Class rely on the omission of the material fact that the vehicles are defective. This omission is contrary to representations, including partial representations, actually made by GM regarding the transmissions and vehicles at issue, as further described above.

65. In failing to inform consumers of the defective Vti transmissions, by GM has engaged in an unfair, unconscionable, and deceptive act prohibited by the Consumer Protection Statutes.

66. The omission of this material fact is the type of omission which is likely to and tends to mislead or deceive reasonable consumers acting reasonably under the circumstances.

67. But for GM's deceptive and unfair act of concealing from Plaintiffs and the Class the existence of the defect in the vehicles, Plaintiffs and the Class members would not have purchased the vehicles.

68. GM received written notice of its violations of the California Consumers Legal

Remedies Act (the "CLRA") on September 4, 2007, from Plaintiff Kelly Castillo on behalf of herself and all others similarly situated, satisfying the notice requirement of the CLRA and any similar requirement in the other Consumer Protection Statutes. (*See* the notice letter and certified mail receipt attached as Exhibits 1 and 2.) GM has not responded to this notice, and any additional notice would be futile and unnecessary.

SECOND CAUSE OF ACTION

BREACH OF EXPRESS WARRANTIES
(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State Except California)

69. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

70. This Cause of Action is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

71. GM expressly warranted the vehicles at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of three years or 36,000 miles and, further, that GM would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. Such warranties are express warranties within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) in each of the Class States at issue in this class action and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*[3]

72. More specifically, GM's "New Car Limited Warranty" promises that GM "will provide for repairs to the vehicle" during the warranty period and that "[t]his warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring" during the warranty period.

73. Through advertising and promotional literature, GM boasted that the Vti

[3] The pertinent UCC sections in the states at issue are: Fla. Stat. § 672.313 (West 2007) (Florida); Ga. Code Ann. § 11-2-313 (2007) (Georgia); 810 ILCS 5/2-313 (2007) (Illinois); Mass. Gen. Laws Ann. ch. 106 § 2-313 (2007) (Massachusetts); Mich. Comp. Laws Ann. § 440.2313 (2007) (Michigan); Mo. Rev. Stat. § 400.2-313 (2007) (Missouri); N.J. Stat. Ann. § 12A:2-313 (2007) (New Jersey); N.Y. U.C.C. Law § 2-313 (McKinney 2007) (New York); N.C. Gen. Stat. § 25-2-313 (2007) (North Carolina); Ohio Rev. Code Ann. § 1302.26 (West 2007) (Ohio); Okla. Stat. Ann. tit. 12 § 2-313 (2007) (Oklahoma).

transmission represented an "evolutionary step in automatic transmission technology" and touted the Vti's "robust design," "excellent performance," and "unobtrusive operation." GM's promotional literature highlighted that the Vti's "torque converter clutch is constructed of carbon fiber ***for durability***" (emphasis added). GM represented that the Vti-equipped Saturn Vue was "tough, versatile [and] at home in almost any environment" and that that the Vti-equipped Ion was "specifically designed and engineered for whatever's next."

74. It is anticipated that Plaintiffs will obtain through discovery additional examples in GM's possession of advertising statements touting the durability of the Vti transmission.

75. GM's representations in its advertising, promotional material, and warranty information became a basis of the bargain between GM and the Plaintiff Class.

76. Upon information and belief, none of GM's advertising or promotional literature disclosed the Vti's design or manufacturing defects, GM's failure to utilize adequate or customary quality control measures, the inherent unreliability of the Vti, or the elevated and unreasonable risk of a transmission failure that would render the vehicle dangerous and/or inoperable.

77. At the time of sale and forward, GM has breached these express warranties by selling to Plaintiffs and the Class vehicles equipped with defective Vti transmissions that are, by design, unsafe, subject to extreme premature wearing and failure, and likely to cause serious injury to Plaintiffs and Class members – if their vehicles are even operable – and/or by refusing to adequately repair or replace their transmissions.

78. As a direct and proximate cause of GM's breach of express warranties, Plaintiffs and the Class have suffered actual damages and are threatened with irreparable harm by virtue of an elevated and unreasonable risk of serious bodily injury.

79. Any limitation on the duration of GM's express warranties is unconscionable within the meaning of Section 2-302 of the UCC, and therefore is unenforceable in that, among other things, vehicles with Vti transmissions contain a latent defect of which GM was actually or constructively aware at the time of sale, and purchasers lacked a meaningful choice with respect to the terms of the warranty due to unequal bargaining power and a lack of warranty competition.

80. Any attempt by GM to repair a defective Vti transmission or to replace one defectively designed Vti transmission with another defectively designed Vti transmission within the warranty period could not satisfy GM's obligation to correct defects under the warranty. The design defect in the Vti transmission -- which unreasonably elevates the risk of premature failure, immobility and/or dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective Vti transmission.

81. Any otherwise applicable notice requirement was met by the filing of this action, and because GM had notice of the defect in Vti-equipped vehicles long before Plaintiffs and the Class but did nothing to adequately remedy the defect.

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State Except California)

82. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

83. This Cause of Action is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

84. Section 2-314 of the Uniform Commercial Code and the Magnuson-Moss Warranty Act govern the implied warranty of merchantability in all of the states at issue in this class action. *See, e.g.*, 810 ILCS 5/2-314 and 15 U.S.C. §§ 2301, *et seq.*[4]

85. As a seller and manufacturer of vehicles, GM is a "merchant" within the meaning of the UCC.

86. The vehicles at issue in this action are "goods" as defined in the UCC.

87. Implied in the sale of the vehicles is a warranty of merchantability that requires, among other things, that the vehicles pass without objection in the trade and are fit for the

[4] The pertinent UCC sections in the states at issue are: Fla. Stat. § 672.314 (West 2007) (Florida); Ga. Code Ann. § 11-2-314 (2007) (Georgia); 810 ILCS 5/2-314 (2007) (Illinois); Mass. Gen. Laws Ann. ch. 106 § 2-314 (2007) (Massachusetts); Mich. Comp. Laws Ann. § 440.2314 (2007) (Michigan); Mo. Rev. Stat. § 400.2-314 (2007) (Missouri); N.J. Stat. Ann. § 12A:2-314 (2007) (New Jersey); N.Y. U.C.C. Law § 2-314 (McKinney 2007) (New York); N.C. Gen. Stat. § 25-2-314 (2007) (North Carolina); Ohio Rev. Code Ann. § 1302.27 (West 2007) (Ohio); Okla. Stat. Ann. tit. 12 §2-314 (2007) (Oklahoma).

ordinary purposes for which the vehicles are used.

88. Because the vehicles are defective, as a result of being equipped with a defective Vti transmission as further described above, the vehicles are not able to function in their ordinary capacities and were therefore not merchantable at the times they were sold, as impliedly warranted by GM.

89. GM was put on notice of the defect by the numerous complaints that GM received concerning the defect, by its own prior knowledge, and by the filing of this action.

90. Any purported limitation on remedies on the part of GM causes the warranty to fail of its essential purpose and is unconscionable under the circumstances.

91. The defect in the vehicles renders them not merchantable and thereby proximately caused Plaintiffs and the Class members who purchased them to suffer damages in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

UNJUST ENRICHMENT
(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State)

92. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

93. This Cause of Action is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

94. This Cause of Action is brought against GM pursuant to the common law doctrine of unjust enrichment.

95. The vehicles that GM manufactured and sold containing the Vti transmission are defective because the Vti transmission is defectively designed and or manufactured, as further described above.

96. Upon information and belief, GM had knowledge of the defect in the vehicles at the time of sale, as further described above.

97. Despite GM's knowledge of the defect in these vehicles, GM failed to disclose the existence of this defect (a material fact) to Plaintiffs and the Class when they purchased their

6. For such other and further relief as this Court may deem just and proper.

Dated: October 10, 2007

Respectfully submitted,

KERSHAW, CUTTER & RATINOFF, LLP

By _____

C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF
980 9th Street, 19th Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

MARK L. BROWN
THE LAKIN LAW FIRM
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorneys for Plaintiffs

///

///

///

///

///

///

///

///

///

///

///

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

Dated: October 10, 2007

Respectfully submitted,

KERSHAW, CUTTER & RATINOFF, LLP

By _____

C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF
980 9th Street, 19th Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

MARK L. BROWN
THE LAKIN LAW FIRM
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorneys for Plaintiff

From: Brooks Cutter [mailto:bcutter@kcrlegal.com]
Sent: Wednesday, October 10, 2007 4:10 PM
To: Mark Brown
Subject: FW: Activity in Case 2:07-at-00948 Castillo et al v. General Motors Corporation Complaint

Here's the notice of filing....can't tell which judge we pulled yet.

Brooks
-----Original Message-----
From: caed_cmecf_helpdesk@caed.uscourts.gov [mailto:caed_cmecf_helpdesk@caed.uscourts.gov]
Sent: Wednesday, October 10, 2007 1:40 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-at-00948 Castillo et al v. General Motors Corporation Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Cutter, C on 10/10/2007 at 1:39 PM PDT and filed on 10/10/2007

Case Name:	Castillo et al v. General Motors Corporation
Case Number:	2:07-at-948
Filer:	Kelly Castillo Nichole Brown Barbara Glisson

Document Number: 1

Docket Text:
COMPLAINT *[Class Action]* against General Motors Corporation by Kelly Castillo, Nichole Brown, Barbara Glisson. Attorney Cutter, C Brooks added.(Cutter, C)

2:07-at-948 Electronically filed documents will be served electronically to:

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

2:07-at-948 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=10/10/2007] [FileNumber=1896749-0] [73b28cb043d3f3b31623db229e45988c8d3d9f33cc4113ae73b6408527c4adb3246fbfe94e150f39b544b2167cdae89a0c821a35ac0befa88a0b656159c4ea97]]

EXHIBIT E

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
980 9TH STREET, 19TH Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Mark L. Brown (admitted *pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVANS, BARBARA GLISSON, STANLEY OZAROWSKI, and DONNA SANTI *Individually and on behalf of all others similarly situated,* Plaintiffs, v. GENERAL MOTORS CORPORATION, Defendants.	Case No.: 2:07-CV-02142 WBS-GGH **FIRST AMENDED CLASS ACTION COMPLAINT**

Plaintiffs, Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Glisson, Stanley Ozarowski, and Donna Santi individually and on behalf of all others similarly situated, for their Class Action Complaint against General Motors Corporation (hereinafter "GM"), allege the following:

CASE OVERVIEW

1. Plaintiffs bring this action on behalf of themselves and a class of Saturn vehicle owners in the States of California, Florida, Georgia, Illinois, Massachusetts, Michigan, Missouri, New Jersey,

New York, North Carolina, Ohio, Oklahoma, and Virginia (the "Class States") whose defectively designed Saturn Vti transmissions have experienced a failure that GM failed or refused to fully remedy.

2. GM manufactures and sells vehicles worldwide under the Saturn brand name, among others.

3. From 2002 until at least 2004, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (now diminished) value of the vehicle.

4. Upon information and belief, GM was aware when it introduced the Vti transmission in 2002 of the inherent design flaws and problems with the Vti, and GM was aware that the Vti transmissions it sold were likely to experience premature failure. Despite this exclusive knowledge, GM failed to disclose this material information to consumers.

5. Many owners of Saturn Vti transmissions have had to repair or replace their Vti transmissions three or more times, and many Saturn customers have been left without transportation because they are unable to afford the costly transmission repairs or replacements needed to return their vehicles to operating condition.

6. Often such customers have attempted to trade in their Saturn vehicles, only to be offered a trade-in amount by the Saturn dealership that was less than the cost of a Vti transmission repair/replacement and which was significantly less than the anticipated fair market value of the vehicle. This despite the fact that when the Vue was introduced in 2002, it had a minimum manufacturer's suggested retail price (MSRP) of more than $16,000.00.

7. Although GM recently has publicly acknowledged an unusually high failure rate on vehicles with the Vti transmission, GM has failed or refused to remedy the problem. For customers with vehicles within the written warranty period, GM has done no more than to temporarily repair the Vti

transmissions or to replace them with other similarly defective and inherently failure-prone Vti transmissions. GM has refused to take any action at all to remedy this concealed defect for those customers with vehicles outside a voluntarily extended warranty period. In no case has GM adequately remedied the defect for any member of the proposed Class by providing a vehicle not containing a defective Vti transmission.

8. In short, GM is believed to have sold vehicles in which it knew the transmissions were likely to fail prematurely, and when such failure occurs, it renders the vehicles virtually worthless absent costly transmission repairs or replacement.

JURISDICTION AND VENUE

9. Plaintiff Kelly Castillo is a resident of Meadow Vista (Placer County), California who purchased a 2003 Saturn Vue in Roseville (Placer County), California.

10. GM is a Delaware corporation with its principal place of business in the State of Michigan.

11. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1132(d) because (a) it is a class action; (b) there are more than 100 class members; (c) the amount in controversy exceeds $5 million, exclusive of interest and costs; and (d) at least one member of the Class is a citizen of a State different from at least one Defendant.

12. Personal jurisdiction over GM is proper because GM transacts substantial business within this State, has made contracts or promises substantially connected with this State, and has otherwise subjected itself to the general jurisdiction of this Court and the other courts in this State.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district, such as the purchase by plaintiff Kelly Castillo and many other class members of their Saturn vehicles from GM in this district.

ALLEGATIONS COMMON TO ALL COUNTS

14. The Saturn Vti transmission is a "continuously variable" transmission (CVT). Unlike a conventional automatic transmission, which uses traditional gears to shift at a few fixed points, a CVT shifts through the use of a belt or chain that runs through pulleys that move closer together or farther apart.

15. Rather than using a chain, which is more durable than a belt, the Saturn Vti utilizes a steel belt, known as a "thrust belt." Due to the inherently defective design of the Vti transmission, the thrust belt and the Vti transmission are extraordinarily prone to premature failure. For example, upon information and belief, the transmission is defectively designed in that the engine and/or the pump are underpowered to apply sufficient pressure on the thrust belt. As a result the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails.

16. When the thrust belt and/or the transmission fails, either it causes hesitation in the movement or acceleration of the vehicle, leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile. In either event, this failure requires costly repairs or transmission replacement. On information and belief, the average repair or replacement cost to the consumer exceeds five thousand dollars ($5,000.00).

17. Upon information and belief, this design defect and the accompanying inherent risk of premature transmission failure could have been avoided by using a chain instead of a belt and/or by increasing the power to the transmission, perhaps among other remedies.

18. The defectively designed/manufactured Vti transmissions at issue in this action are contained in 4-cylinder Saturn Vues and Saturn Ions in model years 2002-2004, perhaps among other Saturn vehicle models.

19. Upon information and belief, GM was aware when it introduced the Vti transmission that it was inherently prone to premature failure. For example, in 1999 or 2000, GM recognized that "concerns exist over the durability of the belt under continuous high-load operations."

20. So concerned was GM over the quality and durability of the Vti transmission, and so plagued was the Vti with problems, that its initial launch was delayed by several months.

21. Despite this delay in the launch of the Vti, upon information and belief, Saturn did not undertake adequate or customary quality control measures to ensure that the Vti was sufficiently tested and refined for full-scale production and sale to consumers. For example, upon information and belief, GM and/or its suppliers bypassed the production startup phase in which small quantities of vehicles or components typically are tested and quality-controlled prior to initiation of full-scale production.

22. GM did not inform the Class that GM had bypassed the "startup" phase of production, or that it had failed to undertake adequate or customary quality control measures concerning the Vti transmission.

23. In April of 2003, GM further recognized excessive durability problems with the Vti transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the Vti.

24. In early 2004, GM again recognized durability problems with the Vti transmission when it voluntarily extended the warranty on vehicles containing the Vti from 3 years / 36,000 miles to 5 years / 75,000 miles. However, this temporary remedy was illusory because repairs under the voluntarily extended warranty failed to replace the defectively designed Vti transmission with a durable non-Vti transmission, and any replacement Vti transmissions carried the same defects and inherent elevated risk of premature failure.

25. Transmissions are designed to, and ordinarily do, function for periods (and mileages) substantially in excess of those specified in GM's Saturn warranties, and given past experience, consumers legitimately expect to enjoy the use of an automobile without worry that the transmission would fail for significantly longer than the limited times and mileages identified in Saturn's express warranties, including the voluntarily extended warranty.

26. Upon information and belief, GM, through (1) its own records of customers complaints, (2) dealership repair records, (3) records from the national Highway Traffic Safety Administration

(NHTSA), and (4) other various sources, was well aware of the alarming failure rate of Vti transmissions but failed to notify customers of the nature and extent of the problems with the Vti transmission and failed to provide an adequate remedy.

27. Members of the class could not have discovered the latent Vti transmission defects through any reasonable inspection of their vehicles prior to purchase.

28. GM failed adequately to research, design, test and/or manufacture the Vti transmission before warranting, advertising, promoting, marketing, and selling it as suitable and safe for use in an intended and/or reasonably foreseeable manner.

29. GM advertised, promoted, marketed, warranted, and sold through the stream of commerce to Plaintiffs and the Class vehicles containing Vti transmissions that GM knew or reasonably should have know were dangerously defective, and which otherwise would not perform in accordance with Plaintiff's and the Class members' reasonable expectations that the vehicles would not suffer an inherent, dangerous, disabling defect, and that the vehicles would be safe and suitable for their intended and reasonably foreseeable use.

30. GM expressly warranted the affected vehicles to be free from defects in materials or workmanship for a period of 36 months or 36,000 miles.

31. Buyers, lessees, and other owners of the affected vehicles were without access to the information concealed by GM as described herein, and therefor reasonably relied on GM's representations and warranties regarding the quality, durability, and other material characteristics of their vehicles. Had these buyers and lessees known of the defect and the danger, they would have taken steps to avoid that danger and/or would have paid less for their vehicles than the amounts they actually paid, or would not have purchased the vehicles.

32. By concealing the safety risk associated with the vehicles, GM has forced consumers to bear the risk of injury to themselves and other persons, as well as to property, as a result of the transmission failure, as well as the financial loss associated with the diminished value of their vehicles.

Had GM revealed this information, consumers would not buy or lease, or would pay substantially less for, vehicles equipped with the defective Vti transmissions.

33. As a result of GM's misconduct, Plaintiffs and the Class have suffered actual damages in that their Saturn vehicles are hazardous to drive, if operable at all, resulting in loss of use, costly repairs, and substantially diminished value, including without limitation diminished resale value. Further, the defective Vti transmission is not a discreet, modular or incidental part of the vehicle but, rather, is an essential part of the drive train and is integral to the safe operation of the vehicle.

34. The cost to repair or replace the defective Vti transmission is expected to be between $4,000.00 and $8,000.00 per vehicle. Because of the relatively small size of Plaintiff's and the Class members' claims based on repair costs and/or loss of vehicle market value, and because most have only modest resources as compared to GM, it is unlikely that individual Class members could afford to seek recovery against GM. A class action is, therefore, the only reasonable means by which Class members can obtain relief.

35. GM's knowledge of the fact that the Vti transmission is inherently defective and prone to sudden failure, and that it would need costly repairs and/or replacement, gave GM more than adequate opportunity to cure the problem, which opportunity it failed to timely undertake. Upon information and belief, GM was alerted to this problem by:

a) GM's own testing and knowledge prior to the launch of the Vti transmission in 2002, including without limitation that which led to the delays in initial production;

b) Excessive warranty claims relating to premature transmission failure;

c) Reports of transmission failure to the National Highway Traffic Safety Administration (NHTSA);

d) Additional complaints registered directly from consumers;

e) Reports from GM's dealerships and authorized repair facilities regarding the nature and frequency of the premature transmission failure;

f) Discussions in internet chat rooms, forums, and list serves sponsored by GM or, if not sponsored by GM, monitored by GM's employees; and

g) Other sources.

TOLLING OF STATUTES OF LIMITATION

36. Any applicable statute of limitations has been tolled by GM's knowing and active concealment and denial of the facts as alleged herein. Plaintiffs and the Class have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and the Class could not earlier have reasonably discovered the true, latent defective nature of the Vti transmission.

37. GM was and is under a continuing duty to disclose to Plaintiffs and the Class the true character, quality, and nature of the Vti transmission. Because of GM's knowing, affirmative, and/or active concealment of the true character, quality and nature of the Vti transmission problems with the vehicles at issue, GM is estopped from relying on any statutes of limitation in defense of this action.

CLASS REPRESENTATIVE ALLEGATIONS

Kelly Castillo

38. Plaintiff Kelly Castillo purchased a new 2003 Saturn Vue with a Vti transmission in January of 2007 from a Saturn dealership in Roseville, California for approximately $23,000.00.

39. Ms. Castillo had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle. The Saturn dealership in Roseville claimed to be unable to diagnose the problems and did not repair or replace the transmission during the voluntarily extended warranty period.

40. However, when the vehicle reached approximately 80,000 miles (just outside the warranty coverage) in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost of approximately $4,200.00 to Ms. Castillo.

Nichole Brown

41. Plaintiff Nichole Brown, a resident of the State of Georgia, purchased her 2003 Saturn Vue with a Vti transmission for about $12,888.00 in or about December of 2006, when it had slightly over 75,000 miles.

42. The Vti transmission failed in or about July of 2007, when the vehicle had approximately 78,000 miles. The Saturn dealership in Georgia quoted her a price of approximately $6,000 to replace the transmission.

43. Ms. Brown instead had the transmission replaced by an independent mechanic at a cost of approximately $4,000.00.

44. After the failure of the Vti transmission, Ms. Brown learned that the Vti transmission in her vehicle had previously been repaired or replaced by a Saturn dealership in October of 2006, meaning that the newly repaired or replaced transmission had only about 2 months of previous usage at the time she purchased it, and only a few thousand miles at the time of failure.

Brenda Alexis Digiandomenico

45. Plaintiff Brenda Alexis Digiandomenico, a resident of the State of Virginia, purchased a new 2002 Saturn Vue with a Vti transmission in July of 2002 from a Saturn dealership in Fredericksburg, Virginia for approximately $23,010.00.

46. The Vti transmission failed when the vehicle had approximately 52,000 miles. The Saturn dealership in Fredericksburg, Virginia replaced the transmission under warranty at that time.

47. The Vti transmission failed again when the vehicle had approximately 116,000 miles, at which time the transmission had approximately 64,000 miles. The same Saturn dealership in Fredericksburg, Virginia agreed to replace the Vti transmission for a cost of $1,900 to Ms. Digiandomenico, which she paid.

Valerie Evans

48. Plaintiff Valerie Evans, a resident of the State of Missouri, purchased a new 2003 Saturn Vue with a Vti transmission in September of 2002 from a Saturn dealership in St. Louis, Missouri for approximately $19,500.00.

49. When the vehicle reached approximately 83,232 miles, the transmission failed and was towed to Saturn of North County. Saturn of North County diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost for a rental car and tow of $323.79 to Ms. Evans.

Barbara Glisson

50. Plaintiff Barbara Glisson, a resident of the State of Oklahoma, purchased a new 2003 Saturn Vue with a Vti transmission in September of 2003 from a Saturn dealership in Jacksonville, Florida for approximately $25,000, plus $1,495 for an "extended warranty service contract."

51. The Vti transmission in Ms. Glisson's vehicle failed for the first time in February of 2005, when the vehicle had approximately 33,000 miles. A Saturn dealership in Tulsa, Oklahoma replaced the transmission under warranty at that time.

52. The Vti transmission failed a second time a little more than a year later, in March of 2006, when the vehicle had approximately 68,000 miles and the second transmission had only about 35,000 miles. A Saturn dealership in Tulsa, Oklahoma overhauled the Vti transmission case, again under warranty.

53. The vehicle now has approximately 107,000 miles and is experiencing its third transmission failure. The Saturn dealership in Tulsa has once again diagnosed the vehicle as needing a transmission replacement, and the dealership quoted a price of more than $5,500.00 to do so. Ms. Glisson has not yet had the vehicle repaired following the third transmission failure.

Stanley Ozarowski

54. Plaintiff Stanley Ozarowski purchased a used 2003 Saturn Vue with a Vti transmission on October 14, 2002 from a Saturn dealership in Schaumburg, Illinois for approximately $22,683.00.

55. Mr. Ozarowski had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle.

56. During the voluntary extended 75,000 mile warranty period, parts on the Vti transmission were replaced after Mr. Ozarowski complained to Saturn of Schaumburg about transmission problems. Parts on the Vti transmission were replaced when the vehicle had the following mileages: 32,394; 36,651; and 36,878.

57. However, when the vehicle reached 83,665 miles (just outside the warranty coverage) the transmission failed and was towed to Saturn of Barrington and then to Saturn of Dundee. On October 30, 2007, Saturn of Dundee diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost for labor of $1,200.00 to Mr Ozarowski.

Donna Santi

58. Plaintiff Donna Santi, a resident of the State of Michigan, purchased a new 2003 Saturn Vue with a Vti transmission in November 2002 from a Saturn dealership in Ft. Myers, Florida for approximately $22,000.00.

59. During the voluntary extended 75,000 mile warranty period parts on the Vti transmission were replaced after Ms. Santi complained about transmission problems. At approximately 3,314 miles transmission repairs were completed by a Saturn dealership in Ft. Myers, Florida. At approximately 47,216 miles transmission repairs were completed by a Saturn dealership in Sterling Heights, Michigan.

60. Outside the voluntary extended 75,000 mile warranty period parts on the Vti transmission were replaced at approximately 77,972 miles by the Saturn dealership in Sterling Heights, Michigan.

61. However, when the vehicle reached approximately 102,459 miles (or about 24,487 miles since the last repair), the Saturn dealership in Sterling Heights, Michigan informed her that the Vti transmission needed to be replaced. The Saturn dealership in Sterling Heights, Michigan replaced the transmission for the cost of $377.26 to Ms. Santi.

CLASS ACTION ALLEGATIONS

62. Plaintiffs bring this class action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements for maintaining this action under both state and federal law.

63. The class of persons on whose behalf this action is brought is defined as follows (the "Class"):

> All persons in the States of California, Florida, Georgia, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, and Virginia who have owned a Saturn vehicle containing a Vti transmission which experienced a failure that GM failed or refused to fully remedy.

Excluded from the Class are: (1) members of the federal judiciary in the foregoing states, and (2) GM, its employees, and any entity in which GM has a controlling interest, including officers and directors and the members of their immediate families. Also excluded from the Class are individuals and entities with claims against GM for personal injuries as a result of the defect alleged herein.

64. The members of the Class, being geographically dispersed and numbering at least in the tens of thousands, are so numerous that joinder of them in a single action is impracticable. According to GM's website, GM sold approximately 75,000 Vues in 2002, 82,000 in 2003, 87,000 in 2004, and 92,000 in 2005. GM sold approximately 6,000 Ions in 2002, 117,000 in 2003, 104,000 in 2004, and 101,000 in

2005.[1] Even if only a small fraction of these vehicles contained the Vti transmission, the Class would number in the tens of thousands.

65. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class, as (a) the claims of Plaintiffs are substantially similar (if not identical to) those of absent Class members, (b) there are questions of law or fact that are common to the Class and that overwhelmingly predominate over any individual issues, such that by prevailing on his own claims, Plaintiffs necessarily will establish Defendants' liability as to all Class members, (c) without the Class representation provided by Plaintiff, virtually no Class members will receive legal representation or redress for their injuries, (d) Class counsel have the necessary financial resources to adequately and vigorously litigate this class action, and (e) Plaintiffs and Class counsel are aware of their fiduciary responsibilities to the Class Members and are determined diligently to discharge those duties by vigorously seeking the maximum possible recovery for the Class.

66. Numerous questions of law and fact that are common to all class members, including, *inter alia*:

(a) Whether Saturn vehicles containing the Vti transmission are defective in that: they fail to perform in accordance with the reasonable expectations of ordinary consumers; they are not fit and safe for their ordinary, intended, and foreseeable use; their risks and dangers outweigh their benefits, if any; and/or they would not be offered for sale by a reasonably careful manufacturer or seller who knew of their defective nature;

(b) Whether GM knew of the defective and unreasonably dangerous nature of vehicles equipped with the Vti transmission at the time those vehicles were sold;

(c) Whether GM represented, through its advertising, warranties and other representations, that the Vti-equipped Saturn vehicles had characteristics that they did not actually have, or omitted to disclose material facts and actual characteristics regarding the Vti-equipped Saturn vehicles;

---

[1] http://www.gm.com/company/investor_information/sales_prod/hist_sales.html.

(d) Whether GM made any affirmations of fact or promises relating to the Vti-equipped vehicles that became a basis of the bargain between seller and buyer, and thereby created an express warranty that the vehicles would conform to those affirmations or promises

(e) Whether the Vti-equipped vehicles conform(ed) to GM's express warranties;

(f) Whether the Vti-equipped vehicles are merchantable, pass without objection in the trade, and are fit for their ordinary and intended purposes;

(g) Whether the Vti-equipped vehicles have the value represented by GM;

(h) Whether Plaintiffs and the Class are entitled to compensatory damages; and

(i) Whether GM's active concealment and failure to disclose the inherently defective nature of the Vti transmission constituted fraud or misrepresentation.

67. These common questions of law or fact predominate over any questions or issues affecting individual Class members.

68. A class action is an appropriate method for the fair and efficient adjudication of this controversy, given that:

(a) Common questions of law and fact overwhelmingly predominate over any individual questions that may arise, such that there would be enormous economies to the Court and the parties in litigating the common issues on a classwide instead of a repetitive individual basis;

(b) The size of each Class member's relatively small claim is too insignificant to make individual litigation an economically viable alternative, such that as a practical matter there is no "alternative" means of adjudication to a class action;

(c) Few Class members have any interest in individually controlling the prosecution of separate actions (and any who do may opt out);

(d) Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by Class members;

(e) Despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this class action to be litigated on a cost-effective basis, especially when compared with repetitive individual litigation; and

(f) No unusual difficulties are likely to be encountered in the management of this class action insofar as GM's liability turns on substantial questions of law or fact that are common to the Class and that predominate over any individual questions.

COUNT I – STATUTORY CONSUMER FRAUD

(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State, Excluding Commercial Entities in Florida, Michigan, Missouri, and Ohio)

69. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

70. This Count is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State, excluding commercial entities in Florida, Michigan, Missouri, and Ohio.

71. At all relevant times there have been in effect substantially similar consumer protection statutes in each of the Class States (the "Consumer Protection Statutes"). Each of the Consumer Protection Statutes prohibits unfair or deceptive practices.[2]

[2] The claims in this Count are brought on behalf of the Class Members under the Consumer Protection Statutes in their respective states. Those statutes are: the California Consumers Legal Remedies Act ("CLRA"), Cal.Civ.Code §§ 1750, *et seq.*, and the California Unfair Competition Law ("UCL"), Cal.Bus.& Prof.Code §§ 17200, *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.* (Florida); Georgia Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.* (Georgia); Illinois Consumer Fraud Act, 815 ILCS 505/1, *et seq.* (Illinois); Mass Gen. L. ch. 93A, § 1, *et seq.* (Massachusetts); Mich. Stat. Ann § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Mo. Rev. Stat. § 407.010, *et seq.* (Missouri); N.J. Rev. Stat. § 56:8-1, *et seq.*; N.J. Rev. Stat. § 56:8-2, *et seq.* (New Jersey); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); N.C. Gen. Stat. § 75-1.1, *et seq.* (North Carolina); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio); and the Oklahoma Consumer Protection Act, Okla. Stat. Tit. 15, § 751, *et seq.* (Oklahoma); VA St. § 59.1-196, *et seq.* (Virginia).

72. Plaintiffs and members of the Class are "consumers," the Saturn vehicles at issue are "goods" or "merchandise," and the purchase of the Saturn vehicles at issue is a "consumer transaction" within the meaning of the Consumer Protection Statutes.

73. The vehicles at issue in this action were defectively designed and/or manufactured, as further described above.

74. As a result of the defective design and/or manufacture of the vehicles, the Vti transmission is inherently prone to premature failure. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (diminished) value of the vehicle, and may create unreasonably hazardous driving conditions when the failure occurs while the vehicle is being driven.

75. Upon information and belief, GM had exclusive knowledge of the defect at the time the vehicles were sold, as further described above.

76. Despite GM's knowledge of the defect in the vehicles, GM failed or refused to disclose the existence of this defect (a material fact that GM was obliged to disclose) to Plaintiffs and members of the Class at the time they purchased their vehicles.

77. GM intended, and continues to intend, that Plaintiffs and the Class rely on the omission of the material fact that the vehicles are defective. This omission is contrary to representations, including partial representations, actually made by GM regarding the transmissions and vehicles at issue, as further described above.

78. In failing to inform consumers of the defective Vti transmissions, by GM has engaged in an unfair, unconscionable, and deceptive act prohibited by the Consumer Protection Statutes.

79. The omission of this material fact is the type of omission which is likely to and tends to mislead or deceive reasonable consumers acting reasonably under the circumstances.

80. But for GM's deceptive and unfair act of concealing from Plaintiffs and the Class the existence of the defect in the vehicles, Plaintiffs and the Class members would not have purchased the vehicles.

81. GM received written notice of its violations of the California Consumers Legal Remedies Act (the "CLRA") on September 4, 2007, from Plaintiff Kelly Castillo on behalf of herself and all others similarly situated, satisfying the notice requirement of the CLRA and any similar requirement in the other Consumer Protection Statutes. (*See* the notice letter and certified mail receipt attached as Exhibits 1 and 2.) GM has not responded to this notice, and any additional notice would be futile and unnecessary.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count I as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in amount of actual damages to be determined at trial;

C. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

D. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT II – BREACH OF EXPRESS WARRANTIES

(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State Except California)

82. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

83. This Count is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

84. GM expressly warranted the vehicles at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of three years or 36,000 miles and, further, that GM

would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. Such warranties are express warranties within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) in each of the Class States at issue in this class action and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*[3]

85. More specifically, GM's "New Car Limited Warranty" promises that GM "will provide for repairs to the vehicle" during the warranty period and that "[t]his warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring" during the warranty period.

86. Through advertising and promotional literature, GM boasted that the Vti transmission represented an "evolutionary step in automatic transmission technology" and touted the Vti's "robust design," "excellent performance," and "unobtrusive operation." GM's promotional literature highlighted that the Vti's "torque converter clutch is constructed of carbon fiber ***for durability***" (emphasis added). GM represented that the Vti-equipped Saturn Vue was "tough, versatile [and] at home in almost any environment" and that that the Vti-equipped Ion was "specifically designed and engineered for whatever's next."

87. It is anticipated that Plaintiffs will obtain through discovery additional examples in GM's possession of advertising statements touting the durability of the Vti transmission.

88. GM's representations in its advertising, promotional material, and warranty information became a basis of the bargain between GM and the Plaintiff Class.

89. Upon information and belief, none of GM's advertising or promotional literature disclosed the Vti's design or manufacturing defects, GM's failure to utilize adequate or customary quality control measures, the inherent unreliability of the Vti, or the elevated and unreasonable risk of a transmission failure that would render the vehicle dangerous and/or inoperable.

---

[3] The pertinent UCC sections in the states at issue are: Fla. Stat. § 672.313 (West 2007) (Florida); Ga. Code Ann. § 11-2-313 (2007) (Georgia); 810 ILCS 5/2-313 (2007) (Illinois); Mass. Gen. Laws Ann. ch. 106 § 2-313 (2007) (Massachusetts); Mich. Comp. Laws Ann. § 440.2313 (2007) (Michigan); Mo. Rev. Stat. § 400.2-313 (2007) (Missouri); N.J. Stat. Ann. § 12A:2-313 (2007) (New Jersey); N.Y. U.C.C. Law § 2-313 (McKinney 2007) (New York); N.C. Gen. Stat. § 25-2-313 (2007) (North Carolina); Ohio Rev. Code Ann. § 1302.26 (West 2007) (Ohio); Okla. Stat. Ann. tit. 12 § 2-313 (2007) (Oklahoma); VA St. § 59.1-196, *et seq.* (Virginia).

90. At the time of sale and forward, GM has breached these express warranties by selling to Plaintiffs and the Class vehicles equipped with defective Vti transmissions that are, by design, unsafe, subject to extreme premature wearing and failure, and likely to cause serious injury to Plaintiffs and Class members – if their vehicles are even operable – and/or by refusing to adequately repair or replace their transmissions.

91. As a direct and proximate cause of GM's breach of express warranties, Plaintiffs and the Class have suffered actual damages and are threatened with irreparable harm by virtue of an elevated and unreasonable risk of serious bodily injury.

92. Any limitation on the duration of GM's express warranties is unconscionable within the meaning of Section 2-302 of the UCC, and therefore is unenforceable in that, among other things, vehicles with Vti transmissions contain a latent defect of which GM was actually or constructively aware at the time of sale, and purchasers lacked a meaningful choice with respect to the terms of the warranty due to unequal bargaining power and a lack of warranty competition.

93. Any attempt by GM to repair a defective Vti transmission or to replace one defectively designed Vti transmission with another defectively designed Vti transmission within the warranty period could not satisfy GM's obligation to correct defects under the warranty. The design defect in the Vti transmission -- which unreasonably elevates the risk of premature failure, immobility and/or dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective Vti transmission.

94. Any otherwise applicable notice requirement was met by the filing of this action, and because GM had notice of the defect in Vti-equipped vehicles long before Plaintiffs and the Class but did nothing to adequately remedy the defect.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count II as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in amount of actual monetary damages to be determined at trial;

C. Specific performance of GM's express and implied warranties, striking the durational limits of the warranties as unconscionable;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT III – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State Except California)

95. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

96. This Count is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

97. Section 2-314 of the Uniform Commercial Code and the Magnuson-Moss Warranty Act govern the implied warranty of merchantability in all of the states at issue in this class action. *See, e.g.*, 810 ILCS 5/2-314 and 15 U.S.C. §§ 2301, *et seq.*[4]

98. As a seller and manufacturer of vehicles, GM is a "merchant" within the meaning of the UCC.

99. The vehicles at issue in this action are "goods" as defined in the UCC.

[4] The pertinent UCC sections in the states at issue are: Fla. Stat. § 672.314 (West 2007) (Florida); Ga. Code Ann. § 11-2-314 (2007) (Georgia); 810 ILCS 5/2-314 (2007) (Illinois); Mass. Gen. Laws Ann. ch. 106 § 2-314 (2007) (Massachusetts); Mich. Comp. Laws Ann. § 440.2314 (2007) (Michigan); Mo. Rev. Stat. § 400.2-314 (2007) (Missouri); N.J. Stat. Ann. § 12A:2-314 (2007) (New Jersey); N.Y. U.C.C. Law § 2-314 (McKinney 2007) (New York); N.C. Gen. Stat. § 25-2-314 (2007) (North Carolina); Ohio Rev. Code Ann. § 1302.27 (West 2007) (Ohio); Okla. Stat. Ann. tit. 12 §2-314 (2007) (Oklahoma); VA St. § 59.1-196, *et seq.* (Virginia).

100. Implied in the sale of the vehicles is a warranty of merchantability that requires, among other things, that the vehicles pass without objection in the trade and are fit for the ordinary purposes for which the vehicles are used.

101. Because the vehicles are defective, as a result of being equipped with a defective Vti transmission as further described above, the vehicles are not able to function in their ordinary capacities and were therefore not merchantable at the times they were sold, as impliedly warranted by GM.

102. GM was put on notice of the defect by the numerous complaints that GM received concerning the defect, by its own prior knowledge, and by the filing of this action.

103. Any purported limitation on remedies on the part of GM causes the warranty to fail of its essential purpose and is unconscionable under the circumstances.

104. The defect in the vehicles renders them not merchantable and thereby proximately caused Plaintiffs and the Class members who purchased them to suffer damages in an amount to be ascertained at trial.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count III as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in amount of actual monetary damages to be determined at trial;

C. Specific performance of GM's express and implied warranties, striking the durational limits of the warranties as unconscionable;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT IV – UNJUST ENRICHMENT

(On Behalf of Class Members Who Reside in or Purchased Affected Vehicles in Any Class State)

105. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

106. This Count is brought on behalf of Class Members who reside in or purchased affected vehicles in any Class State except California.

107. This Count is brought against GM pursuant to the common law doctrine of unjust enrichment.

108. The vehicles that GM manufactured and sold containing the Vti transmission are defective because the Vti transmission is defectively designed and or manufactured, as further described above.

109. Upon information and belief, GM had knowledge of the defect in the vehicles at the time of sale, as further described above.

110. Despite GM's knowledge of the defect in these vehicles, GM failed to disclose the existence of this defect (a material fact) to Plaintiffs and the Class when they purchased their vehicles.

111. Plaintiffs and the Class conferred upon GM, without knowledge of the design defect, payment for their vehicles, benefits which were non-gratuitous.

112. GM accepted or retained the non-gratuitous benefits conferred by Plaintiffs and the Class despite GM's knowledge of the design defect in the vehicles. Retaining the benefits conferred upon GM by Plaintiffs and the Class under these circumstances made GM's retention of these benefits unjust and inequitable.

113. Because GM's retention of the benefits conferred by Plaintiffs and the Class is unjust and inequitable, GM must pay restitution in a manner established by the Court.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count IV as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in amount of actual monetary damages to be determined at trial;

C. An order equitably estopping GM from denying warranty coverage of the Vti transmission after the expiration of the unconscionable durational limits of the express and implied warranties;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

Dated: January 14, 2008

Respectfully submitted,

THE LAKIN LAW FIRM, P.C.

s/ Mark L. Brown
Mark L. Brown (admitted *pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
980 9TH STREET, 19TH Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
980 9TH STREET, 19TH Floor
Sacramento, California 95814
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Mark L. Brown (admitted *pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2008, I electronically filed Plaintiffs' First Amended Class Action Complaint with the Clerk of Court using the CM/ECF system which will send notification of such filings(s) to the following:

Gregory Oxford
goxford@icclawfirm.com; arobinson@icclawfirm.com

Respectfully submitted,

s/ Mark L. Brown
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

THE LAKIN LAW FIRM
A PROFESSIONAL CORPORATION

300 Evans Avenue
P. O. Box 229
Wood River, Illinois
62095-0229
(618) 254-1127
FAX: (618) 254-0199
www.lakinlaw.com
E Mail Address
lakin@lakinlaw.com

Bradley M. Lakin (LIC. IL)
Roy C. Dripps (LIC. IL, MO)
Marc W. Parker (LIC. IL)
Craig J. Jensen (LIC. IL, MO)
Charles W. Armbruster, III (LIC. IL, MO, WV)
Gail G. Renshaw (LIC. IL, MO)
John E. Winterscheidt (LIC. IL, MO, KS)
Daniel J. Cohen (LIC. IL, MO)
Robert W. Schmieder II (LIC. IL, MO)
Gerald R. Walters (LIC. IL, MO)
Jeffrey A.J. Millar (LIC. IL, MO)
Paul A. Marks (LIC. IL, MO)
Rodney D. Caffey (LIC. IL, MO)
Mark L. Brown (LIC. IL, MO)
Jonathan B. Piper (LIC. IL)
Dennis J. Barton III (LIC. IL, MO)
Michael T. Blotevogel (LIC. IL, MO)
Elizabeth A. Parker (LIC. IL, MO, NC)

OF COUNSEL
Jay C. Hoffman (LIC. IL)
Charles W. Chapman (LIC. IL)
Benjamin B. Allen (LIC. IL)
John Simmons (LIC. IL, CA, FL)

August 30, 2007

VIA CERTIFIED MAIL #91 7108 2133 3934 7899 1936
RETURN RECEIPT REQUESTED
General Motors Corporation
Registered Agent: CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

VIA CERTIFIED MAIL #91 7108 2133 3934 7899 1929
RETURN RECEIPT REQUESTED
Saturn of Roseville
750 Automall Drive
Roseville, CA 95661

Re: *Notice Under California Consumers Legal Remedies Act, Civil Code Sections 1750, et seq.*

To Whom It May Concern:

In compliance with the requirements of the California Consumers Legal Remedies Act (Civil Code Sections 1750, *et seq.*) ("CLRA"), we write on behalf of our client, Kelly Castillo, individually and as a representative of all other persons similarly situated, to notify General Motors Corporation of violations of the CLRA and to demand that GM correct, repair, replace or otherwise rectify the vehicles sold in violation of the CLRA.

BACKGROUND

From 2002 until at least 2004, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. When the Vti transmission fails, it renders the vehicle inoperable, necessitating very costly repairs (often exceeding the value of the vehicle), and creates an unreasonable safety risk when the failure occurs with the vehicle in motion.

Upon information and belief, GM was aware when it introduced the Vti transmission in 2002 of the inherent design flaws and problems with the Vti, and GM was aware that the Vti transmissions it sold were likely to experience premature failure. Despite this knowledge, GM failed to disclose this material information to consumers.

91 7108 2133 3934 7899 1936

91 7108 2133 3934 7899 1929

PLAINTIFF'S EXHIBIT 1

Many owners of Saturn Vti transmissions have had to repair or replace their Vti transmissions three or more times, and many Saturn customers have been left without transportation because they are unable to afford the costly transmission repairs or replacements needed to return their vehicles to operating condition. Although GM recently has publicly acknowledged an unusually high failure rate on vehicles with the Vti transmission, GM has failed or refused to remedy the problem.

Kelly Castillo purchased a new 2003 Saturn Vue with a Vti transmission in January of 2007 from Saturn of Roseville, California for approximately $23,000.00.

Ms. Castillo had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle. The Saturn dealership in Roseville claimed to be unable to diagnose the problems and did not repair or replace the transmission during the voluntarily extended warranty period.

However, when the vehicle reached approximately 80,000 miles (just outside the warranty coverage) in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost of approximately $4,200.00 to Ms. Castillo.

Pursuant to Civil Code Section 1782, you are hereby notified of the following:

VIOLATIONS OF THE CLRA

1. General Motors manufactures, distributes, markets and/or sells vehicles throughout the United States. Such vehicles have included the Saturn Vue and Saturn Ion with defective Vti transmissions. GM expressly and impliedly represented that such vehicles are suitable for use when, in fact, they contain defective transmissions and pose an unreasonable safety risk.

2. These acts constitute violations of Sections 1750, *et seq.* of the Civil Code in that they:

A. Represent that goods are of a particular standard, quality or grade when, in fact, they are of another (violation of Section 1770(a)(7) of the CLRA); and

B. Omit material facts that GM was obligated to disclose (violation of Section 1770(a)(7) of the CLRA).

As a result, Ms. Castillo and all consumers who are similarly situated, i.e., all owners of Saturn vehicles with Vti transmissions, have been damaged. Under Civil Code section 1782, GM is required, within thirty (30) days following receipt of this letter, to correct, repair, replace, or otherwise rectify the goods alleged to be in violation.

GM must ensure that (1) all consumers similarly situated have been identified (or, that GM has made a reasonable effort to identify all such consumers), (2) that such consumers have been notified that upon their request, GM will provide them with an appropriate remedy including, but not limited to, reimbursement for previous repairs and for replacement of defective Vti transmissions with non-defective transmissions, and (3) that GM will within a reasonable time provide such a remedy.

Sincerely,

THE LAKIN LAW FIRM, P.C.

Mark L. Brown

MLB/smb

Confirmation Services

Package ID: 9171082133393478991929
Destination ZIP Code: 95661
Customer Reference: SATURN OF ROSE
Recipient: _____
Address: _____

E-RET RECEIPT
STCL REGULAR LETTER1
PBP Account #: 14662977
Serial #: 4243773
AUG 30 2007 4:22P

Confirmation Services

Package ID: 9171082133393478991936
Destination ZIP Code: 90017
Customer Reference: GENERAL MOTOR
Recipient: _____
Address: _____

E-RET RECEIPT
STCL REGULAR LETTER1
PBP Account #: 14662977
Serial #: 4243773
AUG 30 2007 4:22P

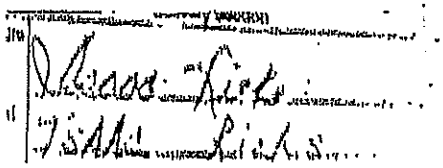
UNITED STATES POSTAL SERVICE.

Date: 09/05/2007

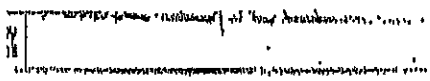
Shawn Billings:

The following is in response to your 09/05/2007 request for delivery information on your Certified Item number 7108 2133 3934 7899 1936. The delivery record shows that this item was delivered on 09/04/2007 at 10:26 AM in LOS ANGELES, CA 90017 to I RICKS. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

PLAINTIFF'S EXHIBIT 2

Track & Confirm

Search Results

Label/Receipt Number: 9171 0821 3339 3478 9919 29
Status: Delivered

Your item was delivered at 11:26 AM on September 5, 2007 in ROSEVILLE, CA 95678.

Track & Confirm
Enter Label/Receipt Number.

Go

Additional Results > Return to USPS.com Home >

Confirmation Options

Track & Confirm by email
Get current event information or updates for your item sent to you or others by email. Go >

Return Receipt (Electronic)
Verify who signed for your item by email. Go >

Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

UNITED STATES POSTAL SERVICE®

Track & Confirm

Return Receipt (Electronic) Confirmation

The necessary components to generate your delivery record online have not been received by the Postal Service. Therefore, no delivery record will be provided online.

Track & Confirm
Enter Label/Receipt Number.
Go >

Date of Request: 09/10/2007
Label/Receipt Number: 9171 0821 3339 3478 9919 29
First Name: shawn
Last Name: Billings
Email Address: shawnb@laklnlaw.com

Return to USPS.com Home >

POSTAL INSPECTORS Preserving the Trust

site map contact us government services jobs National & Premier Accounts
Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

UNITED STATES POSTAL SERVICE®

Track & Confirm

Return Receipt (Electronic) Confirmation

The necessary components to generate your delivery record online have not been received by the Postal Service. Therefore, no delivery record will be provided online.

Date of Request: 09/07/2007
Label/Receipt Number: 9171 0821 3339 3478 9919 29
First Name: Shawn
Last Name: Billings
Email Address: shawnb@lakinlaw.com

Track & Confirm
Enter Label/Receipt Number.
Go

Return to USPS Search Home >

Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Wednesday, January 02, 2008 1:37 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Motion to Amend the Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Brown-PRO HAC VICE, Mark on 1/2/2008 at 11:37 AM PST and filed on 1/2/2008

Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: Kelly Castillo
Nichole Brown
Barbara Glisson
Document Number: 18

Docket Text:
MOTION to AMEND the COMPLAINT amending [1] Complaint by Kelly Castillo, Nichole Brown, Barbara Glisson. (Attachments: # (1) Exhibit A)(Brown-PRO HAC VICE, Mark)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/2/2008] [FileNumber=2038385-0]
[69c391219c7697ed4eb95cdd248953fd732fd72ee537fe1235606470455abc388069
a4fff41f9de53f5b67d7c60ac5e67e63431af822b521e08d9ec1897f5cde]]
Document description: Exhibit A
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/2/2008] [FileNumber=2038385-1]
[b850bf693653c6fbd10c6929513a39e88000d4dd868eb6dc7d20b7ed0f510a857651
9592d576f8618d550103ad653a4ea589155029959207f171d068ae6fd947]]

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Monday, January 14, 2008 2:32 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Amended Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Brown-PRO HAC VICE, Mark on 1/14/2008 at 12:31 PM PST and filed on 1/14/2008

Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: Kelly Castillo
Nichole Brown
Barbara Glisson
Document Number: 27

Docket Text:
First AMENDED COMPLAINT against General Motors Corporation by Kelly Castillo, Nichole Brown, Barbara Glisson. (Attachments: # (1) Exhibit 1# (2) Exhibit 2)(Brown-PRO HAC VICE, Mark)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/14/2008] [FileNumber=2061228-0
] [6f1c85536640adbce9211641f764e22562aefe447e8a468272a2b80c6dd824856a5
1d9039dda186c436843107bac7bc91a4783079869f72952649dda0417aa68]]
Document description: Exhibit 1
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/14/2008] [FileNumber=2061228-1
] [3788a5d3c17ccae57152bb33018030eee99562ab05cd11b317180df74f1d0237288
36c3ebc4de9388303bb40d197d8a5ec115f2eee416cddba416da0fe3176d5]]
Document description: Exhibit 2
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/14/2008] [FileNumber=2061228-2
] [3230bb4cfc0ee87375a96ee9ff80199da61f112006b383e379ea95aa6dc83360f56
df6311a00046cbef2ce8aabe3e321afa2879290eba92c21202d44841a77ce]]

EXHIBIT F

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi individually and on behalf of all others similarly situated, for their Class Action Complaint against General Motors Corporation (hereinafter "GM"), allege the following:

CASE OVERVIEW

1. Plaintiffs bring this action on behalf of themselves and a nationwide class of current and former Saturn vehicle owners with defective Saturn Vti transmissions.

2. GM manufactures and sells vehicles worldwide under the Saturn brand name, among others.

3. From 2002 until 2005, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (now diminished) value of the vehicle.

4. Upon information and belief, GM was aware when it introduced the Vti transmission in 2002 of the inherent design flaws and problems with the Vti, and GM was aware that the Vti transmissions it sold were likely to experience premature failure. Despite this exclusive knowledge, GM failed to disclose this material information to consumers.

5. Many owners of Saturn Vti transmissions have had to repair or replace their Vti transmissions three or more times, and many Saturn customers have been left without transportation because they are unable to afford the costly transmission repairs or replacements needed to return their vehicles to operating condition.

6. Often such customers have attempted to trade in their Saturn vehicles, only to be offered a trade-in amount by the Saturn dealership that was less than the cost of a Vti transmission repair/replacement and which was significantly less than the anticipated fair market

value of the vehicle. This despite the fact that when the Vue was introduced in 2002, it had a minimum manufacturer's suggested retail price (MSRP) of more than $16,000.00.

7. Although GM recently has publicly acknowledged an unusually high failure rate on vehicles with the Vti transmission, GM has failed or refused to correct the problem. For customers with vehicles within the written warranty period, GM has done no more than to temporarily repair the Vti transmissions or to replace them with other similarly defective and inherently failure-prone Vti transmissions. GM has refused to take any action at all to correct this concealed defect for those customers with vehicles outside a voluntarily extended warranty period. In no case has GM adequately corrected the defect for any member of the proposed Class by providing a vehicle not containing a defective Vti transmission or by otherwise aligning the performance of the Vti transmission with the reasonable expectations of Plaintiffs and the proposed Class.

8. In short, GM is believed to have sold vehicles in which it knew the transmissions were likely to fail prematurely, and when such failure occurs, it renders the vehicles virtually worthless absent costly transmission repairs or replacement.

JURISDICTION AND VENUE

9. Plaintiff Kelly Castillo is a resident of Meadow Vista (Placer County), California who purchased a 2003 Saturn Vue in Roseville (Placer County), California.

10. GM is a Delaware corporation with its principal place of business in the State of Michigan.

11. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1132(d) because (a) it is a class action; (b) there are more than 100 class members;

(c) the amount in controversy exceeds $5 million, exclusive of interest and costs; and (d) at least one member of the Class is a citizen of a State different from at least one Defendant.

12. Personal jurisdiction over GM is proper because GM transacts substantial business within this State, has made contracts or promises substantially connected with this State, and has otherwise subjected itself to the general jurisdiction of this Court and the other courts in this State.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district, such as the purchase by plaintiff Kelly Castillo and many other class members of their Saturn vehicles from GM in this district.

ALLEGATIONS COMMON TO ALL COUNTS

14. The Saturn Vti transmission is a "continuously variable" transmission (CVT). Unlike a conventional automatic transmission, which uses traditional gears to shift at a few fixed points, a CVT shifts through the use of a belt or chain that runs through pulleys that move closer together or farther apart.

15. Rather than using a chain, which is more durable than a belt, the Saturn Vti utilizes a steel belt, known as a "thrust belt." Due to the inherently defective design of the Vti transmission, the thrust belt and the Vti transmission are extraordinarily prone to premature failure. For example, upon information and belief, the transmission is defectively designed in that the engine and/or the pump are underpowered to apply sufficient pressure on the thrust belt. As a result the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails.

16. When the thrust belt and/or the transmission fails, either it causes hesitation in the movement or acceleration of the vehicle, potentially leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile. In either event, this failure requires costly repairs or transmission replacement. On information and belief, the average repair or replacement cost to the consumer exceeds five thousand dollars ($5,000.00).

17. Upon information and belief, this design defect and the accompanying inherent risk of premature transmission failure could have been avoided by using a chain instead of a belt and/or by increasing the power to the transmission, perhaps among other remedies.

18. The defectively designed/manufactured Vti transmissions at issue in this action are contained in 4-cylinder Model Year 2002-2005 Saturn Vues and Model Year 2003-2004 Saturn Ions.

19. Upon information and belief, GM was aware when it introduced the Vti transmission that it was inherently prone to premature failure. For example, in 1999 or 2000, GM recognized that "concerns exist over the durability of the belt under continuous high-load operations."

20. So concerned was GM over the quality and durability of the Vti transmission, and so plagued was the Vti with problems, that its initial launch was delayed by several months.

21. Despite this delay in the launch of the Vti, upon information and belief, Saturn did not undertake adequate or customary quality control measures to ensure that the Vti was sufficiently tested and refined for full-scale production and sale to consumers. For example, upon information and belief, GM and/or its suppliers bypassed the production startup phase in

which small quantities of vehicles or components typically are tested and quality-controlled prior to initiation of full-scale production.

22. GM did not inform the Class that GM had bypassed the "startup" phase of production, or that it had failed to undertake adequate or customary quality control measures concerning the Vti transmission.

23. In April of 2003, GM further recognized excessive durability problems with the Vti transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the Vti.

24. In early 2004, GM again recognized durability problems with the Vti transmission when it voluntarily extended the warranty on vehicles containing the Vti from 3 years / 36,000 miles to 5 years / 75,000 miles. However, this temporary remedy was inadequate because repairs under the voluntarily extended warranty failed to replace the defectively designed Vti transmission with a durable non-Vti transmission or to otherwise align the performance of the Vti transmission with the reasonable expectations of Plaintiffs and the other members of the Class.

25. Transmissions are designed to, and ordinarily do, function for periods (and mileages) substantially in excess of those specified in GM's Saturn warranties, and given past experience, consumers legitimately expect to enjoy the use of an automobile without worry that the transmission would fail for significantly longer than the limited times and mileages identified in Saturn's express warranties, including the voluntarily extended warranty.

26. Upon information and belief, GM, through (1) its own records of customers complaints, (2) dealership repair records, (3) records from the national Highway Traffic Safety

Administration (NHTSA), and (4) other various sources, was well aware of the alarming failure rate of Vti transmissions but failed to notify customers of the nature and extent of the problems with the Vti transmission and failed to provide an adequate remedy.

27. Members of the class could not have discovered the latent Vti transmission defects through any reasonable inspection of their vehicles prior to purchase.

28. GM failed adequately to research, design, test and/or manufacture the Vti transmission before warranting, advertising, promoting, marketing, and selling it as suitable and safe for use in an intended and/or reasonably foreseeable manner.

29. GM advertised, promoted, marketed, warranted, and sold through the stream of commerce to Plaintiffs and the Class vehicles containing Vti transmissions that GM knew or reasonably should have know were defective and potentially dangerous, and which otherwise would not perform in accordance with Plaintiff's and the Class members' reasonable expectations that the vehicles would not suffer an inherent, potentially dangerous, disabling defect, and that the vehicles would be safe and suitable for their intended and reasonably foreseeable use.

30. GM expressly warranted the affected vehicles to be free from defects in materials or workmanship for a period of 36 months or 36,000 miles.

31. Buyers, lessees, and other owners of the affected vehicles were without access to the information concealed by GM as described herein, and therefore reasonably relied on GM's representations and warranties regarding the quality, durability, and other material characteristics of their vehicles. Had these buyers and lessees known of the defect and the potential danger,

they would have taken steps to avoid that danger and/or would have paid less for their vehicles than the amounts they actually paid, or would not have purchased the vehicles.

32. By concealing the potential safety risk associated with the vehicles, GM has forced consumers to bear the risk of injury to themselves and other persons, as well as to property, as a result of the transmission failure, as well as the financial loss associated with the diminished value of their vehicles. Had GM revealed this information, consumers would not have bought or leased, or would have paid substantially less for, vehicles equipped with the defective Vti transmissions.

33. As a result of GM's misconduct, Plaintiffs and the Class have suffered actual damages in that their Saturn vehicles are potentially hazardous to drive, if operable at all, resulting in loss of use, costly repairs, and substantially diminished value, including without limitation diminished resale value. Further, the defective Vti transmission is not a discreet, modular or incidental part of the vehicle but, rather, is an essential part of the drive train and is integral to the safe operation of the vehicle.

34. The cost to repair or replace the defective Vti transmission is expected to be between $4,000.00 and $8,000.00 per vehicle. Because of the relatively small size of Plaintiff's and the Class members' individual claims based on repair costs and/or loss of vehicle market value, and because most have only modest resources as compared to GM, it is unlikely that individual Class members could afford to seek recovery against GM. A class action is, therefore, the only reasonable means by which Class members can obtain relief.

35. GM's knowledge of the fact that the Vti transmission is inherently defective and prone to sudden failure, and that it would need costly repairs and/or replacement, gave GM more

than adequate opportunity to cure the problem, which opportunity it failed to timely undertake. Upon information and belief, GM was alerted to this problem by:

a) GM's own testing and knowledge prior to the launch of the Vti transmission in 2002, including without limitation that which led to the delays in initial production;

b) Excessive warranty claims relating to premature transmission failure;

c) Reports of transmission failure to the National Highway Traffic Safety Administration (NHTSA);

d) Additional complaints registered directly from consumers;

e) Reports from GM's dealerships and authorized repair facilities regarding the nature and frequency of the premature transmission failure;

f) Discussions in internet chat rooms, forums, and list serves sponsored by GM or, if not sponsored by GM, monitored by GM's employees; and

g) Other sources.

TOLLING OF STATUTES OF LIMITATION

36. Any applicable statute of limitations has been tolled by GM's knowing and active concealment and denial of the facts as alleged herein. Plaintiffs and the Class have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and the Class could not earlier have reasonably discovered the true, latent defective nature of the Vti transmission.

37. GM was and is under a continuing duty to disclose to Plaintiffs and the Class the true character, quality, and nature of the Vti transmission. Because of GM's knowing, affirmative, and/or active concealment of the true character, quality and nature of the Vti transmission problems with the vehicles at issue, GM is estopped from relying on any statutes of limitation in defense of this action.

CLASS REPRESENTATIVE ALLEGATIONS

Kelly Castillo

38. Plaintiff Kelly Castillo purchased a new 2003 Saturn Vue with a Vti transmission in January of 2003 from a Saturn dealership in Roseville, California for approximately $23,000.00.

39. Ms. Castillo had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle. The Saturn dealership in Roseville claimed to be unable to diagnose the problems and did not repair or replace the transmission during the voluntarily extended warranty period.

40. However, when the vehicle reached approximately 80,000 miles (just outside the warranty coverage) in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost of approximately $4,200.00 to Ms. Castillo.

Nichole Brown

41. Plaintiff Nichole Brown, a resident of the State of Georgia, purchased her 2003 Saturn Vue with a Vti transmission for about $12,888.00 in or about December of 2006, when it had slightly over 75,000 miles.

42. The Vti transmission failed in or about July of 2007, when the vehicle had approximately 78,000 miles. The Saturn dealership in Georgia quoted her a price of approximately $6,000 to replace the transmission.

43. Ms. Brown instead had the transmission replaced by an independent mechanic at a cost of approximately $4,000.00.

44. After the failure of the Vti transmission, Ms. Brown learned that the Vti transmission in her vehicle had previously been repaired or replaced by a Saturn dealership in October of 2006, meaning that the newly repaired or replaced transmission had only about 2 months of previous usage at the time she purchased it, and only a few thousand miles at the time of failure.

Brenda Alexis Digiandomenico

45. Plaintiff Brenda Alexis Digiandomenico, a resident of the State of Virginia, purchased a new 2002 Saturn Vue with a Vti transmission in July of 2002 from a Saturn dealership in Fredericksburg, Virginia for approximately $23,010.00.

46. The Vti transmission failed when the vehicle had approximately 52,000 miles. The Saturn dealership in Fredericksburg, Virginia replaced the transmission under warranty at that time.

47. The Vti transmission failed again when the vehicle had approximately 116,000 miles, at which time the transmission had approximately 64,000 miles. The same Saturn dealership in Fredericksburg, Virginia agreed to replace the Vti transmission for a cost of $1,900 to Ms. Digiandomenico, which she paid.

Valerie Evans

48. Plaintiff Valerie Evans, a resident of the State of Missouri, purchased a new 2003 Saturn Vue with a Vti transmission in September of 2002 from a Saturn dealership in St. Louis, Missouri for approximately $19,500.00.

49. When the vehicle reached approximately 83,232 miles, the transmission failed and was towed to Saturn of North County. Saturn of North County diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost for a rental car and tow of $323.79 to Ms. Evans.

Barbara Allen ("Glisson")

50. Plaintiff Barbara Allen, a resident of the State of Oklahoma, purchased a new 2003 Saturn Vue with a Vti transmission in September of 2003 from a Saturn dealership in Jacksonville, Florida for approximately $25,000, plus $1,495 for an "extended warranty service contract."

51. The Vti transmission in Ms. Allen's vehicle failed for the first time in February of 2005, when the vehicle had approximately 33,000 miles. A Saturn dealership in Tulsa, Oklahoma replaced the transmission under warranty at that time.

52. The Vti transmission failed a second time a little more than a year later, in March of 2006, when the vehicle had approximately 68,000 miles and the second transmission had only about 35,000 miles. A Saturn dealership in Tulsa, Oklahoma overhauled the Vti transmission case, again under warranty.

53. At 107,000 miles, the vehicle experienced its third transmission failure. The Saturn dealership in Tulsa has once again diagnosed the vehicle as needing a transmission replacement, and the dealership quoted a price of more than $5,500.00 to do so. Ms. Allen has not yet had the vehicle repaired following the third transmission failure.

Stanley Ozarowski

54. Plaintiff Stanley Ozarowski purchased a new (demo) 2003 Saturn Vue with a Vti transmission on October 14, 2002 from a Saturn dealership in Schaumburg, Illinois for approximately $22,683.00.

55. Mr. Ozarowski had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle.

56. During the voluntary extended 75,000 mile warranty period, parts on the Vti transmission were replaced after Mr. Ozarowski complained to Saturn of Schaumburg about transmission problems. Parts on the Vti transmission were replaced when the vehicle had the following mileages: 32,394; 36,651; and 36,878.

57. However, when the vehicle reached 83,665 miles (just outside the warranty coverage) the transmission failed and was towed to Saturn of Barrington and then to Saturn of Dundee. On October 30, 2007, Saturn of Dundee diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost for labor of $1,200.00 to Mr. Ozarowski.

Donna Santi

58. Plaintiff Donna Santi, a resident of the State of Michigan, purchased a new 2003 Saturn Vue with a Vti transmission in November of 2002 from a Saturn dealership in Ft. Myers, Florida for approximately $22,000.00.

59. During the voluntary extended 75,000 mile warranty period, parts on the Vti transmission were replaced after Ms. Santi complained about transmission problems. At

approximately 3,314 miles, transmission repairs were completed by a Saturn dealership in Ft. Myers, Florida. At approximately 47,216 miles, transmission repairs were completed by a Saturn dealership in Sterling Heights, Michigan.

60. Outside the voluntary extended 75,000 mile warranty period, parts on the Vti transmission were replaced at approximately 77,972 miles by the Saturn dealership in Sterling Heights, Michigan.

61. However, when the vehicle reached approximately 102,459 miles (or about 24,487 miles since the last repair), the Saturn dealership in Sterling Heights, Michigan informed her that the Vti transmission needed to be replaced. The Saturn dealership in Sterling Heights, Michigan replaced the transmission for the cost of $377.26 to Ms. Santi.

CLASS ACTION ALLEGATIONS

62. Plaintiffs bring this class action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements for maintaining this action under both state and federal law.

63. The class of persons on whose behalf this action is brought is defined as follows (the "Class"):

> All persons and entities in the United States who own or have owned a 2002-2005 Model Year Saturn Vue and/or a 2003-2004 Model Year Saturn Ion equipped with a Vti transmission.

Excluded from the Class are: (1) members of the federal judiciary and (2) GM, its employees, and any entity in which GM has a controlling interest, including officers and directors and the

members of their immediate families. Also excluded from the Class are individuals and entities with claims against GM for personal injuries as a result of the defect alleged herein.

64. The members of the Class, being geographically dispersed and numbering at least in the tens of thousands, are so numerous that joinder of them in a single action is impracticable. GM sold more than 90,000 Saturn vehicles equipped with Vti transmissions.

65. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class, as (a) the claims of Plaintiffs are substantially similar (if not identical to) those of absent Class members, (b) there are questions of law or fact that are common to the Class and that overwhelmingly predominate over any individual issues, such that by prevailing on his own claims, Plaintiffs necessarily will establish Defendants' liability as to all Class members, (c) without the Class representation provided by Plaintiff, virtually no Class members will receive legal representation or redress for their injuries, (d) Class counsel have the necessary financial resources to adequately and vigorously litigate this class action, and (e) Plaintiffs and Class counsel are aware of their fiduciary responsibilities to the Class Members and are determined diligently to discharge those duties by vigorously seeking the maximum possible recovery for the Class.

66. Numerous questions of law and fact that are common to all class members, including, *inter alia*:

(a) Whether Saturn vehicles containing the Vti transmission are defective in that: they fail to perform in accordance with the reasonable expectations of ordinary consumers; they are not fit and safe for their ordinary, intended, and foreseeable use; their risks and dangers outweigh their benefits, if any; and/or they would not be offered for sale by a reasonably careful manufacturer or seller who knew of their defective nature;

(b) Whether GM knew of the defective and potentially unreasonably dangerous nature of vehicles equipped with the Vti transmission at the time those vehicles were sold;

(c) Whether GM represented, through its advertising, warranties and other representations, that the Vti-equipped Saturn vehicles had characteristics that they did not actually have, or omitted to disclose material facts and actual characteristics regarding the Vti-equipped Saturn vehicles;

(d) Whether GM made any affirmations of fact or promises relating to the Vti-equipped vehicles that became a basis of the bargain between seller and buyer, and thereby created an express warranty that the vehicles would conform to those affirmations or promises

(e) Whether the Vti-equipped vehicles conform(ed) to GM's express warranties;

(f) Whether the Vti-equipped vehicles are merchantable, pass without objection in the trade, and are fit for their ordinary and intended purposes;

(g) Whether the Vti-equipped vehicles have the value represented by GM;

(h) Whether Plaintiffs and the Class are entitled to compensatory damages; and

(i) Whether GM's active concealment and failure to disclose the inherently defective nature of the Vti transmission constituted fraud or misrepresentation.

67. These common questions of law or fact predominate over any questions or issues affecting individual Class members.

68. A class action is an appropriate method for the fair and efficient adjudication of this controversy, given that:

(a) Common questions of law and fact overwhelmingly predominate over any individual questions that may arise, such that there would be enormous economies to the Court and the parties in litigating the common issues on a classwide instead of a repetitive individual basis;

(b) The size of each Class member's relatively small individual claim is too insignificant to make individual litigation an economically viable alternative, such that as a practical matter there is no "alternative" means of adjudication to a class action;

(c) Few Class members have any interest in individually controlling the prosecution of separate actions (and any who do may opt out);

(d) Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by Class members;

(e) Despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this class action to be litigated on a cost-effective basis, especially when compared with repetitive individual litigation; and

(f) No unusual difficulties are likely to be encountered in the management of this class action insofar as GM's liability turns on substantial questions of law or fact that are common to the Class and that predominate over any individual questions.

COUNT I – STATUTORY CONSUMER FRAUD

69. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

70. At all relevant times there have been in effect substantially similar consumer protection statutes in the various states (the "Consumer Protection Statutes"). Each of the Consumer Protection Statutes prohibits unfair or deceptive practices.

71. Plaintiffs and members of the Class are "consumers," the Saturn vehicles at issue are "goods" or "merchandise," and the purchase of the Saturn vehicles at issue is a "consumer transaction" within the meaning of the Consumer Protection Statutes.

72. The vehicles at issue in this action were defectively designed and/or manufactured, as further described above.

73. As a result of the defective design and/or manufacture of the vehicles, the Vti transmission is inherently prone to premature failure. When the Vti transmission fails, it renders the vehicle inoperable and necessitates very costly repairs, often exceeding the (diminished) value of the vehicle, and may create unreasonably hazardous driving conditions when the failure occurs while the vehicle is being driven.

74. Upon information and belief, GM had exclusive knowledge of the defect at the time the vehicles were sold, as further described above.

75. Despite GM's knowledge of the defect in the vehicles, GM failed or refused to disclose the existence of this defect (a material fact that GM was obliged to disclose) to Plaintiffs and members of the Class at the time they purchased their vehicles.

76. GM intended that Plaintiffs and the Class rely on the omission of the material fact that the vehicles are defective. This omission is contrary to representations, including partial representations, actually made by GM regarding the transmissions and vehicles at issue, as further described above.

77. In failing to inform consumers of the defective Vti transmissions, GM has engaged in an unfair, unconscionable, and deceptive act prohibited by the Consumer Protection Statutes.

78. The omission of this material fact is the type of omission which is likely to and tends to mislead or deceive reasonable consumers acting reasonably under the circumstances.

79. But for GM's deceptive and unfair act of concealing from Plaintiffs and the Class the existence of the defect in the vehicles, Plaintiffs and the Class members would not have purchased the vehicles.

80. GM received written notice of its violations of the California Consumers Legal Remedies Act (the "CLRA") on September 4, 2007, from Plaintiff Kelly Castillo on behalf of herself and all others similarly situated, satisfying the notice requirement of the CLRA and any similar requirement in the other Consumer Protection Statutes. (*See* the notice letter and certified mail receipt attached as Exhibits 1 and 2.) GM has not responded to this notice, and any additional notice would be futile and unnecessary.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count I as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in the amount of actual damages to be determined at trial;

C. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

D. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT II – BREACH OF EXPRESS WARRANTIES

81. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

82. GM expressly warranted the vehicles at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of three years or 36,000 miles and, further, that GM would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. Such warranties are express warranties within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) (or the equivalent thereof) in each of the various states and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*

83. More specifically, GM's "New Car Limited Warranty" promises that GM "will provide for repairs to the vehicle" during the warranty period and that "[t]his warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring" during the warranty period.

84. Through advertising and promotional literature, GM boasted that the Vti transmission represented an "evolutionary step in automatic transmission technology" and touted the Vti's "robust design," "excellent performance," and "unobtrusive operation." GM's promotional literature highlighted that the Vti's "torque converter clutch is constructed of carbon fiber ***for durability***" (emphasis added). GM represented that the Vti-equipped Saturn Vue was

"tough, versatile [and] at home in almost any environment" and that that the Vti-equipped Ion was "specifically designed and engineered for whatever's next."

85. GM's representations in its advertising, promotional material, and warranty information became a basis of the bargain between GM and the Plaintiff Class.

86. Upon information and belief, none of GM's advertising or promotional literature disclosed the Vti's design or manufacturing defects, GM's failure to utilize adequate or customary quality control measures, the inherent unreliability of the Vti, or the elevated and unreasonable risk of a transmission failure that would render the vehicle potentially dangerous and/or inoperable.

87. At the time of sale and forward, GM has breached these express warranties by selling to Plaintiffs and the Class vehicles equipped with defective Vti transmissions that are, by design, subject to extreme premature wearing and failure and are potentially unsafe – if the vehicles are even operable at all– and/or by refusing to adequately repair or replace their transmissions.

88. As a direct and proximate cause of GM's breach of express warranties, Plaintiffs and the Class have suffered actual damages and are threatened with irreparable harm by virtue of an elevated and unreasonable risk of serious bodily injury.

89. Any limitation on the duration of GM's express warranties is unconscionable within the meaning of Section 2-302 of the UCC (or the equivalent thereof in each state), and therefore is unenforceable in that, among other things, vehicles with Vti transmissions contain a latent defect of which GM was actually or constructively aware at the time of sale, and

purchasers lacked a meaningful choice with respect to the terms of the warranty due to unequal bargaining power and a lack of warranty competition.

90. Any attempt by GM to repair a defective Vti transmission or to replace one defectively designed Vti transmission with another defectively designed Vti transmission within the warranty period could not satisfy GM's obligation to correct defects under the warranty. The design defect in the Vti transmission -- which unreasonably elevates the risk of premature failure, immobility and/or potentially dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective Vti transmission.

91. Any otherwise applicable notice requirement was met by the filing of this action, and because GM had notice of the defect in Vti-equipped vehicles long before Plaintiffs and the Class but did nothing to adequately remedy the defect.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count II as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in the amount of actual monetary damages to be determined at trial;

C. Specific performance of GM's express and implied warranties, striking the durational limits of the warranties as unconscionable;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT III – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

92. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

93. Section 2-314 of the Uniform Commercial Code (or its equivalent in each state) and the Magnuson-Moss Warranty Act govern the implied warranty of merchantability in all of the states at issue in this class action.

94. As a seller and manufacturer of vehicles, GM is a "merchant" within the meaning of the UCC.

95. The vehicles at issue in this action are "goods" as defined in the UCC.

96. Implied in the sale of the vehicles is a warranty of merchantability that requires, among other things, that the vehicles pass without objection in the trade and are fit for the ordinary purposes for which the vehicles are used.

97. Because the vehicles are defective, as a result of being equipped with a defective Vti transmission as further described above, the vehicles are not able to function in their ordinary capacities and were therefore not merchantable at the times they were sold, as impliedly warranted by GM.

98. GM was put on notice of the defect by the numerous complaints that GM received concerning the defect, by its own prior knowledge, and by the filing of this action.

99. Any purported limitation on remedies on the part of GM causes the warranty to fail of its essential purpose and is unconscionable under the circumstances.

100. The defect in the vehicles renders them not merchantable and thereby proximately caused Plaintiffs and the Class members who purchased them to suffer damages in an amount to be ascertained at trial.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count III as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in the amount of actual monetary damages to be determined at trial;

C. Specific performance of GM's express and implied warranties, striking the durational limits of the warranties as unconscionable;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

COUNT IV – UNJUST ENRICHMENT

101. Plaintiffs incorporate by reference the allegations in all preceding paragraphs as if fully set forth herein.

102. This Count is brought against GM pursuant to the common law doctrine of unjust enrichment.

103. The vehicles that GM manufactured and sold containing the Vti transmission are defective because the Vti transmission is defectively designed and or manufactured, as further described above.

104. Upon information and belief, GM had knowledge of the defect in the vehicles at the time of sale, as further described above.

105. Despite GM's knowledge of the defect in these vehicles, GM failed to disclose the existence of this defect (a material fact) to Plaintiffs and the Class when they purchased their vehicles.

106. Plaintiffs and the Class conferred upon GM, without knowledge of the defect, payment for their vehicles, benefits which were non-gratuitous.

107. GM accepted or retained the non-gratuitous benefits conferred by Plaintiffs and the Class despite GM's knowledge of the design defect in the vehicles. Retaining the benefits conferred upon GM by Plaintiffs and the Class under these circumstances made GM's retention of these benefits unjust and inequitable.

108. Because GM's retention of the benefits conferred by Plaintiffs and the Class is unjust and inequitable, GM must pay restitution in a manner established by the Court.

WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs request the following relief in favor of themselves and the Class and against GM on Count IV as follows:

A. An order certifying the Class and directing that this case proceed as a class action;

B. Judgment in favor of Plaintiffs and the members of the Class in the amount of actual monetary damages to be determined at trial;

C. An order equitably estopping GM from denying warranty coverage of the Vti transmission after the expiration of the unconscionable durational limits of the express and implied warranties;

D. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

Dated: September 12, 2008

Respectfully submitted,

/s/ C. Brooks Cutter
C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

THE LAKIN LAW FIRM, P.C.
Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

THE LAKIN LAW FIRM
PROFESSIONAL CORPORATION
300 Evans Avenue
P. O. Box 229
Wood River, Illinois
62095-0229
(618) 254-1127
FAX: (618) 254-0193
www.lakinlaw.com
E Mail Address:
lakin@lakinlaw.com

Bradley M. Lakin
(LIC. IL)
Roy C. Dripps
(LIC. IL, MO)
Marc W. Parker
(LIC. IL)
Craig J. Jensen
(LIC. IL, MO)
Charles W. Armbruster, III
(LIC. IL, MO, WV)
Gail G. Renshaw
(LIC. IL, MO)
John E. Winterscheidt
(LIC. IL, MO, KS)
Daniel J. Cohen
(LIC. IL, MO)
Robert W. Schmieder II
(LIC. IL, MO)
Gerald R. Walters
(LIC. IL, MO)
Jeffrey A.J. Millar
(LIC. IL, MO)
Paul A. Marks
(LIC. IL, MO)
Rodney D. Caffey
(LIC. IL, MO)
Mark L. Brown
(LIC. IL, MO)
Jonathan B. Piper
(LIC. IL)
Dennis J. Barton III
(LIC. IL, MO)
Michael T. Blotevogel
(LIC. IL, MO)
Elizabeth A. Parker
(LIC. IL, MO, NC)

OF COUNSEL
Jay C. Hoffman
(LIC. IL)
Charles W. Chapman
(LIC. IL)
Benjamin B. Allen
(LIC. IL)
John Simmons
(LIC. IL, GA, FL)

August 30, 2007

VIA CERTIFIED MAIL #91 7108 2133 3934 7899 1936
RETURN RECEIPT REQUESTED
General Motors Corporation
Registered Agent: CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

VIA CERTIFIED MAIL #91 7108 2133 3934 7899 1929
RETURN RECEIPT REQUESTED
Saturn of Roseville
750 Automall Drive
Roseville, CA 95661

Re: *Notice Under California Consumers Legal Remedies Act, Civil Code Sections 1750, et seq.*

To Whom It May Concern:

In compliance with the requirements of the California Consumers Legal Remedies Act (Civil Code Sections 1750, *et seq.*) ("CLRA"), we write on behalf of our client, Kelly Castillo, individually and as a representative of all other persons similarly situated, to notify General Motors Corporation of violations of the CLRA and to demand that GM correct, repair, replace or otherwise rectify the vehicles sold in violation of the CLRA.

BACKGROUND

From 2002 until at least 2004, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. When the Vti transmission fails, it renders the vehicle inoperable, necessitating very costly repairs (often exceeding the value of the vehicle), and creates an unreasonable safety risk when the failure occurs with the vehicle in motion.

Upon information and belief, GM was aware when it introduced the Vti transmission in 2002 of the inherent design flaws and problems with the Vti, and GM was aware that the Vti transmissions it sold were likely to experience premature failure. Despite this knowledge, GM failed to disclose this material information to consumers.

91 7108 2133 3934 7899 1936

91 7108 2133 3934 7899 1929

PLAINTIFF'S EXHIBIT 1

Many owners of Saturn Vti transmissions have had to repair or replace their Vti transmissions three or more times, and many Saturn customers have been left without transportation because they are unable to afford the costly transmission repairs or replacements needed to return their vehicles to operating condition. Although GM recently has publicly acknowledged an unusually high failure rate on vehicles with the Vti transmission, GM has failed or refused to remedy the problem.

Kelly Castillo purchased a new 2003 Saturn Vue with a Vti transmission in January of 2007 from Saturn of Roseville, California for approximately $23,000.00.

Ms. Castillo had repeated problems with the vehicle during the voluntarily extended 75,000 mile warranty period which appeared to be transmission-related, such as loss of power to the vehicle. The Saturn dealership in Roseville claimed to be unable to diagnose the problems and did not repair or replace the transmission during the voluntarily extended warranty period.

However, when the vehicle reached approximately 80,000 miles (just outside the warranty coverage) in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. The dealership replaced the transmission at that time, at a cost of approximately $4,200.00 to Ms. Castillo.

Pursuant to Civil Code Section 1782, you are hereby notified of the following:

VIOLATIONS OF THE CLRA

1. General Motors manufactures, distributes, markets and/or sells vehicles throughout the United States. Such vehicles have included the Saturn Vue and Saturn Ion with defective Vti transmissions. GM expressly and impliedly represented that such vehicles are suitable for use when, in fact, they contain defective transmissions and pose an unreasonable safety risk.

2. These acts constitute violations of Sections 1750, *et seq.* of the Civil Code in that they:

A. Represent that goods are of a particular standard, quality or grade when, in fact, they are of another (violation of Section 1770(a)(7) of the CLRA); and

B. Omit material facts that GM was obligated to disclose (violation of Section 1770(a)(7) of the CLRA).

As a result, Ms. Castillo and all consumers who are similarly situated, i.e., all owners of Saturn vehicles with Vti transmissions, have been damaged. Under Civil Code section 1782, GM is required, within thirty (30) days following receipt of this letter, to correct, repair, replace, or otherwise rectify the goods alleged to be in violation.

GM must ensure that (1) all consumers similarly situated have been identified (or, that GM has made a reasonable effort to identify all such consumers), (2) that such consumers have been notified that upon their request, GM will provide them with an appropriate remedy including, but not limited to, reimbursement for previous repairs and for replacement of defective Vti transmissions with non-defective transmissions, and (3) that GM will within a reasonable time provide such a remedy.

Sincerely,

THE LAKIN LAW FIRM, P.C.

Mark L. Brown

MLB/smb

Confirmation Services		
	Package ID: 9171082133393478991929	E-RET RECEIPT
	Destination ZIP Code: 95661	STCL REGULAR LETTER1
	Customer Reference: SATURN OF ROSE	
	Recipient: _____	PBP Account #: 14662977
	Address: _____	Serial #: 4243773
	_____	AUG 30 2007 4:22P

Confirmation Services		
	Package ID: 9171082133393478991936	E-RET RECEIPT
	Destination ZIP Code: 90017	STCL REGULAR LETTER1
	Customer Reference: GENERAL MOTOR	
	Recipient: _____	PBP Account #: 14662977
	Address: _____	Serial #: 4243773
	_____	AUG 30 2007 4:22P

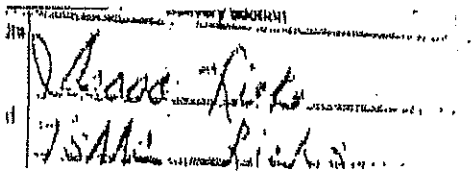
UNITED STATES POSTAL SERVICE

Date: 09/05/2007

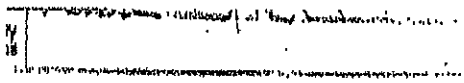
Shawn Billings:

The following is in response to your 09/05/2007 request for delivery information on your Certified Item number 7108 2133 3934 7899 1936. The delivery record shows that this item was delivered on 09/04/2007 at 10:26 AM in LOS ANGELES, CA 90017 to I RICKS. The scanned image of the recipient information is provided below.

Signature of Recipient:



Address of Recipient:



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

PLAINTIFF'S EXHIBIT 2

UNITED STATES POSTAL SERVICE

Track & Confirm

Search Results

Label/Receipt Number: 9171 0821 3339 3478 9919 29
Status: Delivered

Your item was delivered at 11:26 AM on September 5, 2007 in ROSEVILLE, CA 95678.

Additional Details > Return to USPS.com Home >

Track & Confirm

Enter Label/Receipt Number.

Go >

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. Go >

Return Receipt (Electronic)

Verify who signed for your item by email. Go >

Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

UNITED STATES POSTAL SERVICE®

Track & Confirm

Return Receipt (Electronic) Confirmation

The necessary components to generate your delivery record online have not been received by the Postal Service. Therefore, no delivery record will be provided online.

Date of Request: 09/10/2007
Label/Receipt Number: 9171 0821 3339 3478 9919 29
First Name: shawn
Last Name: Billings
Email Address: shawnb@lakinlaw.com

Track & Confirm
Enter Label/Receipt Number.
Go >

Return to USPS.com Home >

Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

UNITED STATES POSTAL SERVICE®

Track & Confirm

Return Receipt (Electronic) Confirmation

The necessary components to generate your delivery record online have not been received by the Postal Service. Therefore, no delivery record will be provided online.

Date of Request: 09/07/2007
Label/Receipt Number: 9171 0821 3339 3478 9919 29
First Name: Shawn
Last Name: Billings
Email Address: shawnb@lakinlaw.com

Track & Confirm

Enter Label/Receipt Number.

Go >

Return to USPS.com Home >

Copyright © 1999-2004 USPS. All Rights Reserved. Terms of Use Privacy Policy

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov

Sent: Friday, September 12, 2008 12:13 PM

To: caed_cmecf_nef@caed.uscourts.gov

Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Amended Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Cutter, C on 9/12/2008 at 10:13 AM PDT and filed on 9/12/2008

Case Name:	Castillo et al v. General Motors Corporation
Case Number:	2:07-cv-2142
Filer:	Kelly Castillo Nichole Brown Barbara Glisson Brenda Alixis Digiandomenico Stanley Ozarowski Donna Santi Valerie Evans

Document Number: 55

Docket Text:
SECOND AMENDED CLASS ACTION COMPLAINT **AMENDED COMPLAINT against General Motors Corporation by Stanley Ozarowski, Donna Santi, Kelly Castillo, Nichole Brown, Barbara Glisson, Brenda Alixis Digiandomenico, Valerie Evans.(Cutter, C)**

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PHV markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, kdonnel@kcrlegal.com, kgradwohl@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W. Schmieder PHV , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=9/12/2008] [FileNumber=2542380-0] [640eb2b0b6b3e1fd349e568abd7dd051232ffe693c701f18161fe102d718f84694d 62b921e46f0e5c046bf93749de14329dde171f39e07d1278fde99c6f84f22]]

EXHIBIT G

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, DOES 1 through 50, inclusive,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

DECLARATION OF L. JOSEPH LINES, III IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE AND MOTION TO DISMISS

Hearing Date: February 4, 2008
Time: 2:00 p.m.
Courtroom 5
Hon. William B. Shubb

I, L. Joseph Lines, III, declare and state:

1. I am employed by defendant General Motors Corporation ("GM") as an Attorney on its Legal Staff. Saturn Corporation ("Saturn") is wholly-owned by GM and I have acted as counsel for Saturn and represented from time to time in connection with litigation. I have personal knowledge of the matters contained herein and could and would testify thereto under oath. I make this declaration in support of GM's Motion To Dismiss in this case.

2. Attached hereto as Exhibit A is a true and correct copy of the Saturn Express Limited Written Warranty Booklet for the 2003 Saturn VUE to which plaintiffs refer in their complaint.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed this 3d day of January, 2008

/s/ L. Joseph Lines, III

This certifies that counsel of record a signed original of this declaration.

/s/ Gregory R. Oxford

2003

Warranty & Owner Assistance

INFORMATION

SATURN.

An Important Message to Saturn Owners . . .

SATURN'S COMMITMENT TO YOU

We are committed to assuring your satisfaction with your new Saturn.

Your Saturn Retailer also wants you to be completely satisfied and invites you to return for all your service needs, both during and after the warranty period.

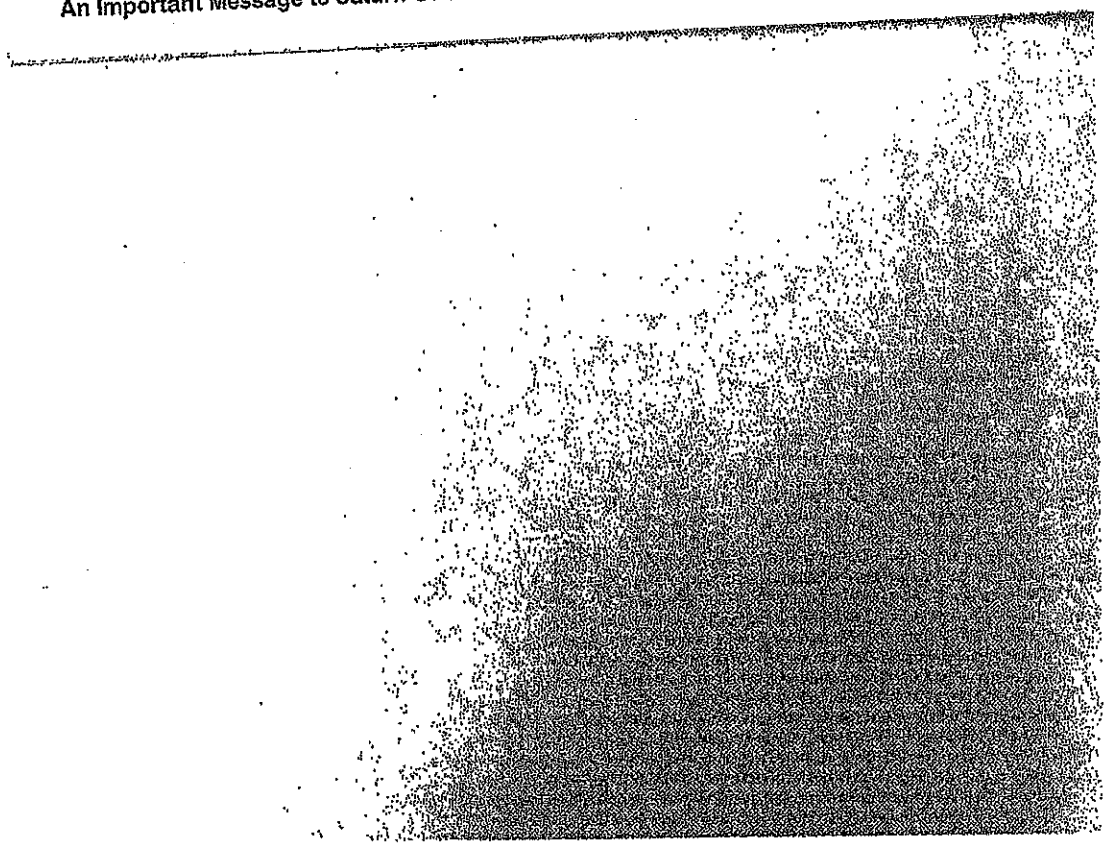
Car Operation and Care

Considering the investment you have made in your new Saturn vehicle, we know you will want to operate and maintain it properly. We urge you to follow the instructions contained in your Owner's Handbook and Maintenance Schedule.

Maintenance Records

Saturn recommends that you retain receipts covering performance of regular vehicle maintenance. Repairs required due to damage resulting from lack of maintenance are not covered under your warranty. Receipts can be very important if a question arises as to whether a malfunction is caused by lack of scheduled maintenance or a defect in material or workmanship.

We suggest you keep these receipts in your Owner's Handbook. Also, a maintenance record area is provided in each interval in the Maintenance Schedule for your convenience in recording the date, actual mileage, and services performed.



Owner Assistance

Should you ever encounter a problem during or after the warranty period that is not resolved, talk to a member of your Retailer's management team. If the problem persists, please contact the Saturn Customer Assistance Center as outlined in *Owner Assistance*, on page 25 of this booklet.

Saturn Mediation/Arbitration Program

On page 26 of this booklet, you will also find information on the voluntary, non-binding Saturn Mediation/Arbitration Program.

We thank you for choosing a Saturn product.

Saturn Corporation

Table of Contents

Copyright © 2002 Saturn Corporation U.S.A. All rights reserved. 1st Edition SVS 2003W

Warranty Coverage at a Glance

GENERAL INFORMATION

The 2003 warranty coverages are summarized on page 6. Please read pages 7 through 30 for complete details.

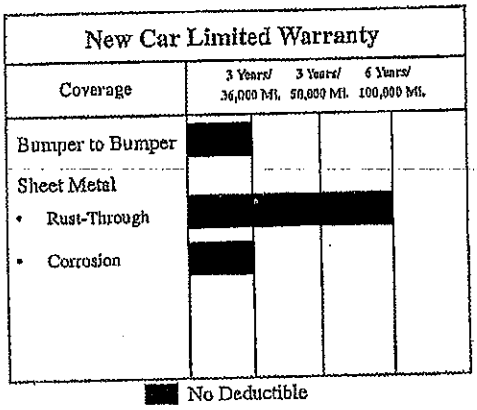
Tire Information

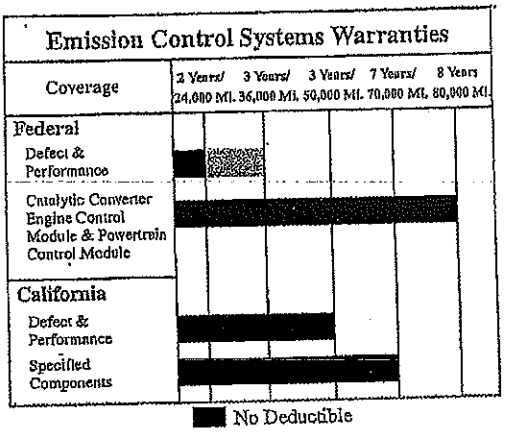
The tires supplied with your vehicle are covered against defects in materials or workmanship under the 3-year/36,000 mile bumper-to-bumper coverage.

Any tire replaced will continue to be warranted for the remaining portion of the bumper-to-bumper coverage period without proration. Following expiration of the bumper-to-bumper coverage, tires may continue to be covered under the tire manufacturer's warranty with proration included.

Review the tire manufacturer's warranty in the Bridgestone Firestone booklet that is included with your Saturn Owner's Handbook.

The 2003 warranty coverages are summarized below. Please read pages 7 through 30 for complete details.





TIRE INFORMATION: Tires are warranted separately (refer to page 8 for additional information).

Defects in material and workmanship continue to be covered under the "Bumper to Bumper" Coverage in the New Car Limited Warranty.

2003 Saturn Corporation New Car Limited Warranty

Saturn Corporation will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the following terms, conditions, and limitations.

WHAT IS COVERED

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the Continental United States, Hawaii,* Alaska, or Canada, and is provided to the original and any subsequent owners of the car during the WARRANTY PERIOD.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.

* In the state of Hawaii, authorized Saturn Service is available only on the island of Oahu.

Needed repairs will be performed using new or remanufactured parts.

Warranty Period

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the COVERAGE period.

Bumper to Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" on pages 8 through 10.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Corrosion

Body sheet metal panels are covered against rust for 3 years or 36,000 miles, whichever comes first.

Rust-Through

Any body sheet metal panel that rusts through (an actual hole in the sheet metal) continues to be covered for up to 6 years or 100,000 miles, whichever comes first.

Note: Cosmetic or surface corrosion (resulting from stone chips or scratches in the paint, for example) is not included in SHEET METAL COVERAGE.

Obtaining Repairs

To obtain warranty repairs, take the car to a Saturn Retail Facility within the WARRANTY PERIOD and request the needed repairs. A reasonable time must be allowed for the retail facility to perform necessary repairs.

Towing

TOWING is covered to the nearest Saturn Retail Facility, if your vehicle cannot be driven because of a warranted defect.

If your vehicle must be towed, the only towing equipment which can be used is a vehicle carrier or a wheel lift tow truck. See your Owner's Handbook for more details.

No Charge

Warranty repairs, including TOWING, parts and labor will be made at NO CHARGE.

WHAT IS NOT COVERED

Tires

Normal tire wear or wear-out is not covered. Road hazard damage such as punctures, cuts, snags, and breaks resulting from pothole impact, curb impact, or from other objects is not covered.

Also, damage from improper inflation, spinning (as when stuck in mud or snow), tire chains, racing, improper tire mounting or dismounting, misuse, negligence, alteration, vandalism, or misapplication is not covered.

Damage Due to Accidents, Misuse, or Alteration

Damage caused as the result of any of the following, is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the vehicle;
- Misuse of the vehicle such as driving over curbs, overloading, racing or other competition. Proper vehicle use is discussed in the Owner's Handbook;
- Alteration or modification to the vehicle including the body, chassis or components, after final assembly by Saturn. In addition, coverages do not apply if the odometer has been disconnected or its reading has been altered, or the mileage cannot be determined.

Note: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.) stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See page 12 for details on Chemical Paint Spotting.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended Maintenance Schedule intervals and/or failure to use or maintain fluids, fuel, lubricants or refrigerants recommended in the Owner's Handbook is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the Owner's Handbook are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear or exposure are not covered.

Items such as:

- Filters
- Clutch Linings
- Audio System Cleaning
- Wiper Inserts
- Brake Pads/Linings
- Keyless Entry Batteries*
- Coolants and Fluids
- Tire Rotation

are covered only when replacement or repair is the result of a defect in material or workmanship.

Failure or damage of one component due to vehicle use, wear, exposure or lack of maintenance is not covered.

** Consumable battery covered up to 12 months only.*

Extra Expenses

Economic loss or extra expense is not covered. Examples include:

- Loss of vehicle use
- Inconvenience
- Storage
- Payment for loss of time or pay
- Vehicle rental expense
- Lodging, meals or other travel costs

Other Terms: This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

Saturn does not authorize any person to create for it any other obligation or liability in connection with these cars. **Any implied warranty of merchantability or fitness for a particular purpose applicable to this car is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. Saturn shall not be liable for incidental or consequential damages (such as, but not limited to, lost wages or vehicle rental expenses) resulting from breach of this written warranty or any implied warranty.***

* Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

Things You Should Know About the New Car Limited Warranty

Warranty Repairs — Component Exchanges

In the interest of customer satisfaction, Saturn may offer exchange service on some vehicle components. This service is intended to reduce the amount of time your vehicle is not available for use due to repairs. Components used in exchange are service replacement parts which may be new, remanufactured, reconditioned or repaired, depending on the component involved.

All exchange components used meet Saturn standards and are warranted the same as new components. Examples of the types of components that might be serviced in this fashion include: transaxle assemblies, instrument cluster assemblies, radios, compact disc players, tape players, batteries, and electronic control modules.

Warranty Repairs - Recycled Materials

Environmental Protection Agency (EPA) guidelines support the capture, purification and reuse of automotive air conditioning refrigerant gases. As a result, any repairs Saturn may make to the sealed portion of your air conditioning system (if equipped) may involve the installation of purified reclaimed refrigerant.

After-Manufacture "Rustproofing"

Your vehicle was designed and built to resist corrosion. Application of additional rust-inhibiting materials is neither necessary nor required under the SHEET METAL COVERAGE. Saturn makes no recommendation concerning the usefulness or value of such products.

Application of after-manufacture rustproofing products may create an environment which reduces the corrosion resistance built into your vehicle.

Repairs to correct damage caused by such applications are not covered under your Saturn New Car Limited Warranty.

Paint, Trim and Appearance Items

Defects in paint, trim, upholstery or other appearance items are normally corrected during new vehicle inspection or during pre-delivery inspection. If you find any paint or appearance concerns, advise your Retailer as soon as possible. Deterioration due to use and exposure is not covered by the warranty.

The instructions in the Owner's Handbook regarding the care of paint, trim, upholstery, glass, and other appearance items should be followed closely.

Chemical Paint Spotting

Some weather and atmospheric conditions can create a chemical fallout. Airborne pollutants can fall upon and attack painted surfaces on your vehicle.

This damage can take two forms: blotchy, ringlet-shaped discolorations, and small irregular dark spots etched into the paint surface.

Although no known defect in the factory applied paint causes this, Saturn will repair, at no charge to the owner, the painted surfaces of new vehicles damaged by this fallout condition within 12 months or 12,000 miles of purchase, whichever comes first.

Warranty Coverage — Extensions

Time Extensions

The New Car Limited Warranty will be extended one day for every day beyond the first 24 hour period in which your vehicle is at an Authorized Saturn Retail Facility for warranty service.

You may be asked to show the customer service order to verify the period of time the warranty is to be extended. Your extension rights may vary depending on state law.

Mileage Extensions

Prior to delivery, some mileage is put on your vehicle during testing at the assembly plant, during shipping and while at the retail facility.

For eligible vehicles, this mileage will be added to the mileage limits of the warranty, ensuring that you receive full benefit of the coverage. Mileage extension eligibility requirements are:

- Applies only to new vehicles held exclusively in new vehicle inventory.
- Does not apply to used vehicles, Saturn owned vehicles, retailer owned vehicles, or retailer demonstrator vehicles.
- Does not apply to vehicles with more than 1,000 miles on the odometer, even though the vehicle may not have been "registered" for license plates.

Warranty Service — Continental United States, Alaska, Hawaii, or Canada

For your records, the servicing Saturn Retail Facility should provide a copy of the Customer Service Order, listing all warranty repairs performed. While any Saturn Retail Facility or Authorized Saturn Service Provider will perform warranty service, we recommend that you return to the Saturn Retail Facility that sold you your car because of their continued and personal interest in you.

If you are touring or move, visit any Saturn Retail Facility or Authorized Saturn Service Provider in the Continental United States, Alaska, Hawaii, or Canada for warranty service.

Touring Owner Service — Outside Continental United States, Alaska, Hawaii, or Canada

If you are touring outside the Continental United States, Alaska, Hawaii, or Canada, and repairs are needed, it is suggested that the necessary repairs be performed at your expense. Once you return to the Continental United States, Alaska, or Hawaii, you should provide your Retailer with a statement of circumstances, the original repair order and any *paid* receipts indicating the work performed and parts replaced for reimbursement consideration.

Please note that repairs made necessary by the use of improper or dirty fuels or lubricants are not covered under the warranty. See your Owner's Handbook for additional information on fuel requirements when operating in foreign countries.

Original Equipment (Vehicle) Alterations

This warranty does not cover any damage or failure resulting from modification or alteration to the vehicle's original equipment as manufactured or assembled by Saturn except for Retailer Installed Regular Production Option (RPO) equipment such as a Delco radio, cruise control, etc. and Saturn approved retailer installed accessory packages as identified in the Saturn Parts and Accessories manuals. Examples of the types of alterations that would not be covered include, but are not limited to, the installation of a non-Saturn part or accessory, or the cutting, welding or disconnecting of the vehicle's original equipment parts and components.

Note: Retailer installed Saturn parts and accessories not available as regular production options may be covered under separate warranties. Please consult your Retailer for details.

Pre-Delivery Service

Defects in or damage to the mechanical, electrical, sheet metal, paint, trim, and other components of your vehicle may occur at the factory or while it is being transported to the Retailer.

Normally, any defect or damage occurring during assembly is detected and corrected at the factory during the inspection process. In addition, Retailers are obligated to inspect each vehicle before delivery.

They repair any uncorrected factory defects and any transit damage detected before the vehicle is delivered to you.

Any defects still present at the time the vehicle is delivered to you are covered by the warranty. If you find any such defects when you take delivery, please advise your Retailer without delay. For further details concerning any repairs which the Retailer may have made prior to your taking delivery of your vehicle, please ask your Retailer.

Production Changes

Saturn Corporation and its Retailers reserve the right to make changes in cars built and/or sold by them at any time without incurring any obligation to make the same or similar changes on cars previously built and/or sold by them.

2003 Emission Control Systems Warranties

This section outlines the emission warranties that Saturn provides for your vehicle in accordance with the U.S. Federal Clean Air Act. Defects in material or workmanship in Saturn emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. In any case, the warranty with the broadest coverage applies.

What is Covered

The parts covered under the emission warranty are listed under Emission Warranty Parts List that appears later in this section.

Federal Emission Control Systems

Both the Emission Defect Warranty and the Emission Performance Warranty described begin on the date the vehicle is first delivered or put into use and continues for a period of 2 years or 24,000 miles, whichever comes first.

If a catalytic converter, vehicle (powertrain) control module, engine control module or transaxle control module (TCM) is found to be defective under either of these warranties, those parts are warranted for 8 years or 80,000 miles, whichever comes first.

Emission Defect Warranty

Saturn Corporation warrants to the owner that the vehicle:

- was designed, equipped and built so as to conform, at the time of sale, with applicable regulations of the Federal Environmental Protection Agency (EPA), and
- is free from defects in materials and workmanship which cause the vehicle to fail to conform with those regulations during the emission warranty period.

Emission related defects in the genuine Saturn parts listed under Emission Warranty Parts List, including related diagnostic costs, parts and labor, are covered by this warranty.

Emission Performance Warranty

Some states and/or local jurisdictions have established periodic vehicle Inspection and Maintenance (I/M) programs to encourage proper maintenance of your vehicle. If an EPA-approved I/M program is required in your area, you may also be eligible for Emission Performance Warranty coverage when all of the following three conditions are met:

- The vehicle has been maintained and operated in accordance with the instructions for proper maintenance and use set forth in the owner's handbook or maintenance schedule supplied with your vehicle.
- The vehicle fails an EPA-approved I/M test during the emission warranty period.*
- The failure results, or will result in, the owner of the vehicle having to bear a penalty or other sanctions (including the denial of the right to use the vehicle) under local, state or federal law.

If all of these conditions are met, Saturn warrants that your retailer will replace, repair, or adjust to Saturn specifications, at no charge to you, any of the part listed on the Emission Warranty Parts List, which may be necessary to cause your vehicle to conform to the applicable emissions standards. Non-Saturn parts labeled "Certified to EPA Standards" are covered by the Emission Performance Warranty.

California Emission Control Warranty

This section outlines the emission warranties that Saturn provides for your vehicle in accordance with the California Air Resources Board. Defects in material or workmanship in Saturn emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. In any case, the warranty with the broadest coverage applies. This warranty applies if your vehicle meets both of the following requirements:

- Your vehicle is registered in California or other states adopting California emission and warranty regulations;*
- is certified for sale in California as indicated on the vehicle's emission control information label.

Your Warranty Rights and Obligations (For Vehicles Subject to California's Exhaust Emission Standards and Warranty Regulations)

The California Air Resources Board and Saturn are pleased to explain the emission control system warranty on your 2003 vehicle. In California, new motor vehicles must be designed, equipped, and built to meet the states' stringent anti-smog standards. Saturn must warrant your vehicle's emission control system for the periods of time and mileage listed, provided there has been no abuse, neglect, or improper maintenance of your vehicle. Your vehicle's emission control system may include parts such as the fuel-injection system, the ignition system, catalytic converter, and engine computer. Also included are hoses, belts, connectors, and other emission-related assemblies.

Where a warrantable condition exists, Saturn will repair your vehicle at no cost to you, including diagnosis, parts, and labor.

Saturn Warranty Coverage

- For 3 years or 50,000 miles (whichever comes first):
  If your vehicle fails a Smog Check inspection, Saturn will make all necessary repairs and adjustments to ensure that your vehicle passes the inspection.

*Currently MA and VT only. Note: NY and ME have adopted California emission regulations, but not California warranty regulations. The Federal Emission Control Warranty applies in NY and ME.

This is your emission control system Performance Warranty. If any emission-related part on your vehicle is defective, Saturn will repair or replace it. This is your short-term emission Defects Warranty.

- For 7 years or 70,000 miles (whichever comes first):
  If an emission-related part listed in your vehicle warranty booklet specially noted with coverage for 7 years or 70,000 miles is defective, Saturn will repair or replace it. This is your long-term emission control system Defects Warranty. (For example, if one of these parts causes a Smog Check failure after the 3 year/50,000 mile performance warranty has expired, the part is still covered for 7 years/70,000 miles.)
- For 8 years or 80,000 miles, whichever comes first:
  If the catalytic converter, a vehicle (powertrain) control module or engine control module is found to be defective, Saturn will repair or replace it under the Federal Emission Control Warranty.

Any authorized Saturn retailer will, as necessary under these warranties, replace, repair, or adjust to Saturn specifications any genuine Saturn parts that affect emissions.

The applicable warranty period shall begin on the date the vehicle is delivered to the first retailer purchaser or, if the vehicle is first placed in service as a demonstrator or company vehicle prior to sale at retail, on the date the vehicle is placed in such service.

Owner's Warranty Responsibilities:

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in the Maintenance Schedule booklet, located in the back cover pocket of the Owner's Handbook. Saturn recommends that you retain all maintenance receipts for your vehicle, but Saturn cannot deny warranty solely for the lack of receipts or for your failure to ensure the performance of all scheduled maintenance.

You are responsible for presenting your vehicle to a Saturn retailer or an Authorized Saturn Service Provider as soon as a problem exists. The warranty repairs should be completed in a reasonable amount of time, not to exceed 30 days.

As the vehicle owner, you should also be aware that Saturn may deny you warranty coverage if your vehicle or a part has failed due to abuse, neglect, improper or insufficient maintenance, or modifications not approved by Saturn.

If you have any questions regarding your rights and responsibilities under these warranties, you should contact the Saturn Customer Assistance Center at 1-800-553-6000 or, in California, the State of California Air Resources Board, Mobile Source Operations Division at P.O. Box 8001, El Monte, CA 91731-2990.

What is Covered:

The parts covered under the Emission Control Systems Warranties are listed under the Emission Warranty Parts List later in this section.

What Is Not Covered:

The Emission Control Systems Warranty obligations do not apply to:

- Conditions resulting from tampering, abuse, neglect, or improper maintenance; or
- Any other item listed under *What is Not Covered* in the New Car Limited Warranty section.

The *Other Terms* presented in the New Car Limited Warranty also apply to the emission-related warranties.

Emission Warranty Parts List

The parts that may affect your vehicle's emissions are listed on the following pages. These emission parts are covered under emission warranties as follows:

- **Federal Coverage** - 2 years/24,000 miles, whichever comes first. (Saturn extends this coverage through the "Bumper to Bumper" New Car Limited Warranty period.)
- **California Coverage** - 3 years/50,000 miles, whichever comes first.

NOTE: Certain parts may be covered beyond these warranties if shown with asterisk(s) as follows:

- (*) 7 years/70,000 miles, whichever comes first, California emission coverage.
- (**) 8 years/80,000 miles, whichever comes first. Federal emission coverage.

Powertrain Control System:

- Transmission Control Module (TCM)
- Input/Output Speed Sensor ASM
- Control Solenoid Valve ASM
- Neutral Start Back-Up Switch (NSBU)

Powertrain Control System (Continued):

- Camshaft Position Sensor
- Input Shaft Speed Sensor
- Coolant Fan Control Relay
- Intake Air Temperature Sensor
- Data Link Connector
- Mass Air Flow Sensor*
- Coolant Level Sensor
- Malfunction Indicator Lamp
- Crankshaft Position Sensor
- Electronic Throttle Control (ETC) Motor
- Manifold Absolute Pressure Sensor
- Engine Control Module (ECM)**
- Oxygen Sensors
- Eng. Coolant Temp. Sensor
- Brake Switch
- Powertrain Control Module (PCM)*
- Throttle Position Sensor/ Switch
- Transmission Speed Sensors
- Vehicle Speed Sensor
- Torque Convertor Clutch Switch
- Manual Transaxle Clutch Switch
- Torque Converter Clutch Solenoid Valve

Exhaust Gas Recirculation System

- EGR Passages
- EGR Valve

Emission Control Systems Warranties

Fuel Management System

- Fuel Injectors
- Fuel Pressure Regulator
- Fuel Rail Assembly*

Air Management System

- Air Cleaner Assembly
- Idle Air Control Valve
- Air Cleaner Resonator
- Intake Manifold (3.0L: Lower Intake Manifold Assembly*)
- Air Intake Ducts
- Throttle Body Assembly*

Ignition System

- Ignition Control Module*
- Spark Plugs
- Knock Sensor System
- Spark Plug Wires

Catalytic Converter System

- Catalytic Converter**
- Exhaust Manifold*
- Exhaust Pipes and/or Mufflers (when located between converter and exhaust manifold)

Secondary Air Injection System

- Air Pump
- Bypass Valve
- Solenoid Vacuum Valve

Positive Crankcase Ventilation System

- Oil Filler Cap
- PCV Filter
- PCV Oil Separator

Evaporative Emission Control System (Gasoline Engines)

- Canister
- Fuel Filler Cap
- Canister Purge Solenoid Valve
- Fuel Pressure Regulator
- Canister Vent Solenoid
- Fuel Tank*
- Fill Limit Valve
- Fuel Tank Filler Pipe (with restrictor)
- Fuel Feed/Return Pipes, Hoses
- Fuel Tank Vacuum Sensor

Miscellaneous Items Used In Above Systems

- Boots
- Hoses
- Gaskets
- Belts
- Housings
- Grommets
- Clamps
- Mounting Hardware
- Sealing Devices
- Connectors
- Pipes
- Springs
- Ducts
- Pulleys
- Tubes
- Fittings

Things You Should Know About the Emission Control Systems Warranties

Replacement Parts

The emission control systems of your 2003 vehicle were designed, built and tested using genuine Saturn parts* and the car is certified as being in conformity with applicable federal and California emission requirements. Accordingly, it is recommended that any replacement parts used for maintenance or for the repair of emission control systems be new, genuine Saturn parts.

The warranty obligations are not dependent upon the use of any particular brand of replacement parts. The owner may elect to use non-genuine Saturn parts for replacement purposes. Use of replacement parts which are not of equivalent quality may impair the effectiveness of emission control systems.

If other than new, genuine Saturn parts are used for maintenance replacements or for the repair of components affecting emission control, the owner should assure himself/herself that such parts are warranted by their manufacturer to be equivalent to genuine Saturn parts in performance and durability.

Maintenance Repairs

Maintenance and repairs can be performed by any qualified service outlet; however, warranty repairs must be performed by an Authorized Saturn Retail Service Facility or Authorized Saturn Service Provider, except in an emergency situation when a warranted part or an Authorized Saturn Retail Facility is not reasonably available to the vehicle owner.

** Genuine Saturn parts, when used in conjunction with Saturn vehicles means parts manufactured by or for Saturn, designed for use on Saturn vehicles and distributed by any division or subsidiary of General Motors Corporation.*

In an emergency, where an authorized Saturn Retailer or Authorized Saturn Service Provider is not reasonably available, repairs may be performed at any available service establishment or by the owner, using any replacement part. Saturn will consider reimbursement for the expense incurred (including diagnosis), not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on Saturn's recommended time allowance for the warranty repair and the geographically appropriate labor rate.

A part not being available within 10 days or a repair not being complete within 30 days constitutes an emergency. Retain receipts and failed parts in order to receive compensation for warranty repairs reimbursable due to an emergency.

Receipts and records covering the performance of regular maintenance or emergency repairs should be retained in the event questions arise concerning maintenance. These receipts and records should be transferred to each subsequent owner. Saturn will not deny warranty coverage solely on the absence of maintenance records. However, Saturn may deny a warranty claim if a failure to perform scheduled maintenance resulted in the failure of a warranted part.

Claim Procedures

As with the other warranties covered in this section, take your car to your Authorized Saturn Retail Facility or Authorized Saturn Service Provider to obtain service under the Emission Warranties. This should be done as soon as possible after failing an EPA-approved Inspection/Maintenance test or a California smog check test, or at anytime you suspect a defect in a part.

Those repairs qualifying under the warranty will be performed by your Saturn Retail Facility or Authorized Saturn Service Provider at no charge. Repairs which do not qualify will be charged to you. You will be notified if the repair qualifies under the warranty within a reasonable time (not to exceed 30 days after the receipt of the vehicle by the Saturn Retail Facility or Authorized Saturn Service Provider, or within the time period required by local or state law).

The only exceptions would be if you request or agree to an extension, or if a delay results from events beyond the control of your Retailer or Saturn. If you are so notified, Saturn will provide any required repairs at no charge.

In the event a warranty matter is not handled to your satisfaction, please contact the Saturn Customer Assistance Center as outlined in the Owner Assistance section on page 25 of this booklet.

For further information or to report violations of the Emission Control System Warranties, you may contact the Director, Field Operation and Support Division, Environmental Protection Agency, 401 "M" Street S.W., Washington, DC 20460.

For a vehicle equipped with the California exhaust emissions option, you may contact the State of California Air Resources Board, Mobile Source Operations Division, PO Box 8001, El Monte, CA 91731-2990.

If, in an emergency situation, it is necessary to have repairs performed by other than an Authorized Saturn Retail Facility or Authorized Saturn Service Provider and you believe the repairs are covered by Emission Warranties, take the replaced parts and your receipt to an Authorized Saturn Retail Facility or Authorized Saturn Service Provider for reimbursement consideration.

This applies to both the Emission Defect Warranty and Emission Performance Warranty.

Owner Assistance

CUSTOMER SATISFACTION

At Saturn, we are committed to the concept of total customer satisfaction. We have made a commitment to provide our customers with unparalleled service, before, during and after the purchase of a Saturn vehicle. We call this concept the *Saturn Difference.* If, for any reason, your ownership experience falls below your expectations, we suggest you take the following action:

1. **Contact the Retailer's Customer Assistance Liaison**
   Any member of the retail management team; General Manager or Service Manager has the training, authority, and, most importantly, the desire to quickly and effectively answer and resolve your questions, problems or concerns.

2. **Contact the Saturn Customer Assistance Center**
   Should you need additional assistance after contacting your Saturn Retailer call the Saturn Customer Assistance Center at:

   1-800-553-6000

   (available from all 50 States and Canada)

A Saturn Customer Assistance Center Team Member will handle your call and assist in providing product and warranty information, nearest Retailer locations, roadside assistance, brochures, literature, and discuss any concerns you may have. In the event that you desire to write to the Saturn Customer Assistance Center, our address is:

Saturn Customer Assistance Center
100 Saturn Parkway
Mail Code 371-999-S24
Spring Hill, TN 37174-1500

NOTE: In order to give you the greatest assistance possible, please help us by providing the following information when you call:

- Vehicle Identification Number. (You will find this 17-digit number located on the upper driver's side corner of the dash and also on your roadside assistance key card.)
- The current mileage on your Saturn vehicle (if applicable).
- The names of the selling and servicing retail facilities.
- Your daytime and evening phone numbers.
- Nature of concern.

Notification of Name/Address Change

If you have purchased a previously owned Saturn vehicle or have changed your name or address, please provide this information to your nearest Saturn facility's service department or the Saturn Customer Assistance Center at 1-800-553-6000.

*Saturn Participation in Better Business Bureau Mediation/Arbitration Program**

Saturn and its Retailers have made a commitment to you for your complete satisfaction with your Saturn vehicle. In those few instances when you feel your vehicle problem was not appropriately addressed, Saturn and its Retailers offer the additional assistance of a neutral party through our voluntary participation in a mediation/arbitration program called BBB Auto Line. This program is available at no cost to you, our customer, and is administered by the Council of Better Business Bureaus. The *Saturn Difference* is our pledge to your satisfaction, and if we are unable to assist you, we are confident that the BBB Auto Line can help in Saturn's customer satisfaction effort.

The program can resolve individual disputes involving vehicle repairs and the interpretation of your New Vehicle Limited Warranty.

We ask that you not resort to BBB Auto Line until after Saturn and its Retailers have been given the opportunity to satisfy your vehicle concerns.

However, you may file a claim at any time by contacting your local Better Business Bureau at 1-800-955-5100.

For further information about filing a claim, you may also write to:

BBB Auto Line
Council of Better Business Bureaus
Suite 800
4200 Wilson Boulevard
Arlington, VA 22203

In order to file a claim, you will have to provide your name and address, the vehicle identification number (VIN) of your vehicle, and a statement of the nature of your complaint. BBB staff may try to help resolve your dispute through mediation.

If mediation is not successful, or if you do not wish to participate in mediation, eligible customers may present their case to an impartial third party arbitrator at an informal hearing. The arbitrator will render a decision in your case which you may accept or reject.

If you accept a valid arbitrator decision, Saturn will be bound by that decision. The entire dispute settlement process should ordinarily take about 40 days from the time you file your complaint to the time a decision is rendered.

We encourage you to use this program before, or instead of, resorting to legal action. We believe it offers advantages over legal avenues in most jurisdictions because it is fast, free of charge, and informal (lawyers are not usually present, although you may retain one at your expense if you choose). If you wish to pursue legal action, however, we do not require that you first file a claim with BBB Auto Line unless state law provides otherwise.*

Whatever your preference may be, remember that if you are unhappy with the results of BBB Auto Line, you can still pursue legal action because an arbitrator's decision is binding on Saturn but not on you unless you accept it.

Eligibility is limited by vehicle age/mileage and other factors. For further information concerning the program, call your local BBB at 1-800-955-5100.

** Saturn Corporation reserves the right to change eligibility limitations and/or to discontinue its participation in this program.*

You may also call the Saturn Customer Assistance Center, at 1-800-553-6000, or write, using the form on page 39.

Customer Assistance for the Hearing or Speech Impaired

To assist owners who have hearing difficulties, Saturn has installed special TDD (Telecommunication Devices for the Deaf) equipment in its Saturn Customer Assistance Center. Any hearing or speech impaired customer who has access to a TDD or a conventional teletypewriter (TTY) can communicate with Saturn by dialing 1-800-TDD-6000.

State Warranty Enforcement Laws (Repair/Replace Laws)

Laws in many states permit owners to obtain a replacement vehicle or a refund of the purchase price under certain circumstances. The provisions of these laws vary from state to state.

To the extent allowed by state law, Saturn requires that you first provide us with written notification of any service difficulty you have experienced so that we have an opportunity to make any needed repairs before you are eligible for the remedies provided by these laws.

Your written notification should be sent to:

Saturn Repair/Replace Law Coordinator
Saturn Customer Assistance Center
100 Saturn Parkway
Mail Code 371-999-S22
Spring Hill, TN 37174-1500

California Warranty Enforcement Laws

On January 1, 2001, a mandate regarding warranty laws on new motor vehicles registered in the state of California was enacted. Specifically, the laws establishing the presumption of a "lemon" have changed. The paraphrased law follows with changes bolded:

For vehicles within 18 months of purchase of a new vehicle or 18,000 miles, whichever is first. If a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the vehicle or make restitution to the buyer, at the buyer's option. **A reasonable number of attempts to correct a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven, is when a vehicle has been subject to repair two or more times and the buyer or lessee has at least once directly notify the manufacturer of the need for the repair.** On all other nonconformity issues a reasonable number of repair attempts is still four.

Written notification should still be addressed to the Saturn Repair/Replace Law Coordinator utilizing the same address noted in the previous section.

** Some states may require that you first file a claim with BBB Auto Line before resorting to state-operated procedures (including legal action). Additionally, you must use the BBB Auto Line before seeking remedies provided in the Magnuson-Moss Warranty Act or certain state laws.*

Special Policy Adjustment Programs Beyond the Warranty Period

Saturn is proud of the protection afforded by its warranty coverages. In order to achieve maximum customer satisfaction, there may be times when Saturn will establish a special policy adjustment program to pay all or part of the cost of certain repairs not covered by the warranty or to reimburse certain repair expenses you may have incurred. From time to time, check with your Saturn Retailer or the Saturn Customer Assistance Center to determine whether any special policy adjustment program is applicable to your vehicle.

When you make any inquiry, you will need to give the year, model and mileage of your vehicle and your vehicle identification number (VIN).

SATURN.

Reporting Safety Defects

Reporting Safety Defects to the United States Government

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA), in addition to notifying Saturn Corporation.

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign.

However, NHTSA cannot become involved in individual problems between you, your Retailer or Saturn.

To contact NHTSA, you may either call the Auto Safety Hotline toll-free at 1-800-424-9393 (or 366-0123 in the Washington, D.C. area) or write to:

NHTSA
U. S. Department of Transportation
Washington, D. C. 20590

You can also obtain other information about motor vehicle safety from the Hotline.

Reporting Safety Defects to Saturn

In addition to notifying NHTSA in a situation like this, we certainly hope you'll notify us. Please call the Saturn Customer Assistance Center at 1-800-553-6000 or write:

Saturn Corporation
100 Saturn Parkway
Mail Drop 371-999-S24
Spring Hill, TN 37174-1500

Request Form for Owner Assistance or Information on Saturn BBB Mediation/Arbitration

If you have discussed a problem with your Retailer's Customer Assistance Liaison and have not been able to resolve it, let us know. Questions and concerns are resolved most efficiently if you telephone or write directly to our Saturn Customer Assistance Center as described in the previous pages. Alternatively, here is a convenient form you may use to contact us about a problem or to request information about the voluntary Saturn BBB Mediation/Arbitration Program.

Name _____ Model Year _____ Model _____

Address _____ Vehicle Identification No. (17 digits) _____

City _____ Telephone (Day) Area Code ( ) _____

State _____ Zip _____ (Evening) Area Code ( ) _____

Retailer _____ Current Mileage _____ Delivery Date _____

City _____ State _____

Comments/Description of Problem _____

☐ Please have someone contact me concerning the problem I have described.

☐ Please send me further information about the Saturn BBB Mediation/Arbitration Program and have the appropriate BBB office contact me.

Signed _____ Date _____

To:
Saturn Corporation
100 Saturn Parkway
Mail Drop 371-999-S24
Spring Hill, TN 37174-1500

(cut here)

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Friday, January 04, 2008 1:40 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Declaration

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Oxford, Gregory on 1/4/2008 at 11:39 AM PST and filed on 1/4/2008

Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: General Motors Corporation
Document Number: 24

Docket Text:
DECLARATION of L. Joseph Lines, III in Support Of. *Request for Judicial Notice and Motion to Dismiss* (Attachments: # (1) Exhibit A)(Oxford, Gregory)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a

Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/4/2008] [FileNumber=2043737-0]
[124d1cb9c79c5128b6d51169fb63bd8bdf354f1d8c0249320fedf2143b0ef2c48390
798a44ccd116f598e2912c7132c78d93bdf375adf55a16f61abab02e00db]]
Document description: Exhibit A
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=1/4/2008] [FileNumber=2043737-1]
[2b593a4674736dd8d473b031e9d891fb1f5668bfe2ff7fb51723c1b67d1d46c72746
32e659b81e9f7e35713643703093014172f8fb21354827b73bfdd2374821]]

EXHIBIT H

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, DOES 1 through 50, inclusive,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS [Rules 9(b), 12(b)(6), F.R.Civ.P.]

Hearing Date: February 4, 2008
Time: 2:00 p.m.
Courtroom 5
Hon. William B. Shubb

Defendant General Motors Corporation ("GM") respectfully submits this memorandum in support of its motion under Rules 9(b) and 12(b)(6) to dismiss the complaint of plaintiffs Kelly Castillo ("Castillo"), Nichole Brown ("Brown") and Barbara Glisson ("Glisson") for failure to state a claim upon which relief can be granted.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT

Plaintiffs Castillo, Brown and Glisson, who live in California, Georgia and Oklahoma, complain that the VTi transmissions in their 2003 Saturn VUEs failed after expiration of Saturn's 5-year, 75,000 mile warranty.[1] They say an alleged "design defect" made their transmissions "prone to premature failure." With odometers reading 78,000, 80,000 and 107,000 miles, respectively, they are suing based on alleged misstatements and omissions in Saturn's advertising and promotional literature, none of which they allege they ever saw, read or heard (First Claim for Relief), claimed breach of express and implied warranties which have expired (Second and Third Claims for Relief) and alleged "unjust enrichment" (Fourth Claim for Relief). They purport to sue on behalf of all residents of California, Georgia, Oklahoma and nine other selected states whose VTi transmissions failed and were not repaired free-of-charge under the Saturn warranty.

Because the First Claim for Relief for violation of "Consumer Protection Statutes" sounds in fraud, the complaint must, but does not, comply with Rule 9(b) of the Federal Rules of Civil Procedure. Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103 (9th Cir.2003). Plaintiffs in any event have not stated actionable "consumer protection' claims under their home states' laws. First, the sparse Saturn statements they actually identify were, at most, perfectly lawful "puffing." Complaint, ¶ 73. Second, they have not pleaded facts that would create any duty to disclose the alleged defect. Daugherty v. American Honda Motor Co., 144 Cal.App.4th 824, 833-37 (2006); Bardin v. DaimlerChrysler Corp., 136 Cal.App.4th 1255, 1275-76 (2006). Third, they have not alleged that any of them ever saw, heard or read any of the alleged Saturn advertising or promotional literature before deciding to purchase their VUEs, so they have failed to plead the essential elements of causation and/or reliance. *See* Cal. Civ. Code § 1780(a); Cal. Bus. & Prof. Code § 17204.

The Second Claim for Relief for breach of express warranty also fails as a matter of law. To begin with, plaintiffs erroneously allege that the Saturn warranty guarantees a

[1] GM owns Saturn Corporation, which manufactures the VUE. Complaint, ¶¶ 2-3. "VTi" is Saturn's name for the continuously variable transmissions (CVT) of certain 2002-05 model year Saturn VUEs and 2003-04 model year Saturn IONs. *Id.*, ¶¶ 3, 14, 51.

"defect free" vehicle. It plainly does no such thing. Rather, the warranty expressly acknowledges the possibility of vehicle defects by providing warranty coverage for "repairs *to correct any vehicle defect* related to materials or workmanship occurring during the warranty period." Complaint, ¶ 72 (emphasis added). In addition, because plaintiffs' warranties here have expired, they are not entitled to repairs and cannot sue for breach. Further, the Saturn advertising statements they identify (¶ 73) are too vague and general to create a "warranty-by-description" under UCC section 2313.

The Third Claim for Relief fails because all of plaintiffs' 2003 Saturn VUEs have now traveled more than 75,000 miles – one more than 100,000 miles – so they obviously were fit for their "ordinary purpose" of "providing transportation" and therefore met the minimum standard of quality required by UCC section 2314 as a matter of law.

The Fourth Claim for Relief fails because the doctrine of "unjust enrichment" does not permit plaintiffs to end-run the clear terms and limitations of the express and implied warranties which defeat their claims.

Thus, although plaintiffs seek to represent "tens of thousands" of people who live in 12 states, their complaint must be dismissed because none of them has pleaded an actionable claim on her own behalf under applicable state laws.

SUMMARY OF ALLEGED AND JUDICIALLY NOTICEABLE FACTS

A. Saturn's Limited New Vehicle Warranty

Contrary to plaintiffs' allegations (Complaint, ¶¶ 30, 71), the Limited New Vehicle Warranty for the 2003 Saturn VUE *did not* warrant a "defect free" vehicle. Request for Judicial Notice; Lines Decl., Exh. A, p. 7.[2] Instead, recognizing the reality that defects sometimes occur in a machine as complex as the modern automobile, Saturn's warranty

[2] Plaintiffs have chosen not to attach the Saturn warranty to their complaint. In ruling on the motion, however, the Court may judicially notice and consider this warranty because the complaint refers to and relies upon this document and it is indisputably authentic. In re Stac Electronics Securities Litig., 89 F.3d 1399, 1405 n.4 (9th Cir.1996), *cert. denied sub nom* Anderson v. Clow, 520 U.S. 1103, 117 S.Ct. 1105, 137 L.Ed.2d 308 (1997); Parrino v. FHP, Inc., 146 F.3d 699, 706 n.3 (9th Cir.), *cert. denied* 525 U.S. 1001, 119 S.Ct. 510, 142 L.Ed.2d 423 (1998); Hoey v. Sony Electronics Inc., 515 F.Supp.2d 1099, ____, 2007 U.S.Dist.LEXIS 77608 at *5-7 (N.D.Cal.) (judicially noticing terms of manufacturer's warranty).

states that it "covers *repairs to correct defects* related to materials or workmanship occurring during the warranty period." *Id.* (emphasis added); Complaint, ¶ 72. This language simply would make no sense if Saturn had warranted a "defect-free" vehicle.

Saturn has voluntarily extended the warranty period for VTi transmissions to 5 years or 75,000 miles. Complaint, ¶ 24.

B. Plaintiffs' Individual Claims

Plaintiff Castillo says she purchased a "new" *2003* VUE with a VTi transmission *in January 2007* from a Saturn dealer in Roseville, California. Complaint, ¶¶ 9, 38. She says she had unspecified "repeated problems ... which *appeared to be* transmission-related" during the warranty period which the Saturn dealer "claimed to be unable to diagnose." *Id.*, ¶ 39 (emphasis added). In June of 2007, five months after purchase, when her VUE allegedly had "reached approximately *80,000* miles," a dealer "diagnosed a transmission failure" and replaced the VTi transmission at a cost of $4,200. *Id.*, ¶ 40 (emphasis added).[3]

Plaintiff Brown, a Georgia resident, purchased her 2003 VUE *used* when its odometer showed more than 75,000 miles, after the Saturn warranty had expired. She says her VTi transmission failed and was replaced at a cost of approximately $4,000. Complaint, ¶¶ 41-43. She claims she later learned the transmission previously had been "repaired or replaced" (she doesn't say which) in October 2006, about two months before she purchased her VUE. *Id.*, ¶ 44.

Plaintiff Glisson lives in Oklahoma. She says the VTi transmission of her 2003 VUE failed in 2005 at 33,000 miles, was replaced free-of-charge, and then failed again in 2006 at 68,000 miles; a Saturn dealer overhauled it, again free-of-charge under warranty. Now, at approximately 107,000 miles, she says the transmission needs replacement and the dealer has given her an estimate of $5,500. Complaint, ¶¶ 45-48.

[3] While reasonable allegations are assumed to be true under Rule 12(b)(6), GM can't help but wonder whether the implied allegation that plaintiff Castillo drove a "new" four-model-year-old 2003 VUE 80,000 miles within a five-month period in 2007 doesn't reflect an inadvertent error of some kind.

Plaintiffs claim Saturn advertisements described the VTi transmission as an "evolutionary step in automatic transmission technology" and touted its "robust design," "excellent performance," and "unobtrusive operation." Complaint, ¶ 73. Yet they do not allege that any of them heard, saw or read – let alone relied upon – these statements in deciding to purchase their VUEs. They also do not allege that they read or relied upon Saturn's alleged statements (1) that the VTi's torque converter clutch [*not* the "steel belt" plaintiffs' say was defective, *see* Complaint, ¶ 15] was "constructed of carbon fiber for durability," (2) that "the *VTi-equipped* Vue [*not* the VTi transmission itself] was 'tough, versatile [and] at home in almost any environment'' and (3) that "the *VTi-equipped* Ion [again, *not* the VTi transmission] was 'specifically designed and engineered for whatever's next.'" Complaint, ¶ 73 (emphasis added). Acknowledging implicitly how vague, general and/or inapplicable these statements are, plaintiffs immediately add (¶ 74) that they anticipate "obtaining through discovery additional examples in GM's possession of advertising statements touting the durability of the VTi transmission" – *i.e.*, more statements these plaintiffs obviously did not hear, see or read before buying their VUEs.

C. Plaintiffs' Class Action Allegations

Plaintiff purports to sue on behalf of an alleged class consisting of all residents of California, Georgia, Oklahoma, Florida, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina and Ohio who at any time owned a Saturn vehicle with a VTi transmission that failed (regardless of mileage) and that GM "failed or refused to fully remedy" (regardless of whether the warranty had expired). Complaint, ¶ 50.

D. Plaintiffs' Factual Allegations Concerning VTi Transmissions

Plaintiffs focus on the "continuously variable" design of the VTi transmission, which uses a "chain or belt that runs through pulleys that move closer together or farther apart." Complaint, ¶ 14. Instead of a "chain," which plaintiffs say would be "more durable," Saturn used a "steel belt, known as a 'thrust belt.'" *Id.*, ¶ 15. This belt and the VTi transmission, say plaintiffs, "are extraordinarily prone to failure." *Id.* They say the design is defective "in that the engine and/or the pump are underpowered to apply

sufficient pressure on the thrust belt" and, as a result, "the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails," necessitating "costly repairs or transmission replacement." *Id.* ¶¶ 15-16. "On information and belief," plaintiffs say, "this design defect and the accompanying inherent risk of premature transmission failure could have been avoided by using a chain instead of a belt and/or by increasing the power of the transmission...." *Id.*, ¶ 17.

When the VTi transmission fails, plaintiffs claim, "either it causes hesitation in the movement or acceleration of the vehicle, leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile." *Id.*, ¶ 16. None of the plaintiffs, however, alleges that she personally was "immobilized" while driving or experienced any other "dangerous driving condition."

Plaintiffs contend that GM was "aware when it introduced the VTi transmission that it was inherently prone to premature failure," citing an unidentified GM document in 1999 or 2000 (more than one year before the VTi transmission made its debut in the 2002 VUE) which allegedly said only that "'*concerns exist[ed]* over the durability of the belt under continuous high-load conditions.'" Complaint, ¶¶ 18-19 (emphasis added). Plaintiffs further claim GM delayed the VTi's launch for several months and "did not take adequate or customary quality control measures to ensure that the VTi was sufficiently tested and refined for full-scale production and sale to consumers." *Id.*, ¶¶ 20-21.

E. Plaintiffs' Claims for Relief

The First Claim for Relief alleges that GM violated the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, and "Consumer Protection Statutes" in Georgia, Oklahoma and nine other states when it "failed or refused to disclose the existence of th[e alleged] defect (a material fact that GM was obliged to disclose) to Plaintiffs ... at the time they purchased their vehicles," contrary to "representations, including partial representations, actually made by GM regarding the transmissions and vehicles at

issue...." Complaint, ¶¶ 58, 63-65, 73. Plaintiffs do not provide any factual basis for their parenthetical legal conclusion that "GM was obliged to disclose" the alleged defect.

Plaintiffs' Second, Third and Fourth Claims for Relief allege breach of express warranty, breach of the implied warranty of merchantability and "unjust enrichment" under the laws of eleven "class states" *other than California*. Complaint, ¶¶ 70, 83, 93.

ARGUMENT

I. PLAINTIFFS HAVE NOT PLEADED FRAUD WITH PARTICULARITY

Although the "Consumer Protection Statutes" of plaintiffs' home states (California, Georgia and Oklahoma) do not require proof of actual fraud, "a plaintiff may choose nonetheless to allege in the complaint that the defendant has engaged in fraudulent conduct." Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103 (9th Cir.2003). Because Rule 9(b) applies to "all averments of fraud," a plaintiff alleging violations of these statutes based on fraudulent conduct must plead the fraud with particularity:

> "... In some cases, the plaintiff may allege a unified course of fraudulent conduct and rely entirely on that course of conduct as the basis of a claim. In that event, the claim is said to be 'grounded in fraud' or to 'sound in fraud,' and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b)....
>
> "In other cases, however, a plaintiff may choose not to allege a unified course of fraudulent conduct in support of a claim, but rather to allege some fraudulent and some non-fraudulent conduct. In such cases, only the allegations of fraud are subject to Rule 9(b)'s heightened pleading requirements." 317 F.3d at 1103-04.

See also Snyder v. Ford Motor Co., 2006 U.S.Dist.LEXIS 63646 at *6-10 (N.D.Cal.2006) (causes of action claiming concealment of an alleged product defect were "grounded in fraud" and therefore had to be pleaded with particularity); Brothers v. Hewlett-Packard Co., 2006 U.S.Dist.LEXIS 82027 at *20-23 (N.D.Cal.2006) (same).

Plaintiffs here claim "a unified course of fraudulent conduct" as the basis for their claims under the CLRA, UCL, and the Georgia and Oklahoma statutes. They say Saturn violated these statutes by alleged misstatements and/or failing to disclose the alleged defect with intent that they and other consumers rely upon the alleged misstatements and omissions. Complaint, ¶¶ 63-67. Had they know of the alleged defect, they say, they

would not have purchased their VUEs. *Id.*, ¶ 68. These claims touch upon all of the elements of fraud and/or fraudulent concealment. Thus, Rule 9(b) requires plaintiffs to plead specific facts supporting each of the elements of their claims, including in the case of concealment specific facts showing Saturn had a "duty to disclose" the alleged defect. Snyder at *7; Bacon *ex rel.* Moroney v. American International Group, 415 F.Supp.2d 1027, 1031 (N.D.Cal.2006), *citing* Edwards v. Marin Park, Inc., 356 F.2d 1058, 1066 (9th Cir.2004); Orlando v. Carolina Cas. Ins. Co., 2007 U.S.Dist.LEXIS 56409 (E.D.Cal.) at *25-26. Further, to the extent plaintiffs rely on omissions in specific statements by Saturn, they must allege that they "read, saw or heard [the] representations, advertisements and promotional materials that omitted the reference to the [alleged defect]." Weaver v. Chrysler Corp., 172 F.R.D. 96, 102 (S.D.N.Y.1997).

Plaintiffs' allegations satisfy none of these requirements. To be sure, they allege in general terms "omissions of the material fact that the vehicles are (allegedly) defective" and that these omissions are "contrary to representations, including partial representations, actually made by GM ... as further described above." Complaint, ¶ 64. Yet nowhere "above" (or below) do plaintiffs "state the time [and] place" of these "representations" or identify who made them or in what manner (*e.g.*, TV ad, oral statement by a Saturn employee, product brochure, etc.). They also do not allege that they in fact "saw, heard or read" any of these statements. And they certainly have not alleged "specific facts" showing that Saturn had a duty to disclose the alleged defect. *Id.*, ¶¶ 62-63.

II. THE FIRST CLAIM FOR RELIEF FAILS AS A MATTER OF LAW

Whether together with or apart from Rule 9(b), the First Claim for Relief should be dismissed under Rule 12(b)(6) for failure to plead any actionable claim under the CLRA, the UCL, Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.* ("FBPA"), or the Oklahoma Consumer Protection Act, 15 Okl.St. § 751 *et seq.* ("OCPA").

A. The Alleged Statements Are Not Actionable Under the UCL or CLRA

To be actionable under the CLRA or UCL, advertising must be "likely to deceive a reasonable consumer." Consumer Advocates v. Echostar Satellite Corp., 113 Cal.App.4th

1351 (2003); Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir.1995). The term "likely" means probable, not just possible. Freeman, 68 F.3d at 289. Thus, misstatements that *probably would not* mislead a reasonable consumer are not actionable. Haskell v. Time, Inc., 857 F.Supp. 1392, 1399 (E.D.Cal.1994). The sparse advertising and other statements which plaintiffs allege in paragraph 73 of their complaint (quoted above) are simply opinions that could not be objectively verified and therefore were *not* likely to "mislead" a reasonable consumer about any *fact*. *See, e.g.*, Cook, Perkiss & Leihe, Inc. v. Northern Calif. Coll. Serv., Inc., 911 F.2d 242, 246 (9th Cir.1990) ("'misdescriptions of specific or absolute characteristics of a product are actionable,'" but advertising "'which merely states in general terms that one product is superior is not actionable'"); In re All Terrain Vehicle Litig., 771 F.Supp. 1057, 1061 (C.D.Cal.1991), *aff'd* 979 F.2d 755 (9th Cir.1992) ("Puffing has been described as making generalized or exaggerated statements such that a reasonable consumer would not interpret the statement as a factual claim upon which he or she could rely"); Haskell, 857 F.Supp. at 1399 ("Advertising that amounts to 'mere' puffery is not actionable because no reasonable consumer relies on puffery. The distinguishing characteristics of puffery are vague, highly subjective claims as opposed to specific, detailed factual assertions."); Consumer Advocates, 113 Cal.App.4th at 1361 (claims of "crystal clear digital" video or "CD quality" audio did not falsely advertise the specific characteristics of goods); Summit Technology, Inc. v. High-Line Medical Instruments Co., 933 F.Supp. 918, 931 (C.D.Cal.1996) (stating that computer equipment is "perfectly reliable" is non-actionable puffing. "The word 'reliable' is inherently vague and general – in common parlance akin to a statement that the machine is 'fine.' ... [I]t is simply a vague statement... a claim incapable of objective verification and not expected to induce reasonable consumer reliance."); Williams v. Gerber Prods Co., 439 F.Supp.2d 1112, 1115 (S.D.Cal.2006).

Vague statements about the VUE or its VTi transmission touting their "robust design," "excellent performance" or "unobtrusive operation" are not *factual* statements concerning specific vehicle characteristics, and therefore are not "likely to mislead a

reasonable consumer." The alleged statement concerning the durability of the "torque converter clutch" (Complaint, ¶ 73) obviously said nothing about the "steel belt" that plaintiffs claim is subject to premature failure (*id.*. ¶ 15). The other quoted Saturn statements also have nothing to do with the VTi transmission *per se*, but instead quintessentially "puff" the "VTi-equipped" VUE or ION *as a whole* (hence the internal quotation marks enclosing what *Saturn* allegedly said come *after* the phrase "VTi-equipped" which apparently was added by plaintiffs, *see* Complaint, ¶ 73).

B. Plaintiff Castillo Has Not Pleaded Reliance or Causation

Plaintiff Castillo's claims also fail because she does not allege that she personally read, saw or heard any of the alleged statements before buying her VUE; thus, she has failed to allege the essential element of causation. Civ. Code §§ 1770(a), 1780(a) (plaintiff must suffer "damage *as a result of*" the alleged false or misleading statements) emphasis added); Bus. & Prof. Code § 17204 (UCL claim can only be brought by "any person who has ... lost money or property *as a result of* the [alleged UCL violation]") (emphasis added); Buckland v. Threshold Enterprises, Ltd., 155 Cal.App.4th 798, 809-11, 817-19 (2007) (affirming dismissal of CLRA and UCL claims where named plaintiff did not rely on defendant's statements). Further, actual reliance where the case is based on omissions "occurs only when the plaintiff reposes confidence in the *material completeness* of the defendant's representations, and acts upon this confidence," which plaintiffs here do not (and cannot) allege. Buckland, 155 Cal.App.4th at 808 (emphasis in original), *citing* Carter v. Seaboard Finance Co., 33 Cal.2d 564, 569-70 (1949); Ostayan v. Serrano Reconveyance Co., 77 Cal.App.4th 1411, 1418-19 (2000).

C. Plaintiffs Have Not Alleged Any Factual Basis for a Duty To Disclose

Plaintiffs have not pleaded an actionable CLRA claim based on omissions because they have not alleged any facts that would create a duty to disclose the alleged defect. As explained in Daugherty, 144 Cal.App. 4th at 833-37, to be actionable under the CLRA an omission "must be contrary to *a representation actually made by the defendant*, or an omission of a fact the defendant *was obliged to disclose*") (emphasis added); *accord*

Bardin, 136 Cal.App.4th at 1275-76 (CLRA claims based on omissions must allege a duty to disclose or affirmative representations that are misleading for want of the disclosure).

Plaintiffs have failed to state a UCL "deception" claim for the same reason. As stated in Daugherty, "[w]e cannot agree that a failure to disclose a fact one has no affirmative duty to disclose is 'likely to deceive' anyone within the meaning of the UCL." 144 Cal.App.4th at 838; *accord* Berryman v. Merit Property Management, Inc., 152 Cal. App.4th 1544, 1556-57 (2007). Thus, the Court of Appeal in Daugherty rejected what is in concept exactly the same claim plaintiffs make here when it held that Honda *did not* violate the UCL by failing to disclose an alleged durability defect at the time of sale. 144 Cal.App.4th at 1556-57. Plaintiffs' allegations here also mirror the facts of Bardin, where plaintiff complained that Chrysler had used "tubular steel in the exhaust manifolds of certain of its vehicles instead of more durable and more expensive cast iron." There, as here, the plaintiff's vehicle had an allegedly less durable feature (there, tubular steel intake manifolds; here, a continuously variable transmission with a steel belt) and not a more durable feature (there, cast iron intake manifolds; here, a continuously variable transmission with an allegedly more durable "chain"). Bardin held that alleged facts like this simply do not make out an actionable claim [136 Cal.App.4th at 1276]:

> "Plaintiffs' claim for violation of the CLRA fails because [he] neither alleged facts showing DCC was "bound to disclose" its use of tubular steel exhaust manifolds, nor alleged facts showing DCC ever gave any information of other facts which could have the likely effect of misleading the public "for want of communication" of the fact it used tubular steel exhaust manifolds."

Plaintiffs' CLRA claim fails for the same reasons. They do not allege (1) any facts that would have created an independent duty to disclose or (2) any statement by Saturn concerning the VTi transmission that "could have the likely effect of misleading the public" for want of disclosure. 136 Cal.App.4th at 1276.

As further explained in Daugherty, where the durability of Honda's F22 engine was at issue, members of the public in order to "likely be deceived" must have some expectation or assumption about the matter in issue (here, the durability of the VTi transmission). Yet as in Daugherty and Bardin, plaintiffs do not allege any facts showing

that they had any specific expectation as to the lifespan of the VTi transmission or that Saturn ever made any specific representations in that regard.

D. Plaintiffs Have Not Pleaded an Actionable UCL Unfairness Claim

The First Cause of Action does not specifically invoke the "unfairness" prong of the UCL, but does allege in conclusory terms that it was an "unfair act" for Saturn not to disclose the alleged defect. Complaint, ¶¶ 65, 67. Under the majority view, any finding of UCL "unfairness" must be "'tethered to some legislatively declared policy....'" Churchill Village LLC v. General Electric Co., 169 F.Supp.2d 1119, 1130 (N.D.Cal. 2000), *citing* Cel-Tech Communications v. Los Angeles Cellular Tel. Co., 30 Cal.4th 163, 182 (1999); Gregory v. Albertson's, Inc., 104 Cal.App.4th 845, 854 (2002) ("where a claim of an unfair act or practice is predicated on public policy, we read *Cel-Tech* to require that the public policy which is a predicate to the action must be 'tethered' to specific constitutional, statutory or regulatory provisions"); In re Firearms Cases, 126 Cal. App.4th 959, 980 (2005); Belton v. Comcast Cable Holdings, LLC, 151 Cal.App.4th 1224, 1239-40 (2007); *but cf.* Lozano v. AT&T Wireless Servs., 504 F.3d 718, 735-36 (9th Cir.2007) (noting conflicting decisions as to the applicable test and lack of definitive California Supreme Court holding). Here, plaintiffs simply have not identified any "legislatively declared policy" that would support a finding of UCL "unfairness." [4]

E. Plaintiffs Have Not Alleged Facts Showing FBPA or OCPA Violations

1. Plaintiff Brown has failed to plead an actionable claim.

Plaintiff Brown's FBPA claim fails as a matter of law for five separate reasons.[5]

[4] Because plaintiff Castillo, the sole California plaintiff, cannot state any actionable claim under the CLRA or UCL, it is difficult to understand why the other, non-resident plaintiffs' claims belong on the congested docket in this district. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir.1987), *cert. denied* 485 U.S. 993, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988) ("If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter," plaintiff's choice of forum "is entitled to only minimal consideration"; and in a class action, "the named plaintiff[s'] choice of forum is given less weight"); Ellis v. Hollister, Inc., 2006 U.S. Dist.LEXIS 28171 at *4-5 (E.D.Cal.); Roake v. Feldman Sherb & Co., 2006 U.S. Dist.LEXIS 25168 at *5 (E.D.Cal.).

[5] Also, while Ms. Brown purports to sue under the FBPA on behalf of a class, that statute *expressly precludes* representative actions. O.C.G.A. § 10-1-399(a).

First, the FBPA does not apply to private transactions and Ms. Brown nowhere alleges that the purchase of her used VUE from an unidentified seller was anything other than a private transaction. *See* Borden v. Pope Jeep-Eagle, Inc., 407 S.E.2d 128, 130-31 (Ga.App.1991).

Second, as is true of the CLRA, the FBPA prohibits "representing" or "advertising" untrue facts about products, not omissions, and Ms. Brown has not alleged any factual basis for imposing a duty to disclose on Saturn. *See* O.C.G.A. § 10-1-393(a)(5), (7), (9).

Third, the "puffing" statements plaintiffs have alleged are not actionable under Georgia law nor are they "partial representations" *about the VTi transmission* that give rise to a duty to disclose the alleged defect. "Representations under the general head of 'dealer's talk' are regarded as mere commendations, 'puffing,' or expressions of opinion, and do not, though untrue, constitute false representations which will avoid a contract. The representations to support a claim must relate to an existing fact and not a future event, unless it be an event which the party making the representations knows will never occur." American Food Services v. Goldsmith, 175 S.E.2d 57, 59 (Ga.App.1970) (citation omitted). "Where representations amount to mere expressions of opinion, they come within the scope of this rule...." Marler v. Dancing Water Lakes, Inc., 305 S.E.2d 876 (Ga.App.1983) (citation omitted). Thus, Hill v. Jay Pontiac, Inc., 381 S.E.2d 417 (Ga.App.1989), affirming summary judgment, held it was "mere sales puffing" to say that "since the car was new, it was in excellent condition and free of defects." *Id.* at 418.

Fourth, to the extent that Ms. Brown's FBPA claim rests on alleged misstatements, she has failed to plead the essential element of justifiable reliance; in fact, she has not alleged ever seeing, reading or hearing *any* statement or advertisement by Saturn before deciding to purchase her used 2003 VUE in 2007, let alone that she relied on or was misled by any such statement. Tissmann v. Linda Martin Homes Corp., 625 S.E.2d 32, 36 (Ga.App.2005) (reliance on misstatements is an essential element); Zeeman v. Black, 273 S.E.2d 910, 916 (Ga.App.1980) (FBPA requires pre-suit notice of deceptive act or practice "relied upon" by plaintiff and therefore FBPA incorporates the reliance element

of the common law tort of misrepresentation into the causation element of an FBPA claim).

Fifth, Ms. Brown's FBPA claims must be dismissed because she has failed to give the pre-suit notice required by O.C.G.A. § 10-1-399(b). Sharpe v. General Motors Corp., 401 S.E.2d 328, 330 (1991); Zeeman, 273 S.E.2d at 916 (the FBPA requires written notice as a prerequisite to *filing* suit "reasonably describing the unfair or deceptive act or practice *relied upon*...") (emphasis in original).

2. Plaintiff Glisson has failed to plead an actionable claim.

Oklahoma decisions recognize that sales "puffing" is not actionable. Hall v. Edge, 782 P.2d 122, 126 & n.2 (Okla.1989) ("Generally, the false representation must be a statement of existing fact and not a mere expression of opinion. For example, a seller's opinion which is nothing more than 'puffing' will not give rise to an action based on misrepresentation." "Puffing" is "exaggerated praise" that must be "'considered to be offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable man would rely.'") (citations omitted); Maupin v. Nutrena Mills, Inc., 385 P.2d 504, 506 (Okla.1963). Thus, for the same reasons discussed above, the statements plaintiffs allege in paragraph 73 of their complaint are not actionable under Oklahoma law and their allegations provide no factual basis for imposing a duty to disclose on Saturn.

To be sure, the OCPA prohibits "deceptive trade practices," 15 Okl.St. § 753(20), which *may* include "omissions," but only if they "could reasonably be expected to deceive or mislead a person to the detriment of that person." *Id.*, § 752(13). Absent any alleged facts showing a consumer expectation that the VTi transmission would be "defect-free" beyond the duration of the VUE's five-year 75,000 mile warranty, there is no basis for assuming here any more than in Daugherty that a reasonable consumer would have been "deceived." Nor is there any basis for any claim of "detriment" based on the prior VTi transmission failures which were corrected free-of-charge under warranty. "[N]o breach results because a product has defective parts if they are replaced within a reasonable time

under the limited remedy of repair and replacement." Collins Radio Co. v. Bell, 623 P.2d 1039, 1054) (Okla.App.1980). Here, Ms. Glisson alleges she has driven her VUE *more than 107,000 miles* without incurring any out-of-pocket expense for transmission repairs.

The alleged facts also do not make out an actionable claim for an "unfair trade practice" under 15 Okl.St. § 752(14), which defines that term as a practice "which offends established public policy or ... is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Here, again, in the absence of facts showing some unusual consumer expectation, there is no basis for requiring disclosure of the alleged defect or for finding the lack of disclosure offensive to public policy, immoral, oppressive, etc. *See* Daugherty, 144 Cal.App.4th at 839 n.9 (rejecting claim that failure to disclose alleged durability defect in Honda engine was "a business practice which offends an established public policy or ... is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers") (internal quotes omitted).

II. PLAINTIFFS PLEAD NO CLAIM FOR BREACH OF EXPRESS WARRANTY

To begin with, plaintiffs incorrectly claim that Saturn warranted a "defect free" vehicle. Complaint, ¶¶ 30, 71. It plainly did not. Instead, the Saturn warranty expressly recognized the possibility of defects by stating that it "cover[ed] repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period." Lines Declaration, Exh. A, p. 7.

The warranty further provided, as permitted by Georgia and Oklahoma law, that "performance of repairs and needed adjustments is the exclusive remedy" for any such defect. *Id.*, p. 1; O.C.G.A. § 11-2-316(4) ("Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy"); *id.*, § 11- 2-719(1)(a) (" The agreement may provide for remedies ... in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to ... repair and replacement of nonconforming goods or parts"); *accord* 12A Okl.St. §§ 2-316(4), 2-719(1)(a).

A. The Saturn Warranty Does Not Cover "Design Defects"

Plaintiffs allege both a design defect and a manufacturing defect. Complaint, ¶¶ 3, 61. Design defects, however, are not covered by the Saturn warranty. A manufacturer's liability for breach of an express warranty "derives from, and is measured by, the terms of that warranty." Hines v. Mercedes-Benz USA, LLC, 358 F.Supp.2d 1222, 1227 (N.D.Ga. 2005), *quoting* Cipollone v. Liggett Group, Inc., 505 U.S. 504, 525, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). The Saturn warranty only promises to repair "defects related to materials or workmanship," *i.e.*, manufacturing defects. The term "design defect" is foreign to the law of express warranty. A design defect becomes actionable only when a product causes personal injuries or property damage, giving rise to strict liability in tort. A manufacturer is not strictly liable for mere economic injuries resulting from a design defect, and the law of express warranty does not provide plaintiffs with a detour past this principle. As Justice Traynor explained in his seminal opinion in Seely v. White Motor Co., 63 Cal.2d 9, 18 (1965), "a consumer can be 'fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Even in actions for negligence, a manufacturer's liability is limited to damages for physical injuries and there is no recovery for economic loss alone.'" This principle has found more recent expression in Bussain v. DaimlerChrysler Corp., 411 F.Supp.2d 614, 625 (M.D.N.C.2005): "'[T]ort concepts of safety and risk apply when a manufacturer negligently produces products that are dangerous to people or other property, and the manufacturer is responsible for injuries caused by his negligence. However, this rationale does not apply where a manufacturer's products simply fail to "meet the business needs of his customers"'" (citations omitted).

Here plaintiffs do not allege any personal injury or property damage as a result of the design of the VTi transmission. Although they do say their transmissions are "prone to failure" which may create "an elevated and unreasonable risk of serious bodily injury" *in the future*, Complaint, ¶ 78, this claim fails for want of the essential element of damage, *i.e.*, actual personal injury as a result of the alleged defect. Briehl v. General Motors

Corp., 172 F.3d 623, 627 (8th Cir.1999) (courts been "particularly vigilant in requiring allegations of injury or damages in products liability cases"). Thus, the Seventh Circuit resoundingly rejected a highly-publicized claim that vehicles and/or tires were "defective" because the tires had a "high failure rate." In re Bridgestone/Firestone Inc., Tire Prods. Liab. Litig., 288 F.3d 1012 (7th Cir.2002). As Judge Easterbrook explained, safety regulation by the National Highway Traffic Safety Administration [6] and litigation by persons who actually have been damaged "is far superior to a suit by millions of uninjured buyers for dealing with consumer products that are said to be failure prone." *Id.* at 1019 (emphasis in original); *and see id.* at 1017 & n.1 ("recoveries by those whose products function properly mean excess compensation"); Yost v. General Motors Corp., 651 F. Supp. 656, 657-58 (D.N.J.1986) (rejecting claims that engines were defective because a "likely" leak *could* result in engine damage; because "damage is a necessary element," allegations that damage merely was "likely" were too conclusory to support a claim); Ziegelmann v. DaimlerChrysler Corp., 649 N.W.2d 556 (N.Dak.2002) ("The gist of Ziegelmann's complaint is that the vehicle might malfunction and cause injury in the future; we conclude, like the vast majority of courts that have considered similar no-injury product liability lawsuits, that the claim of injury is simply too speculative....").

To be sure, plaintiffs also say the alleged defect has diminished their VUEs' resale value. Complaint, ¶ 33. But none alleges that she has sold or attempted to sell her VUE and hypothetical "diminution in value" or the mere possibility of a reduced resale price is not a sufficient allegation of damage. *See* Carlson v. General Motors Corp., 883 F.2d 287, 298 (4th Cir.1989), *cert. denied* 495 U.S. 910, 110 S.Ct. 1936, 109 L.Ed.2d 299 (1990) (rejecting implied warranty claim based on "lost resale value"); In re General Motors

---

[6] If plaintiffs truly believe that the VTi transmission poses a serious safety problem, they could – but apparently have chosen not to – petition the National Highway Traffic Safety Administration to open a "defect investigation" under 49 U.S.C. §§ 30118(b) and 30162. American Suzuki Motor Corp. v. Superior Court, 37 Cal.App.4th 1291,1299-1300 (1995) ("The remedy which will best promote consumer safety, and which will address real parties' concern that 'tragic consequences' will result if the defect is not remedied, is to petition the National Highway Traffic Safety Administration (NHTSA) for a defect investigation") (footnote omitted).

Anti-Lock Brake Prods. Liab. Lit., 966 F.Supp. 1525, 1530 (E.D.Mo.1997), *aff'd sub nom* Briehl v. General Motors Corp. *supra* (rejecting claims that plaintiffs paid more than supposedly defective vehicles were worth and suffered reduced resale value); Weaver v. Chrysler Corp., 172 F.R.D. at 99 (dismissing claims based on allegedly defective child safety seat because plaintiff's "allegation of possible economic loss" failed to adequately plead damage); Martin v. Ford Motor Co., 914 F.Supp. 1449, 1455-56 & n.7 (S.D.Tex. 1996) (rejecting plaintiffs' claim they paid more than vehicles were worth).

B. Saturn Has Not Breached the VUE's Express Warranty

Here, as in Hines v. Mercedes-Benz, the Saturn warranty "[wa]s not breached unless and until Defendant ... refused or failed to repair the vehicle." 358 F.Supp.2d at 1227; *accord* DeLoach v. General Motors Corp., 369 S.E.2d 484, 486 (Ga.App.1988). Indeed, plaintiff Glisson alleges that Saturn *did* repair or replace her transmission *twice* free-of-charge under warranty. Complaint, ¶¶ 46, 47. Thus, she does not and cannot claim that Saturn "refused or failed to repair" her VUE during the warranty period. Neither can Ms. Brown, who purchased her VUE *after the Saturn warranty had expired* and thus could not have presented her VUE for repairs during the warranty period, as the warranty expressly requires. Complaint, ¶ 41; Lines Decl., Exh. A, p. 8.

The general rule, recognized and applied in Daugherty, "is that an express warranty 'does not cover repairs made after the applicable time or mileage periods have elapsed.'" 144 Cal.App.4th at 830 (citation omitted); *see* Long v. Hewlett-Packard Co., 2007 U.S. Dist.LEXIS 79262 at *10 (N.D.Cal.) ("Simply stated, it is clear following *Daugherty* that a plaintiff cannot maintain a breach of warranty claim under California law for a product that is repaired within the warranty period and fails again months after the warranty has expired...."). Silently acknowledging that any breach of warranty claim by Ms. Castillo would be "dead on arrival" under Daugherty, plaintiffs' counsel have chosen not even to make a breach of warranty under California law but instead have limited the Second and Third Claims for Relief to residents of states *other than* California. Complaint, ¶¶ 70, 83. But the same general rule applies virtually everywhere.

The leading case is Abraham v. Volkswagen of America, Inc., 795 F.2d 238, 250 (2d Cir.1986), which like this case involved an allegedly "latent" defect:

> "[V]irtually all product failures discovered in automobiles after expiration of the warranty can be attributed to a "latent defect" that existed at the time of sale or during the term of the warranty. All parts will wear out sooner or later and thus have a limited effective life. Manufacturers always have knowledge regarding the effective life of particular parts and the likelihood of their failing within a particular period of time. Such knowledge is easily demonstrated by the fact that manufacturers must predict rates of failure of particular parts in order to price warranties and thus can always be said to "know" that many parts will fail after the warranty period has expired. A rule that would make failure of a part actionable based on such "knowledge" would render meaningless time/mileage limitations in warranty coverage."

Accord Walsh v. Ford Motor Co., 588 F.Supp. 1513, 1536 (D.D.C.1984) ("[T]o hold that all latent defects are covered under the written warranty whether they become apparent to the customer before or after the expiration of the written warranty, would place an undue burden on the manufacturer. Ford would, in effect, be obliged to insure that a vehicle it manufactures is defect free for its entire life. The Court cannot accept such a drastic interpretation of the plain language of the warranty."); Canal Elec. Co. v. Westinghouse Elec. Co., 973 F.2d 988, 993 (1st Cir.1992) ("Case law almost uniformly holds that time-limited warranties do not protect buyers against hidden defects – defects that may exist before, but typically are not discovered until after, the expiration of the warranty period"); *see also* Duquesne Light Co. v. Westinghouse Elec. Co., 66 F.3d 604, 616 (3d Cir.1995); Long at *10-13; Taterka v. Ford Motor Co., 271 N.W.2d 653, 657 (Wisc.1978); Tokar v. Crestwood Imports, Inc., 532 N.E.2d 382, 388 (Ill.App.1988); Evitts v. DaimlerChrysler Motors Corp., 834 N.E.2d 942, 950 (Ill.App.2005). Although GM's research has turned up no direct authority on this point in Georgia and Oklahoma, there is no reason to believe that the courts of these states would depart from the general rule.

C. Plaintiffs Have Not Pleaded Breach of Any Warranty-by-Description

The UCC, specifically here O.C.G.A. §11-2-313(1) and 12A Okl.St. § 2-313(1), provides that "[a] ny affirmation *of fact* or promise made by the seller to the buyer which relates to the goods" or "[a]ny description or the goods" which is "*part of the basis of the bargain*" creates an express warranty that the goods shall conform to the affirmation,

promise or description" (emphasis added). Plaintiffs' attempt to plead such a "warranty-by-description" in this case doubly fails.

First, for the same reasons that the Saturn statements alleged by plaintiffs constitute non-actionable "puffing" under the FBPA and OCPA, *see* Part II-E *supra*, they are not sufficient to create express warranties: "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." O.C.G.A. §11-2-313(2); 12A Okl.St. §2-313(2); Schierman v. Coulter, 624 P.2d 70, 72 (Okla.1980) ("In order for an express warranty to exist, there must be an absolute assertion understood by the parties pertaining to the merchandise sold"); Maupin, 385 P.2d at 506 ("'[A]ffirmations or representations which merely express the seller's opinion, belief, judgment, or estimate do not constitute a warranty, no matter how strong the affirmation or representation may be.... Under the established and governing rules, dealer's talk is permissible; and puffing, or praise of the goods by the seller, is no warranty such representations falling within the maxim simplex commendatio non obligat.'"); *see also* Hubbard v. General Motors Corp., 1996 U.S.Dist. LEXIS 6974 at *20-21 (S.D.N.Y.) ("advertising proclamations that Suburbans are 'like a rock,' 'popular,' and 'the most dependable, long-lasting trucks on the planet' ... are generalized and exaggerated claims, which a reasonable consumer could not rely upon as statements of fact" and "do not create an express warranty upon which plaintiff could reasonably rely").

Second, plaintiffs "have failed to allege that [Saturn] advertisements were the basis of their bargains as required by [UCC section 2-313]," or that they ever even saw, heard or read the alleged ads, let alone took them into consideration in deciding to purchase their VUEs. In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig., 966 F.Supp. at 1531-32.

III. THE IMPLIED WARRANTY CLAIMS FAIL AS A MATTER OF LAW

The implied warranty of merchantability arises as a matter of law out of the sale of goods and promises only a "minimum level of quality," *i.e.*, that the goods at the time of sale are "fit for the ordinary purposes for which such goods are used." O.C.G.A. § 11-2-

314(2)(c); 12A Okl.St. § 2-314(2)(c); Collins Radio, 623 P.2d at 1053 ("Merchantability has been defined in Oklahoma to mean of a quality generally sold in the market place and suitable for its intended purpose even if not of the best quality"); *see generally* American Suzuki Motor Corp. v. Superior Court, 37 Cal.App.4th 1291, 1295-96 (1995), *citing* Skelton v. General Motors Corp., 500 F.Supp. 1181, 1191 (N.D.Ill.1980), *rev'd on other gds* 660 F.2d 311 (7th Cir.1981), *cert. denied* 456 U.S. 974, 102 S.Ct. 2238, 72 L.Ed.2d 848 (1982).

Courts universally hold that an automobile's "ordinary purpose" is to provide transportation. *See, e.g.*, American Suzuki, 37 Cal.App.4th at 1296; Bussain, 411 F.Supp. 2d at 623. As a result, the implied warranty of merchantability "can only be breached when the 'vehicle manifests a defect so basic it renders the vehicle unfit for its ordinary purpose of providing transportation.'" In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig., 966 F.Supp. at 1533 (citation omitted); American Suzuki, 37 Cal.App. 4th at 1296.

Because the implied warranty arises out of the sale, it is an essential element that the vehicle be unfit for this ordinary purpose *at the time of sale*. Collins Radio, 623 P.2d at 1053; Dildine v. Town & Country Truck Sales, Inc., 577 S.E.2d 881, 883-84 (Ga.App. 2003) (rejecting claim of defect at the time of sale where vehicle was driven 26,000 miles with no problem except for an unrelated repair under an express warranty); Crowe v. CarMax Auto Superstores, Inc., 612 S.E.2d 90 (Ga.App.2005) (no breach of implied warranty where vehicle was driven more than 25,000 miles before defect appeared).

These and legions of other cases hold that where vehicles, despite intervening repairs, continue to provide safe and reliable transportation over a long period of time, there can be no claim they were unmerchantable at the time of sale. Priebe v. Autobarn, Ltd., 240 F.3d 584, 588 (7th Cir.2001) (no breach of implied warranty where plaintiff continued to drive it for more than 30,000 miles); Bussain, 411 F.Supp.2d at 623-24 (single repair 5 years after original manufacture did not show unmerchantability); In re Air Bag Prods. Liab. Litig., 7 F.Supp.2d 792, 803 & n.17 (E.D.La.1998) (fact that air bags

might cause serious injury did not suggest vehicles "have not served the ordinary purposes of transportation"); Lee v. General Motors Corp., 950 F.Supp. 170, 174 (S.D.Miss.1996) (no lack of merchantability where vehicles did not manifest alleged defects after 5 years and 90,000 miles); Takerka v. Ford Motor Co., 271 N.W.2d 653, 655 (Wisc.1978) (same – 33 months and 75,000 miles); Ford Motor Co. v. Fairley, 398 So.2d 216, 219 (S.D.Miss. 1981) (same – 2 years and 26,649 miles).

Here, of course, plaintiffs' VUEs were driven for even longer periods before experiencing transmission problems: Brown (almost 75,000 miles); Glisson (33,000 miles). For this and several other reasons neither plaintiff has stated an actionable claim for breach of implied warranty.

A. Ms. Brown Lacks Standing To Sue for Breach of Implied Warranty

Ms. Brown's implied warranty claim fails *ab initio* because she is not the original purchaser of her VUE. Under Georgia law, a used car buyer cannot sue the manufacturer for breach of implied warranty. *See* Gill v. Blue Bird Body Co., 2005 U.S.App.LEXIS 11626, 2005-1 Trade Cas. (CCH) ¶ 74,847 (11th Cir.2005) ("Georgia's implied warranties for goods do not pass to a second or subsequent purchaser, and may be enforced only by the *original* buyer, who stands in privity of contract with the defendant seller"), *citing* Stewart v. Gainesville Glass Co., 206 S.E.2d 857, 859-60 (Ga.App.1974), *aff'd* 212 S.E. 2d 377 (Ga.1975); Lamb v. Georgia-Pacific Corp., 392 S.E.2d 307, 309 (Ga.App.1990).

To be sure, the Georgia privity rule does not bar an implied warranty claim against a manufacturer *by the original purchaser* who buys from an authorized dealer where the manufacturer through the dealer has provided *that purchaser* with an express warranty at the time of sale. *See, e.g.*, Ford Motor Co. v. Lee, 224 S.E.2d 168, 171 (Ga.App.), *aff'd in part and rev'd in part,* 229 S.E.2d 379 (1976); Chrysler Corp. v. Wilson Plumbing Co., 208 S.E.2d 321, 323 (1974). Here the situation is wholly different because the express warranty Saturn provided *to the original purchaser* had *expired* before Ms. Brown bought her used VUE. *See* Complaint, ¶¶ 24, 41; Lines Decl., Exh. A, p. 10 (limiting duration of "any implied warranty" to the duration of the express warranty); Magnuson-Moss

Warranty Act, 15 U.S.C. § 2308(b) (expressly permitting manufacturer to limit duration of implied warranties "to the duration of the written [*i.e.*, express limited] warranty").

Although the complaint alleges in conclusory terms that "[a]ny purported limitation on remedies on the part of GM causes the warranty to fail of its essential purpose and is unconscionable under the circumstances" (*id.*, ¶ 90), Saturn here does not need to rely upon any limitations on "remedies." Instead, again assuming *arguendo* that Ms. Brown has standing, which she does not, the limitation on the implied warranty's *duration*, in and of itself, would dispatch her claim. *See* Lee v. Mercedes-Benz USA, LLC, 622 S.E.2d 361 (Ga.App.2005) (even where there were intervening repairs, limiting the implied warranty to 48 months or 50,000 miles, whichever came first, was not unconscionable and did not cause warranty to "fail of its essential purpose" under UCC section 2-719).

B. Ms. Glisson's Implied Warranty Claim Also Fails as a Matter of Law

Ms. Glisson says her VTi transmission failed twice during the warranty period, once at 33,000 miles and again at 68,000 miles, and both times was repaired or replaced free-of-charge under warranty, precluding any claim of breach during the warranty period. Complaint, ¶¶ 46, 47; Collins Radio, 623 P.2d at 1054 ("no breach" of express warranty "if [defective parts] are replaced within a reasonable time under the limited remedy of repair and replacement"); *see also* American Fertilizer Specialists, Inc. v. Wood, 635 P.2d 592, 595 (Okla.1981) (requiring actual loss proximately caused by breach of warranty).

Further, a claim for breach of the implied warranty of merchantability lies only if "the product was defective at the time it left the manufacturer's possession or control." Harrison v. Leviton Mfg. Co., 2006 U.S.Dist.LEXIS 76334 at * 17, 61 U.C.C. Rep.Serv. 2d (Callaghan) 30 (N.D.Okla.2006). This warranty "is not indefinite, but lasts for a reasonable time only." *Id.*, *citing* Hoort v. Oklahoma Truck Parts, Inc., 650 P.2d 71, 73 (Okla.App.1981). Here Ms. Glisson claims her VTi transmission needs replacement *after driving her VUE 107,000 miles* without incurring any out-of-pocket repair expenses. Complaint, ¶ 48. Thus, by any measure, the implied warranty *did* last for a reasonable time, but has now expired. None of the cases cited above -- and certainly no Oklahoma

decision GM has been able to find – so much as suggests that a component failure *after a vehicle has been driven more than 100,000 miles* can serve as evidence that a vehicle was "unfit for its ordinary purpose" of providing transportation "at the time of sale."

IV. PLAINTIFFS HAVE NO CAUSE OF ACTION FOR UNJUST ENRICHMENT

The doctrine of "unjust enrichment" is similar in Georgia and Oklahoma. "Unjust enrichment is a condition which results from the failure of a party to make restitution in circumstances where it is inequitable; i.e. the party has money in its hands that, in equity and good conscience, it should not be allowed to retain. *Where the plaintiff has an adequate remedy at law*, the court will not ordinarily exercise its equitable jurisdiction to grant relief for unjust enrichment." Harvell v. Goodyear Tire & Rubber Co., 164 P.3d 1028, 1035 (Okla.2006) (emphasis added; footnotes omitted). "Unjust enrichment is an equitable concept and 'applies when as a matter of fact *there is no legal contract*..., but when the party sought to be charged has been conferred a benefit by the party contending an unjust enrichment which the benefited party equitably ought to return or compensate for.'" St. Paul Mercury Ins. Co. v. Meeks, 508 S.E.2d 646, 648 (Ga.App.1998) (citation omitted). Here there *is* a contract – the Saturn warranty – and the fact that this warranty has *expired* does not show that plaintiffs "lacked a legal remedy" to enforce their contract rights *subject to the contract terms*, including *the limited duration* of the warranty. The doctrine of "unjust enrichment" does not provide a basis for end-running the terms *and limitations* of the warranty which are clearly stated. *See* Daewoo Motor America, Inc. v. General Motors Corp., 459 F.3d 1249, 1260 (11th Cir.2006), *cert. denied* ___U.S. ___, 127 S.Ct. 2032, 167 L.Ed.2d 804 (2007) ("a quasi-contract claim for unjust enrichment cannot lie when there is a written contract that covers the same subject matter").[7]

[7] Plaintiff Castillo has chosen not to make any claim for unjust enrichment under California law, which recognizes this same principle. California Medical Ass'n v. Aetna U. S. Healthcare of California, 94 Cal.App.4th 151, 172-73 (2001) ("[A]s a matter of law, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights. 'When parties have an actual contract covering a subject, a court cannot--not even under the guise of equity jurisprudence--substitute the court's own concepts of fairness regarding that subject in place of the parties' own contract.'") (citations omitted).

CONCLUSION

For all the foregoing reasons, GM respectfully urges that its motion to dismiss plaintiffs' complaint should be granted in all respects.

DATED: January 4, 2008

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: _/s/_____
Gregory R. Oxford
Attorneys for Defendant
General Motors Corporation

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Friday, January 04, 2008 1:36 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Memorandum

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Oxford, Gregory on 1/4/2008 at 11:35 AM PST and filed on 1/4/2008
Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: General Motors Corporation
Document Number: 23

Docket Text:
MEMORANDUM by General Motors Corporation in Support Of. *Motion to Dismiss* (Oxford, Gregory)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=1/4/2008] [FileNumber=2043710-0]
[776a3ff1bcd1574d1acde3f864fa58ec8754cd3b9467b92812b94aa8ad328f4f3e18
daf7ee3b11d86916fe8168bd91517178c0aad977f2aafd98105e8a93874c]]

EXHIBIT H

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, DOES 1 through 50, inclusive,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS [Rules 9(b), 12(b)(6), F.R.Civ.P.]

Hearing Date: February 4, 2008
Time: 2:00 p.m.
Courtroom 5
Hon. William B. Shubb

Defendant General Motors Corporation ("GM") respectfully submits this memorandum in support of its motion under Rules 9(b) and 12(b)(6) to dismiss the complaint of plaintiffs Kelly Castillo ("Castillo"), Nichole Brown ("Brown") and Barbara Glisson ("Glisson") for failure to state a claim upon which relief can be granted.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT

Plaintiffs Castillo, Brown and Glisson, who live in California, Georgia and Oklahoma, complain that the VTi transmissions in their 2003 Saturn VUEs failed after expiration of Saturn's 5-year, 75,000 mile warranty.[1] They say an alleged "design defect" made their transmissions "prone to premature failure." With odometers reading 78,000, 80,000 and 107,000 miles, respectively, they are suing based on alleged misstatements and omissions in Saturn's advertising and promotional literature, none of which they allege they ever saw, read or heard (First Claim for Relief), claimed breach of express and implied warranties which have expired (Second and Third Claims for Relief) and alleged "unjust enrichment" (Fourth Claim for Relief). They purport to sue on behalf of all residents of California, Georgia, Oklahoma and nine other selected states whose VTi transmissions failed and were not repaired free-of-charge under the Saturn warranty.

Because the First Claim for Relief for violation of "Consumer Protection Statutes" sounds in fraud, the complaint must, but does not, comply with Rule 9(b) of the Federal Rules of Civil Procedure. Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103 (9th Cir.2003). Plaintiffs in any event have not stated actionable "consumer protection' claims under their home states' laws. First, the sparse Saturn statements they actually identify were, at most, perfectly lawful "puffing." Complaint, ¶ 73. Second, they have not pleaded facts that would create any duty to disclose the alleged defect. Daugherty v. American Honda Motor Co., 144 Cal.App.4th 824, 833-37 (2006); Bardin v. DaimlerChrysler Corp., 136 Cal.App.4th 1255, 1275-76 (2006). Third, they have not alleged that any of them ever saw, heard or read any of the alleged Saturn advertising or promotional literature before deciding to purchase their VUEs, so they have failed to plead the essential elements of causation and/or reliance. *See* Cal. Civ. Code § 1780(a); Cal. Bus. & Prof. Code § 17204.

The Second Claim for Relief for breach of express warranty also fails as a matter of law. To begin with, plaintiffs erroneously allege that the Saturn warranty guarantees a

[1] GM owns Saturn Corporation, which manufactures the VUE. Complaint, ¶¶ 2-3. "VTi" is Saturn's name for the continuously variable transmissions (CVT) of certain 2002-05 model year Saturn VUEs and 2003-04 model year Saturn IONs. *Id.*, ¶¶ 3, 14, 51.

"defect free" vehicle. It plainly does no such thing. Rather, the warranty expressly acknowledges the possibility of vehicle defects by providing warranty coverage for "repairs *to correct any vehicle defect* related to materials or workmanship occurring during the warranty period." Complaint, ¶ 72 (emphasis added). In addition, because plaintiffs' warranties here have expired, they are not entitled to repairs and cannot sue for breach. Further, the Saturn advertising statements they identify (¶ 73) are too vague and general to create a "warranty-by-description" under UCC section 2313.

The Third Claim for Relief fails because all of plaintiffs' 2003 Saturn VUEs have now traveled more than 75,000 miles – one more than 100,000 miles – so they obviously were fit for their "ordinary purpose" of "providing transportation" and therefore met the minimum standard of quality required by UCC section 2314 as a matter of law.

The Fourth Claim for Relief fails because the doctrine of "unjust enrichment" does not permit plaintiffs to end-run the clear terms and limitations of the express and implied warranties which defeat their claims.

Thus, although plaintiffs seek to represent "tens of thousands" of people who live in 12 states, their complaint must be dismissed because none of them has pleaded an actionable claim on her own behalf under applicable state laws.

SUMMARY OF ALLEGED AND JUDICIALLY NOTICEABLE FACTS

A. Saturn's Limited New Vehicle Warranty

Contrary to plaintiffs' allegations (Complaint, ¶¶ 30, 71), the Limited New Vehicle Warranty for the 2003 Saturn VUE *did not* warrant a "defect free" vehicle. Request for Judicial Notice; Lines Decl., Exh. A, p. 7.[2] Instead, recognizing the reality that defects sometimes occur in a machine as complex as the modern automobile, Saturn's warranty

[2] Plaintiffs have chosen not to attach the Saturn warranty to their complaint. In ruling on the motion, however, the Court may judicially notice and consider this warranty because the complaint refers to and relies upon this document and it is indisputably authentic. In re Stac Electronics Securities Litig., 89 F.3d 1399, 1405 n.4 (9th Cir.1996), *cert. denied sub nom* Anderson v. Clow, 520 U.S. 1103, 117 S.Ct. 1105, 137 L.Ed.2d 308 (1997); Parrino v. FHP, Inc., 146 F.3d 699, 706 n.3 (9th Cir.), *cert. denied* 525 U.S. 1001, 119 S.Ct. 510, 142 L.Ed.2d 423 (1998); Hoey v. Sony Electronics Inc., 515 F.Supp.2d 1099, ____, 2007 U.S.Dist.LEXIS 77608 at *5-7 (N.D.Cal.) (judicially noticing terms of manufacturer's warranty).

states that it "covers *repairs to correct defects* related to materials or workmanship occurring during the warranty period." *Id.* (emphasis added); Complaint, ¶ 72. This language simply would make no sense if Saturn had warranted a "defect-free" vehicle.

Saturn has voluntarily extended the warranty period for VTi transmissions to 5 years or 75,000 miles. Complaint, ¶ 24.

B. Plaintiffs' Individual Claims

Plaintiff Castillo says she purchased a "new" *2003* VUE with a VTi transmission *in January 2007* from a Saturn dealer in Roseville, California. Complaint, ¶¶ 9, 38. She says she had unspecified "repeated problems ... which *appeared to be* transmission-related" during the warranty period which the Saturn dealer "claimed to be unable to diagnose." *Id.*, ¶ 39 (emphasis added). In June of 2007, five months after purchase, when her VUE allegedly had "reached approximately *80,000* miles," a dealer "diagnosed a transmission failure" and replaced the VTi transmission at a cost of $4,200. *Id.*, ¶ 40 (emphasis added).[3]

Plaintiff Brown, a Georgia resident, purchased her 2003 VUE *used* when its odometer showed more than 75,000 miles, after the Saturn warranty had expired. She says her VTi transmission failed and was replaced at a cost of approximately $4,000. Complaint, ¶¶ 41-43. She claims she later learned the transmission previously had been "repaired or replaced" (she doesn't say which) in October 2006, about two months before she purchased her VUE. *Id.*, ¶ 44.

Plaintiff Glisson lives in Oklahoma. She says the VTi transmission of her 2003 VUE failed in 2005 at 33,000 miles, was replaced free-of-charge, and then failed again in 2006 at 68,000 miles; a Saturn dealer overhauled it, again free-of-charge under warranty. Now, at approximately 107,000 miles, she says the transmission needs replacement and the dealer has given her an estimate of $5,500. Complaint, ¶¶ 45-48.

[3] While reasonable allegations are assumed to be true under Rule 12(b)(6), GM can't help but wonder whether the implied allegation that plaintiff Castillo drove a "new" four-model-year-old 2003 VUE 80,000 miles within a five-month period in 2007 doesn't reflect an inadvertent error of some kind.

Plaintiffs claim Saturn advertisements described the VTi transmission as an "evolutionary step in automatic transmission technology" and touted its "robust design," "excellent performance," and "unobtrusive operation." Complaint, ¶ 73. Yet they do not allege that any of them heard, saw or read – let alone relied upon – these statements in deciding to purchase their VUEs. They also do not allege that they read or relied upon Saturn's alleged statements (1) that the VTi's torque converter clutch [*not* the "steel belt" plaintiffs' say was defective, *see* Complaint, ¶ 15] was "constructed of carbon fiber for durability," (2) that "the *VTi-equipped* Vue [*not* the VTi transmission itself] was 'tough, versatile [and] at home in almost any environment'' and (3) that "the *VTi-equipped* Ion [again, *not* the VTi transmission] was 'specifically designed and engineered for whatever's next.'" Complaint, ¶ 73 (emphasis added). Acknowledging implicitly how vague, general and/or inapplicable these statements are, plaintiffs immediately add (¶ 74) that they anticipate "obtaining through discovery additional examples in GM's possession of advertising statements touting the durability of the VTi transmission" – *i.e.*, more statements these plaintiffs obviously did not hear, see or read before buying their VUEs.

C. Plaintiffs' Class Action Allegations

Plaintiff purports to sue on behalf of an alleged class consisting of all residents of California, Georgia, Oklahoma, Florida, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina and Ohio who at any time owned a Saturn vehicle with a VTi transmission that failed (regardless of mileage) and that GM "failed or refused to fully remedy" (regardless of whether the warranty had expired). Complaint, ¶ 50.

D. Plaintiffs' Factual Allegations Concerning VTi Transmissions

Plaintiffs focus on the "continuously variable" design of the VTi transmission, which uses a "chain or belt that runs through pulleys that move closer together or farther apart." Complaint, ¶ 14. Instead of a "chain," which plaintiffs say would be "more durable," Saturn used a "steel belt, known as a 'thrust belt.'" *Id.*, ¶ 15. This belt and the VTi transmission, say plaintiffs, "are extraordinarily prone to failure." *Id.* They say the design is defective "in that the engine and/or the pump are underpowered to apply

sufficient pressure on the thrust belt" and, as a result, "the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails," necessitating "costly repairs or transmission replacement." *Id.* ¶¶ 15-16. "On information and belief," plaintiffs say, "this design defect and the accompanying inherent risk of premature transmission failure could have been avoided by using a chain instead of a belt and/or by increasing the power of the transmission...." *Id.*, ¶ 17.

When the VTi transmission fails, plaintiffs claim, "either it causes hesitation in the movement or acceleration of the vehicle, leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile." *Id.*, ¶ 16. None of the plaintiffs, however, alleges that she personally was "immobilized" while driving or experienced any other "dangerous driving condition."

Plaintiffs contend that GM was "aware when it introduced the VTi transmission that it was inherently prone to premature failure," citing an unidentified GM document in 1999 or 2000 (more than one year before the VTi transmission made its debut in the 2002 VUE) which allegedly said only that "'*concerns exist[ed]* over the durability of the belt under continuous high-load conditions.'" Complaint, ¶¶ 18-19 (emphasis added). Plaintiffs further claim GM delayed the VTi's launch for several months and "did not take adequate or customary quality control measures to ensure that the VTi was sufficiently tested and refined for full-scale production and sale to consumers." *Id.*, ¶¶ 20-21.

E. Plaintiffs' Claims for Relief

The First Claim for Relief alleges that GM violated the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, and "Consumer Protection Statutes" in Georgia, Oklahoma and nine other states when it "failed or refused to disclose the existence of th[e alleged] defect (a material fact that GM was obliged to disclose) to Plaintiffs ... at the time they purchased their vehicles," contrary to "representations, including partial representations, actually made by GM regarding the transmissions and vehicles at

issue...." Complaint, ¶¶ 58, 63-65, 73. Plaintiffs do not provide any factual basis for their parenthetical legal conclusion that "GM was obliged to disclose" the alleged defect.

Plaintiffs' Second, Third and Fourth Claims for Relief allege breach of express warranty, breach of the implied warranty of merchantability and "unjust enrichment" under the laws of eleven "class states" *other than California*. Complaint, ¶¶ 70, 83, 93.

ARGUMENT

I. PLAINTIFFS HAVE NOT PLEADED FRAUD WITH PARTICULARITY

Although the "Consumer Protection Statutes" of plaintiffs' home states (California, Georgia and Oklahoma) do not require proof of actual fraud, "a plaintiff may choose nonetheless to allege in the complaint that the defendant has engaged in fraudulent conduct." Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103 (9th Cir.2003). Because Rule 9(b) applies to "all averments of fraud," a plaintiff alleging violations of these statutes based on fraudulent conduct must plead the fraud with particularity:

> "... In some cases, the plaintiff may allege a unified course of fraudulent conduct and rely entirely on that course of conduct as the basis of a claim. In that event, the claim is said to be 'grounded in fraud' or to 'sound in fraud,' and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b)....
>
> "In other cases, however, a plaintiff may choose not to allege a unified course of fraudulent conduct in support of a claim, but rather to allege some fraudulent and some non-fraudulent conduct. In such cases, only the allegations of fraud are subject to Rule 9(b)'s heightened pleading requirements." 317 F.3d at 1103-04.

See also Snyder v. Ford Motor Co., 2006 U.S.Dist.LEXIS 63646 at *6-10 (N.D.Cal.2006) (causes of action claiming concealment of an alleged product defect were "grounded in fraud" and therefore had to be pleaded with particularity); Brothers v. Hewlett-Packard Co., 2006 U.S.Dist.LEXIS 82027 at *20-23 (N.D.Cal.2006) (same).

Plaintiffs here claim "a unified course of fraudulent conduct" as the basis for their claims under the CLRA, UCL, and the Georgia and Oklahoma statutes. They say Saturn violated these statutes by alleged misstatements and/or failing to disclose the alleged defect with intent that they and other consumers rely upon the alleged misstatements and omissions. Complaint, ¶¶ 63-67. Had they know of the alleged defect, they say, they

would not have purchased their VUEs. *Id.*, ¶ 68. These claims touch upon all of the elements of fraud and/or fraudulent concealment. Thus, Rule 9(b) requires plaintiffs to plead specific facts supporting each of the elements of their claims, including in the case of concealment specific facts showing Saturn had a "duty to disclose" the alleged defect. Snyder at *7; Bacon *ex rel.* Moroney v. American International Group, 415 F.Supp.2d 1027, 1031 (N.D.Cal.2006), *citing* Edwards v. Marin Park, Inc., 356 F.2d 1058, 1066 (9th Cir.2004); Orlando v. Carolina Cas. Ins. Co., 2007 U.S.Dist.LEXIS 56409 (E.D.Cal.) at *25-26. Further, to the extent plaintiffs rely on omissions in specific statements by Saturn, they must allege that they "read, saw or heard [the] representations, advertisements and promotional materials that omitted the reference to the [alleged defect]." Weaver v. Chrysler Corp., 172 F.R.D. 96, 102 (S.D.N.Y.1997).

Plaintiffs' allegations satisfy none of these requirements. To be sure, they allege in general terms "omissions of the material fact that the vehicles are (allegedly) defective" and that these omissions are "contrary to representations, including partial representations, actually made by GM ... as further described above." Complaint, ¶ 64. Yet nowhere "above" (or below) do plaintiffs "state the time [and] place" of these "representations" or identify who made them or in what manner (*e.g.*, TV ad, oral statement by a Saturn employee, product brochure, etc.). They also do not allege that they in fact "saw, heard or read" any of these statements. And they certainly have not alleged "specific facts" showing that Saturn had a duty to disclose the alleged defect. *Id.*, ¶¶ 62-63.

II. THE FIRST CLAIM FOR RELIEF FAILS AS A MATTER OF LAW

Whether together with or apart from Rule 9(b), the First Claim for Relief should be dismissed under Rule 12(b)(6) for failure to plead any actionable claim under the CLRA, the UCL, Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.* ("FBPA"), or the Oklahoma Consumer Protection Act, 15 Okl.St. § 751 *et seq.* ("OCPA").

A. The Alleged Statements Are Not Actionable Under the UCL or CLRA

To be actionable under the CLRA or UCL, advertising must be "likely to deceive a reasonable consumer." Consumer Advocates v. Echostar Satellite Corp., 113 Cal.App.4th

1351 (2003); Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir.1995). The term "likely" means probable, not just possible. Freeman, 68 F.3d at 289. Thus, misstatements that *probably would not* mislead a reasonable consumer are not actionable. Haskell v. Time, Inc., 857 F.Supp. 1392, 1399 (E.D.Cal.1994). The sparse advertising and other statements which plaintiffs allege in paragraph 73 of their complaint (quoted above) are simply opinions that could not be objectively verified and therefore were *not* likely to "mislead" a reasonable consumer about any *fact*. *See, e.g.*, Cook, Perkiss & Leihe, Inc. v. Northern Calif. Coll. Serv., Inc., 911 F.2d 242, 246 (9th Cir.1990) ("'misdescriptions of specific or absolute characteristics of a product are actionable,'" but advertising "'which merely states in general terms that one product is superior is not actionable'"); In re All Terrain Vehicle Litig., 771 F.Supp. 1057, 1061 (C.D.Cal.1991), *aff'd* 979 F.2d 755 (9th Cir.1992) ("Puffing has been described as making generalized or exaggerated statements such that a reasonable consumer would not interpret the statement as a factual claim upon which he or she could rely"); Haskell, 857 F.Supp. at 1399 ("Advertising that amounts to 'mere' puffery is not actionable because no reasonable consumer relies on puffery. The distinguishing characteristics of puffery are vague, highly subjective claims as opposed to specific, detailed factual assertions."); Consumer Advocates, 113 Cal.App.4th at 1361 (claims of "crystal clear digital" video or "CD quality" audio did not falsely advertise the specific characteristics of goods); Summit Technology, Inc. v. High-Line Medical Instruments Co., 933 F.Supp. 918, 931 (C.D.Cal.1996) (stating that computer equipment is "perfectly reliable" is non-actionable puffing. "The word 'reliable' is inherently vague and general – in common parlance akin to a statement that the machine is 'fine.' ... [I]t is simply a vague statement... a claim incapable of objective verification and not expected to induce reasonable consumer reliance."); Williams v. Gerber Prods Co., 439 F.Supp.2d 1112, 1115 (S.D.Cal.2006).

Vague statements about the VUE or its VTi transmission touting their "robust design," "excellent performance" or "unobtrusive operation" are not *factual* statements concerning specific vehicle characteristics, and therefore are not "likely to mislead a

reasonable consumer." The alleged statement concerning the durability of the "torque converter clutch" (Complaint, ¶ 73) obviously said nothing about the "steel belt" that plaintiffs claim is subject to premature failure (*id.*. ¶ 15). The other quoted Saturn statements also have nothing to do with the VTi transmission *per se*, but instead quintessentially "puff" the "VTi-equipped" VUE or ION *as a whole* (hence the internal quotation marks enclosing what *Saturn* allegedly said come *after* the phrase "VTi-equipped" which apparently was added by plaintiffs, *see* Complaint, ¶ 73).

B. Plaintiff Castillo Has Not Pleaded Reliance or Causation

Plaintiff Castillo's claims also fail because she does not allege that she personally read, saw or heard any of the alleged statements before buying her VUE; thus, she has failed to allege the essential element of causation. Civ. Code §§ 1770(a), 1780(a) (plaintiff must suffer "damage *as a result of*" the alleged false or misleading statements) emphasis added); Bus. & Prof. Code § 17204 (UCL claim can only be brought by "any person who has ... lost money or property *as a result of* the [alleged UCL violation]") (emphasis added); Buckland v. Threshold Enterprises, Ltd., 155 Cal.App.4th 798, 809-11, 817-19 (2007) (affirming dismissal of CLRA and UCL claims where named plaintiff did not rely on defendant's statements). Further, actual reliance where the case is based on omissions "occurs only when the plaintiff reposes confidence in the *material completeness* of the defendant's representations, and acts upon this confidence," which plaintiffs here do not (and cannot) allege. Buckland, 155 Cal.App.4th at 808 (emphasis in original), *citing* Carter v. Seaboard Finance Co., 33 Cal.2d 564, 569-70 (1949); Ostayan v. Serrano Reconveyance Co., 77 Cal.App.4th 1411, 1418-19 (2000).

C. Plaintiffs Have Not Alleged Any Factual Basis for a Duty To Disclose

Plaintiffs have not pleaded an actionable CLRA claim based on omissions because they have not alleged any facts that would create a duty to disclose the alleged defect. As explained in Daugherty, 144 Cal.App. 4th at 833-37, to be actionable under the CLRA an omission "must be contrary to *a representation actually made by the defendant*, or an omission of a fact the defendant *was obliged to disclose*") (emphasis added); *accord*

Bardin, 136 Cal.App.4th at 1275-76 (CLRA claims based on omissions must allege a duty to disclose or affirmative representations that are misleading for want of the disclosure).

Plaintiffs have failed to state a UCL "deception" claim for the same reason. As stated in Daugherty, "[w]e cannot agree that a failure to disclose a fact one has no affirmative duty to disclose is 'likely to deceive' anyone within the meaning of the UCL." 144 Cal.App.4th at 838; *accord* Berryman v. Merit Property Management, Inc., 152 Cal. App.4th 1544, 1556-57 (2007). Thus, the Court of Appeal in Daugherty rejected what is in concept exactly the same claim plaintiffs make here when it held that Honda *did not* violate the UCL by failing to disclose an alleged durability defect at the time of sale. 144 Cal.App.4th at 1556-57. Plaintiffs' allegations here also mirror the facts of Bardin, where plaintiff complained that Chrysler had used "tubular steel in the exhaust manifolds of certain of its vehicles instead of more durable and more expensive cast iron." There, as here, the plaintiff's vehicle had an allegedly less durable feature (there, tubular steel intake manifolds; here, a continuously variable transmission with a steel belt) and not a more durable feature (there, cast iron intake manifolds; here, a continuously variable transmission with an allegedly more durable "chain"). Bardin held that alleged facts like this simply do not make out an actionable claim [136 Cal.App.4th at 1276]:

> "Plaintiffs' claim for violation of the CLRA fails because [he] neither alleged facts showing DCC was "bound to disclose" its use of tubular steel exhaust manifolds, nor alleged facts showing DCC ever gave any information of other facts which could have the likely effect of misleading the public "for want of communication" of the fact it used tubular steel exhaust manifolds."

Plaintiffs' CLRA claim fails for the same reasons. They do not allege (1) any facts that would have created an independent duty to disclose or (2) any statement by Saturn concerning the VTi transmission that "could have the likely effect of misleading the public" for want of disclosure. 136 Cal.App.4th at 1276.

As further explained in Daugherty, where the durability of Honda's F22 engine was at issue, members of the public in order to "likely be deceived" must have some expectation or assumption about the matter in issue (here, the durability of the VTi transmission). Yet as in Daugherty and Bardin, plaintiffs do not allege any facts showing

that they had any specific expectation as to the lifespan of the VTi transmission or that Saturn ever made any specific representations in that regard.

D. Plaintiffs Have Not Pleaded an Actionable UCL Unfairness Claim

The First Cause of Action does not specifically invoke the "unfairness" prong of the UCL, but does allege in conclusory terms that it was an "unfair act" for Saturn not to disclose the alleged defect. Complaint, ¶¶ 65, 67. Under the majority view, any finding of UCL "unfairness" must be "'tethered to some legislatively declared policy....'" Churchill Village LLC v. General Electric Co., 169 F.Supp.2d 1119, 1130 (N.D.Cal. 2000), *citing* Cel-Tech Communications v. Los Angeles Cellular Tel. Co., 30 Cal.4th 163, 182 (1999); Gregory v. Albertson's, Inc., 104 Cal.App.4th 845, 854 (2002) ("where a claim of an unfair act or practice is predicated on public policy, we read *Cel-Tech* to require that the public policy which is a predicate to the action must be 'tethered' to specific constitutional, statutory or regulatory provisions"); In re Firearms Cases, 126 Cal. App.4th 959, 980 (2005); Belton v. Comcast Cable Holdings, LLC, 151 Cal.App.4th 1224, 1239-40 (2007); *but cf.* Lozano v. AT&T Wireless Servs., 504 F.3d 718, 735-36 (9th Cir.2007) (noting conflicting decisions as to the applicable test and lack of definitive California Supreme Court holding). Here, plaintiffs simply have not identified any "legislatively declared policy" that would support a finding of UCL "unfairness." [4]

E. Plaintiffs Have Not Alleged Facts Showing FBPA or OCPA Violations

1. Plaintiff Brown has failed to plead an actionable claim.

Plaintiff Brown's FBPA claim fails as a matter of law for five separate reasons.[5]

[4] Because plaintiff Castillo, the sole California plaintiff, cannot state any actionable claim under the CLRA or UCL, it is difficult to understand why the other, non-resident plaintiffs' claims belong on the congested docket in this district. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir.1987), *cert. denied* 485 U.S. 993, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988) ("If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter," plaintiff's choice of forum "is entitled to only minimal consideration"; and in a class action, "the named plaintiff[s'] choice of forum is given less weight"); Ellis v. Hollister, Inc., 2006 U.S. Dist.LEXIS 28171 at *4-5 (E.D.Cal.); Roake v. Feldman Sherb & Co., 2006 U.S. Dist.LEXIS 25168 at *5 (E.D.Cal.).

[5] Also, while Ms. Brown purports to sue under the FBPA on behalf of a class, that statute *expressly precludes* representative actions. O.C.G.A. § 10-1-399(a).

First, the FBPA does not apply to private transactions and Ms. Brown nowhere alleges that the purchase of her used VUE from an unidentified seller was anything other than a private transaction. *See* Borden v. Pope Jeep-Eagle, Inc., 407 S.E.2d 128, 130-31 (Ga.App.1991).

Second, as is true of the CLRA, the FBPA prohibits "representing" or "advertising" untrue facts about products, not omissions, and Ms. Brown has not alleged any factual basis for imposing a duty to disclose on Saturn. *See* O.C.G.A. § 10-1-393(a)(5), (7), (9).

Third, the "puffing" statements plaintiffs have alleged are not actionable under Georgia law nor are they "partial representations" *about the VTi transmission* that give rise to a duty to disclose the alleged defect. "Representations under the general head of 'dealer's talk' are regarded as mere commendations, 'puffing,' or expressions of opinion, and do not, though untrue, constitute false representations which will avoid a contract. The representations to support a claim must relate to an existing fact and not a future event, unless it be an event which the party making the representations knows will never occur." American Food Services v. Goldsmith, 175 S.E.2d 57, 59 (Ga.App.1970) (citation omitted). "Where representations amount to mere expressions of opinion, they come within the scope of this rule...." Marler v. Dancing Water Lakes, Inc., 305 S.E.2d 876 (Ga.App.1983) (citation omitted). Thus, Hill v. Jay Pontiac, Inc., 381 S.E.2d 417 (Ga.App.1989), affirming summary judgment, held it was "mere sales puffing" to say that "since the car was new, it was in excellent condition and free of defects." *Id.* at 418.

Fourth, to the extent that Ms. Brown's FBPA claim rests on alleged misstatements, she has failed to plead the essential element of justifiable reliance; in fact, she has not alleged ever seeing, reading or hearing *any* statement or advertisement by Saturn before deciding to purchase her used 2003 VUE in 2007, let alone that she relied on or was misled by any such statement. Tissmann v. Linda Martin Homes Corp., 625 S.E.2d 32, 36 (Ga.App.2005) (reliance on misstatements is an essential element); Zeeman v. Black, 273 S.E.2d 910, 916 (Ga.App.1980) (FBPA requires pre-suit notice of deceptive act or practice "relied upon" by plaintiff and therefore FBPA incorporates the reliance element

of the common law tort of misrepresentation into the causation element of an FBPA claim).

Fifth, Ms. Brown's FBPA claims must be dismissed because she has failed to give the pre-suit notice required by O.C.G.A. § 10-1-399(b). Sharpe v. General Motors Corp., 401 S.E.2d 328, 330 (1991); Zeeman, 273 S.E.2d at 916 (the FBPA requires written notice as a prerequisite to *filing* suit "reasonably describing the unfair or deceptive act or practice *relied upon*...") (emphasis in original).

2. Plaintiff Glisson has failed to plead an actionable claim.

Oklahoma decisions recognize that sales "puffing" is not actionable. Hall v. Edge, 782 P.2d 122, 126 & n.2 (Okla.1989) ("Generally, the false representation must be a statement of existing fact and not a mere expression of opinion. For example, a seller's opinion which is nothing more than 'puffing' will not give rise to an action based on misrepresentation." "Puffing" is "exaggerated praise" that must be "'considered to be offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable man would rely.'") (citations omitted); Maupin v. Nutrena Mills, Inc., 385 P.2d 504, 506 (Okla.1963). Thus, for the same reasons discussed above, the statements plaintiffs allege in paragraph 73 of their complaint are not actionable under Oklahoma law and their allegations provide no factual basis for imposing a duty to disclose on Saturn.

To be sure, the OCPA prohibits "deceptive trade practices," 15 Okl.St. § 753(20), which *may* include "omissions," but only if they "could reasonably be expected to deceive or mislead a person to the detriment of that person." *Id.*, § 752(13). Absent any alleged facts showing a consumer expectation that the VTi transmission would be "defect-free" beyond the duration of the VUE's five-year 75,000 mile warranty, there is no basis for assuming here any more than in Daugherty that a reasonable consumer would have been "deceived." Nor is there any basis for any claim of "detriment" based on the prior VTi transmission failures which were corrected free-of-charge under warranty. "[N]o breach results because a product has defective parts if they are replaced within a reasonable time

under the limited remedy of repair and replacement." Collins Radio Co. v. Bell, 623 P.2d 1039, 1054) (Okla.App.1980). Here, Ms. Glisson alleges she has driven her VUE *more than 107,000 miles* without incurring any out-of-pocket expense for transmission repairs.

The alleged facts also do not make out an actionable claim for an "unfair trade practice" under 15 Okl.St. § 752(14), which defines that term as a practice "which offends established public policy or ... is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Here, again, in the absence of facts showing some unusual consumer expectation, there is no basis for requiring disclosure of the alleged defect or for finding the lack of disclosure offensive to public policy, immoral, oppressive, etc. *See* Daugherty, 144 Cal.App.4th at 839 n.9 (rejecting claim that failure to disclose alleged durability defect in Honda engine was "a business practice which offends an established public policy or ... is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers") (internal quotes omitted).

II. PLAINTIFFS PLEAD NO CLAIM FOR BREACH OF EXPRESS WARRANTY

To begin with, plaintiffs incorrectly claim that Saturn warranted a "defect free" vehicle. Complaint, ¶¶ 30, 71. It plainly did not. Instead, the Saturn warranty expressly recognized the possibility of defects by stating that it "cover[ed] repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period." Lines Declaration, Exh. A, p. 7.

The warranty further provided, as permitted by Georgia and Oklahoma law, that "performance of repairs and needed adjustments is the exclusive remedy" for any such defect. *Id.*, p. 1; O.C.G.A. § 11-2-316(4) ("Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy"); *id.*, § 11- 2-719(1)(a) (" The agreement may provide for remedies ... in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to ... repair and replacement of nonconforming goods or parts"); *accord* 12A Okl.St. §§ 2-316(4), 2-719(1)(a).

A. The Saturn Warranty Does Not Cover "Design Defects"

Plaintiffs allege both a design defect and a manufacturing defect. Complaint, ¶¶ 3, 61. Design defects, however, are not covered by the Saturn warranty. A manufacturer's liability for breach of an express warranty "derives from, and is measured by, the terms of that warranty." Hines v. Mercedes-Benz USA, LLC, 358 F.Supp.2d 1222, 1227 (N.D.Ga. 2005), *quoting* Cipollone v. Liggett Group, Inc., 505 U.S. 504, 525, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). The Saturn warranty only promises to repair "defects related to materials or workmanship," *i.e.*, manufacturing defects. The term "design defect" is foreign to the law of express warranty. A design defect becomes actionable only when a product causes personal injuries or property damage, giving rise to strict liability in tort. A manufacturer is not strictly liable for mere economic injuries resulting from a design defect, and the law of express warranty does not provide plaintiffs with a detour past this principle. As Justice Traynor explained in his seminal opinion in Seely v. White Motor Co., 63 Cal.2d 9, 18 (1965), "a consumer can be 'fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Even in actions for negligence, a manufacturer's liability is limited to damages for physical injuries and there is no recovery for economic loss alone.'" This principle has found more recent expression in Bussain v. DaimlerChrysler Corp., 411 F.Supp.2d 614, 625 (M.D.N.C.2005): "'[T]ort concepts of safety and risk apply when a manufacturer negligently produces products that are dangerous to people or other property, and the manufacturer is responsible for injuries caused by his negligence. However, this rationale does not apply where a manufacturer's products simply fail to "meet the business needs of his customers"'" (citations omitted).

Here plaintiffs do not allege any personal injury or property damage as a result of the design of the VTi transmission. Although they do say their transmissions are "prone to failure" which may create "an elevated and unreasonable risk of serious bodily injury" *in the future*, Complaint, ¶ 78, this claim fails for want of the essential element of damage, *i.e.*, actual personal injury as a result of the alleged defect. Briehl v. General Motors

Corp., 172 F.3d 623, 627 (8th Cir.1999) (courts been "particularly vigilant in requiring allegations of injury or damages in products liability cases"). Thus, the Seventh Circuit resoundingly rejected a highly-publicized claim that vehicles and/or tires were "defective" because the tires had a "high failure rate." In re Bridgestone/Firestone Inc., Tire Prods. Liab. Litig., 288 F.3d 1012 (7th Cir.2002). As Judge Easterbrook explained, safety regulation by the National Highway Traffic Safety Administration [6] and litigation by persons who actually have been damaged "is far superior to a suit by millions of uninjured buyers for dealing with consumer products that are said to be failure prone." *Id.* at 1019 (emphasis in original); *and see id.* at 1017 & n.1 ("recoveries by those whose products function properly mean excess compensation"); Yost v. General Motors Corp., 651 F. Supp. 656, 657-58 (D.N.J.1986) (rejecting claims that engines were defective because a "likely" leak *could* result in engine damage; because "damage is a necessary element," allegations that damage merely was "likely" were too conclusory to support a claim); Ziegelmann v. DaimlerChrysler Corp., 649 N.W.2d 556 (N.Dak.2002) ("The gist of Ziegelmann's complaint is that the vehicle might malfunction and cause injury in the future; we conclude, like the vast majority of courts that have considered similar no-injury product liability lawsuits, that the claim of injury is simply too speculative....").

To be sure, plaintiffs also say the alleged defect has diminished their VUEs' resale value. Complaint, ¶ 33. But none alleges that she has sold or attempted to sell her VUE and hypothetical "diminution in value" or the mere possibility of a reduced resale price is not a sufficient allegation of damage. *See* Carlson v. General Motors Corp., 883 F.2d 287, 298 (4th Cir.1989), *cert. denied* 495 U.S. 910, 110 S.Ct. 1936, 109 L.Ed.2d 299 (1990) (rejecting implied warranty claim based on "lost resale value"); In re General Motors

---

[6] If plaintiffs truly believe that the VTi transmission poses a serious safety problem, they could – but apparently have chosen not to – petition the National Highway Traffic Safety Administration to open a "defect investigation" under 49 U.S.C. §§ 30118(b) and 30162. American Suzuki Motor Corp. v. Superior Court, 37 Cal.App.4th 1291,1299-1300 (1995) ("The remedy which will best promote consumer safety, and which will address real parties' concern that 'tragic consequences' will result if the defect is not remedied, is to petition the National Highway Traffic Safety Administration (NHTSA) for a defect investigation") (footnote omitted).

Anti-Lock Brake Prods. Liab. Lit., 966 F.Supp. 1525, 1530 (E.D.Mo.1997), *aff'd sub nom* Briehl v. General Motors Corp. *supra* (rejecting claims that plaintiffs paid more than supposedly defective vehicles were worth and suffered reduced resale value); Weaver v. Chrysler Corp., 172 F.R.D. at 99 (dismissing claims based on allegedly defective child safety seat because plaintiff's "allegation of possible economic loss" failed to adequately plead damage); Martin v. Ford Motor Co., 914 F.Supp. 1449, 1455-56 & n.7 (S.D.Tex. 1996) (rejecting plaintiffs' claim they paid more than vehicles were worth).

B. Saturn Has Not Breached the VUE's Express Warranty

Here, as in Hines v. Mercedes-Benz, the Saturn warranty "[wa]s not breached unless and until Defendant ... refused or failed to repair the vehicle." 358 F.Supp.2d at 1227; *accord* DeLoach v. General Motors Corp., 369 S.E.2d 484, 486 (Ga.App.1988). Indeed, plaintiff Glisson alleges that Saturn *did* repair or replace her transmission *twice* free-of-charge under warranty. Complaint, ¶¶ 46, 47. Thus, she does not and cannot claim that Saturn "refused or failed to repair" her VUE during the warranty period. Neither can Ms. Brown, who purchased her VUE *after the Saturn warranty had expired* and thus could not have presented her VUE for repairs during the warranty period, as the warranty expressly requires. Complaint, ¶ 41; Lines Decl., Exh. A, p. 8.

The general rule, recognized and applied in Daugherty, "is that an express warranty 'does not cover repairs made after the applicable time or mileage periods have elapsed.'" 144 Cal.App.4th at 830 (citation omitted); *see* Long v. Hewlett-Packard Co., 2007 U.S. Dist.LEXIS 79262 at *10 (N.D.Cal.) ("Simply stated, it is clear following *Daugherty* that a plaintiff cannot maintain a breach of warranty claim under California law for a product that is repaired within the warranty period and fails again months after the warranty has expired...."). Silently acknowledging that any breach of warranty claim by Ms. Castillo would be "dead on arrival" under Daugherty, plaintiffs' counsel have chosen not even to make a breach of warranty under California law but instead have limited the Second and Third Claims for Relief to residents of states *other than* California. Complaint, ¶¶ 70, 83. But the same general rule applies virtually everywhere.

The leading case is Abraham v. Volkswagen of America, Inc., 795 F.2d 238, 250 (2d Cir.1986), which like this case involved an allegedly "latent" defect:

> "[V]irtually all product failures discovered in automobiles after expiration of the warranty can be attributed to a "latent defect" that existed at the time of sale or during the term of the warranty. All parts will wear out sooner or later and thus have a limited effective life. Manufacturers always have knowledge regarding the effective life of particular parts and the likelihood of their failing within a particular period of time. Such knowledge is easily demonstrated by the fact that manufacturers must predict rates of failure of particular parts in order to price warranties and thus can always be said to "know" that many parts will fail after the warranty period has expired. A rule that would make failure of a part actionable based on such "knowledge" would render meaningless time/mileage limitations in warranty coverage."

Accord Walsh v. Ford Motor Co., 588 F.Supp. 1513, 1536 (D.D.C.1984) ("[T]o hold that all latent defects are covered under the written warranty whether they become apparent to the customer before or after the expiration of the written warranty, would place an undue burden on the manufacturer. Ford would, in effect, be obliged to insure that a vehicle it manufactures is defect free for its entire life. The Court cannot accept such a drastic interpretation of the plain language of the warranty."); Canal Elec. Co. v. Westinghouse Elec. Co., 973 F.2d 988, 993 (1st Cir.1992) ("Case law almost uniformly holds that time-limited warranties do not protect buyers against hidden defects – defects that may exist before, but typically are not discovered until after, the expiration of the warranty period"); *see also* Duquesne Light Co. v. Westinghouse Elec. Co., 66 F.3d 604, 616 (3d Cir.1995); Long at *10-13; Taterka v. Ford Motor Co., 271 N.W.2d 653, 657 (Wisc.1978); Tokar v. Crestwood Imports, Inc., 532 N.E.2d 382, 388 (Ill.App.1988); Evitts v. DaimlerChrysler Motors Corp., 834 N.E.2d 942, 950 (Ill.App.2005). Although GM's research has turned up no direct authority on this point in Georgia and Oklahoma, there is no reason to believe that the courts of these states would depart from the general rule.

C. Plaintiffs Have Not Pleaded Breach of Any Warranty-by-Description

The UCC, specifically here O.C.G.A. §11-2-313(1) and 12A Okl.St. § 2-313(1), provides that "[a] ny affirmation *of fact* or promise made by the seller to the buyer which relates to the goods" or "[a]ny description or the goods" which is "*part of the basis of the bargain*" creates an express warranty that the goods shall conform to the affirmation,

promise or description" (emphasis added). Plaintiffs' attempt to plead such a "warranty-by-description" in this case doubly fails.

First, for the same reasons that the Saturn statements alleged by plaintiffs constitute non-actionable "puffing" under the FBPA and OCPA, *see* Part II-E *supra*, they are not sufficient to create express warranties: "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." O.C.G.A. §11-2-313(2); 12A Okl.St. §2-313(2); Schierman v. Coulter, 624 P.2d 70, 72 (Okla.1980) ("In order for an express warranty to exist, there must be an absolute assertion understood by the parties pertaining to the merchandise sold"); Maupin, 385 P.2d at 506 ("'[A]ffirmations or representations which merely express the seller's opinion, belief, judgment, or estimate do not constitute a warranty, no matter how strong the affirmation or representation may be.... Under the established and governing rules, dealer's talk is permissible; and puffing, or praise of the goods by the seller, is no warranty such representations falling within the maxim simplex commendatio non obligat.'"); *see also* Hubbard v. General Motors Corp., 1996 U.S.Dist. LEXIS 6974 at *20-21 (S.D.N.Y.) ("advertising proclamations that Suburbans are 'like a rock,' 'popular,' and 'the most dependable, long-lasting trucks on the planet' ... are generalized and exaggerated claims, which a reasonable consumer could not rely upon as statements of fact" and "do not create an express warranty upon which plaintiff could reasonably rely").

Second, plaintiffs "have failed to allege that [Saturn] advertisements were the basis of their bargains as required by [UCC section 2-313]," or that they ever even saw, heard or read the alleged ads, let alone took them into consideration in deciding to purchase their VUEs. In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig., 966 F.Supp. at 1531-32.

III. THE IMPLIED WARRANTY CLAIMS FAIL AS A MATTER OF LAW

The implied warranty of merchantability arises as a matter of law out of the sale of goods and promises only a "minimum level of quality," *i.e.*, that the goods at the time of sale are "fit for the ordinary purposes for which such goods are used." O.C.G.A. § 11-2-

314(2)(c); 12A Okl.St. § 2-314(2)(c); Collins Radio, 623 P.2d at 1053 ("Merchantability has been defined in Oklahoma to mean of a quality generally sold in the market place and suitable for its intended purpose even if not of the best quality"); *see generally* American Suzuki Motor Corp. v. Superior Court, 37 Cal.App.4th 1291, 1295-96 (1995), *citing* Skelton v. General Motors Corp., 500 F.Supp. 1181, 1191 (N.D.Ill.1980), *rev'd on other gds* 660 F.2d 311 (7th Cir.1981), *cert. denied* 456 U.S. 974, 102 S.Ct. 2238, 72 L.Ed.2d 848 (1982).

Courts universally hold that an automobile's "ordinary purpose" is to provide transportation. *See, e.g.*, American Suzuki, 37 Cal.App.4th at 1296; Bussain, 411 F.Supp. 2d at 623. As a result, the implied warranty of merchantability "can only be breached when the 'vehicle manifests a defect so basic it renders the vehicle unfit for its ordinary purpose of providing transportation.'" In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig., 966 F.Supp. at 1533 (citation omitted); American Suzuki, 37 Cal.App. 4th at 1296.

Because the implied warranty arises out of the sale, it is an essential element that the vehicle be unfit for this ordinary purpose *at the time of sale*. Collins Radio, 623 P.2d at 1053; Dildine v. Town & Country Truck Sales, Inc., 577 S.E.2d 881, 883-84 (Ga.App. 2003) (rejecting claim of defect at the time of sale where vehicle was driven 26,000 miles with no problem except for an unrelated repair under an express warranty); Crowe v. CarMax Auto Superstores, Inc., 612 S.E.2d 90 (Ga.App.2005) (no breach of implied warranty where vehicle was driven more than 25,000 miles before defect appeared).

These and legions of other cases hold that where vehicles, despite intervening repairs, continue to provide safe and reliable transportation over a long period of time, there can be no claim they were unmerchantable at the time of sale. Priebe v. Autobarn, Ltd., 240 F.3d 584, 588 (7th Cir.2001) (no breach of implied warranty where plaintiff continued to drive it for more than 30,000 miles); Bussain, 411 F.Supp.2d at 623-24 (single repair 5 years after original manufacture did not show unmerchantability); In re Air Bag Prods. Liab. Litig., 7 F.Supp.2d 792, 803 & n.17 (E.D.La.1998) (fact that air bags

might cause serious injury did not suggest vehicles "have not served the ordinary purposes of transportation"); Lee v. General Motors Corp., 950 F.Supp. 170, 174 (S.D.Miss.1996) (no lack of merchantability where vehicles did not manifest alleged defects after 5 years and 90,000 miles); Takerka v. Ford Motor Co., 271 N.W.2d 653, 655 (Wisc.1978) (same – 33 months and 75,000 miles); Ford Motor Co. v. Fairley, 398 So.2d 216, 219 (S.D.Miss. 1981) (same – 2 years and 26,649 miles).

Here, of course, plaintiffs' VUEs were driven for even longer periods before experiencing transmission problems: Brown (almost 75,000 miles); Glisson (33,000 miles). For this and several other reasons neither plaintiff has stated an actionable claim for breach of implied warranty.

A. Ms. Brown Lacks Standing To Sue for Breach of Implied Warranty

Ms. Brown's implied warranty claim fails *ab initio* because she is not the original purchaser of her VUE. Under Georgia law, a used car buyer cannot sue the manufacturer for breach of implied warranty. *See* Gill v. Blue Bird Body Co., 2005 U.S.App.LEXIS 11626, 2005-1 Trade Cas. (CCH) ¶ 74,847 (11th Cir.2005) ("Georgia's implied warranties for goods do not pass to a second or subsequent purchaser, and may be enforced only by the *original* buyer, who stands in privity of contract with the defendant seller"), *citing* Stewart v. Gainesville Glass Co., 206 S.E.2d 857, 859-60 (Ga.App.1974), *aff'd* 212 S.E. 2d 377 (Ga.1975); Lamb v. Georgia-Pacific Corp., 392 S.E.2d 307, 309 (Ga.App.1990).

To be sure, the Georgia privity rule does not bar an implied warranty claim against a manufacturer *by the original purchaser* who buys from an authorized dealer where the manufacturer through the dealer has provided *that purchaser* with an express warranty at the time of sale. *See, e.g.*, Ford Motor Co. v. Lee, 224 S.E.2d 168, 171 (Ga.App.), *aff'd in part and rev'd in part,* 229 S.E.2d 379 (1976); Chrysler Corp. v. Wilson Plumbing Co., 208 S.E.2d 321, 323 (1974). Here the situation is wholly different because the express warranty Saturn provided *to the original purchaser* had *expired* before Ms. Brown bought her used VUE. *See* Complaint, ¶¶ 24, 41; Lines Decl., Exh. A, p. 10 (limiting duration of "any implied warranty" to the duration of the express warranty); Magnuson-Moss

Warranty Act, 15 U.S.C. § 2308(b) (expressly permitting manufacturer to limit duration of implied warranties "to the duration of the written [*i.e.*, express limited] warranty").

Although the complaint alleges in conclusory terms that "[a]ny purported limitation on remedies on the part of GM causes the warranty to fail of its essential purpose and is unconscionable under the circumstances" (*id.*, ¶ 90), Saturn here does not need to rely upon any limitations on "remedies." Instead, again assuming *arguendo* that Ms. Brown has standing, which she does not, the limitation on the implied warranty's *duration*, in and of itself, would dispatch her claim. *See* Lee v. Mercedes-Benz USA, LLC, 622 S.E.2d 361 (Ga.App.2005) (even where there were intervening repairs, limiting the implied warranty to 48 months or 50,000 miles, whichever came first, was not unconscionable and did not cause warranty to "fail of its essential purpose" under UCC section 2-719).

B. Ms. Glisson's Implied Warranty Claim Also Fails as a Matter of Law

Ms. Glisson says her VTi transmission failed twice during the warranty period, once at 33,000 miles and again at 68,000 miles, and both times was repaired or replaced free-of-charge under warranty, precluding any claim of breach during the warranty period. Complaint, ¶¶ 46, 47; Collins Radio, 623 P.2d at 1054 ("no breach" of express warranty "if [defective parts] are replaced within a reasonable time under the limited remedy of repair and replacement"); *see also* American Fertilizer Specialists, Inc. v. Wood, 635 P.2d 592, 595 (Okla.1981) (requiring actual loss proximately caused by breach of warranty).

Further, a claim for breach of the implied warranty of merchantability lies only if "the product was defective at the time it left the manufacturer's possession or control." Harrison v. Leviton Mfg. Co., 2006 U.S.Dist.LEXIS 76334 at * 17, 61 U.C.C. Rep.Serv. 2d (Callaghan) 30 (N.D.Okla.2006). This warranty "is not indefinite, but lasts for a reasonable time only." *Id.*, *citing* Hoort v. Oklahoma Truck Parts, Inc., 650 P.2d 71, 73 (Okla.App.1981). Here Ms. Glisson claims her VTi transmission needs replacement *after driving her VUE 107,000 miles* without incurring any out-of-pocket repair expenses. Complaint, ¶ 48. Thus, by any measure, the implied warranty *did* last for a reasonable time, but has now expired. None of the cases cited above -- and certainly no Oklahoma

decision GM has been able to find – so much as suggests that a component failure *after a vehicle has been driven more than 100,000 miles* can serve as evidence that a vehicle was "unfit for its ordinary purpose" of providing transportation "at the time of sale."

IV. PLAINTIFFS HAVE NO CAUSE OF ACTION FOR UNJUST ENRICHMENT

The doctrine of "unjust enrichment" is similar in Georgia and Oklahoma. "Unjust enrichment is a condition which results from the failure of a party to make restitution in circumstances where it is inequitable; i.e. the party has money in its hands that, in equity and good conscience, it should not be allowed to retain. *Where the plaintiff has an adequate remedy at law*, the court will not ordinarily exercise its equitable jurisdiction to grant relief for unjust enrichment." Harvell v. Goodyear Tire & Rubber Co., 164 P.3d 1028, 1035 (Okla.2006) (emphasis added; footnotes omitted). "Unjust enrichment is an equitable concept and 'applies when as a matter of fact *there is no legal contract*..., but when the party sought to be charged has been conferred a benefit by the party contending an unjust enrichment which the benefited party equitably ought to return or compensate for.'" St. Paul Mercury Ins. Co. v. Meeks, 508 S.E.2d 646, 648 (Ga.App.1998) (citation omitted). Here there *is* a contract – the Saturn warranty – and the fact that this warranty has *expired* does not show that plaintiffs "lacked a legal remedy" to enforce their contract rights *subject to the contract terms*, including *the limited duration* of the warranty. The doctrine of "unjust enrichment" does not provide a basis for end-running the terms *and limitations* of the warranty which are clearly stated. *See* Daewoo Motor America, Inc. v. General Motors Corp., 459 F.3d 1249, 1260 (11th Cir.2006), *cert. denied* ___U.S. ___, 127 S.Ct. 2032, 167 L.Ed.2d 804 (2007) ("a quasi-contract claim for unjust enrichment cannot lie when there is a written contract that covers the same subject matter").[7]

[7] Plaintiff Castillo has chosen not to make any claim for unjust enrichment under California law, which recognizes this same principle. California Medical Ass'n v. Aetna U. S. Healthcare of California, 94 Cal.App.4th 151, 172-73 (2001) ("[A]s a matter of law, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights. 'When parties have an actual contract covering a subject, a court cannot--not even under the guise of equity jurisprudence--substitute the court's own concepts of fairness regarding that subject in place of the parties' own contract.'") (citations omitted).

CONCLUSION

For all the foregoing reasons, GM respectfully urges that its motion to dismiss plaintiffs' complaint should be granted in all respects.

DATED: January 4, 2008

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

By: _/s/_____
Gregory R. Oxford
Attorneys for Defendant
General Motors Corporation

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Friday, January 04, 2008 1:36 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Memorandum

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Oxford, Gregory on 1/4/2008 at 11:35 AM PST and filed on 1/4/2008
Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: General Motors Corporation
Document Number: 23

Docket Text:
MEMORANDUM by General Motors Corporation in Support Of. *Motion to Dismiss* (Oxford, Gregory)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=1/4/2008] [FileNumber=2043710-0]
[776a3ff1bcd1574d1acde3f864fa58ec8754cd3b9467b92812b94aa8ad328f4f3e18
daf7ee3b11d86916fe8168bd91517178c0aad977f2aafd98105e8a93874c]]

EXHIBIT I

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
THE LAKIN LAW FIRM, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Date: March 31, 2008
Time: 2:00 p.m.
Courtroom 5

Assigned to Honorable William B. Shubb

Plaintiffs respectfully submit this brief in opposition to the Motion to Dismiss filed by Defendant General Motors Corporation ("GM").

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

This is a case about GM's failure to disclose to consumers a known defect in GM's Vti transmission that makes Vti-equipped Saturn vehicles unreasonably dangerous, renders the vehicles completely immobile upon failure, necessitates transmission replacement or service costing thousands of dollars, and persists even after transmission replacement (despite GM's unfulfilled promise to "correct" the defect). In other words, this is an omissions case.

Ironically, GM's omissions continue. GM briefs largely omit the fact that this is an omissions case, for example by advocating the heightened pleading standard that applies to affirmative representations rather than to fraudulent omissions. And next by building a straw man argument about how GM's advertising lacks sufficient specificity to constitute affirmative misrepresentation. And by failing to acknowledge Plaintiffs' assertion that it is GM's fraudulent omissions which render GM's warranty limitations unconscionable. GM also omits critical allegations from Plaintiffs' First Amended Complaint (the "Complaint"), such as the significant safety risk associated with the Vti's defect. GM omits that its written warranty requires GM to actually "correct" the Vti's defect. GM omits any authority for many of the false propositions it asserts (such as the unsupported notion that fraudulent omissions are not actionable under the Virginia Consumer Protection Act). Finally, GM omits important facts and language in many of the cases it cites which materially distinguish those cases and render them inapplicable to this dispute.

When properly characterized, Plaintiffs' Complaint alleges sufficient facts (which, of course, must be accepted as true at the pleading stage) to support each of Plaintiffs' claims. Every class state at issue has a consumer protection statute which prohibits material omissions of the type alleged by Plaintiffs, each state has adopted UCC provisions prohibiting unconscionable

durational limits on GM's warranties under these circumstances, and each state recognizes a cause of action for GM's unjust enrichment. GM's Motion to Dismiss should be denied.

BRIEF SYNOPSIS OF ALLEGED FACTS MOST PERTINENT TO GM'S MOTION

Background facts alleged in Plaintiffs' Complaint, as well as important specific facts which GM's briefs largely disregard, include the following:

- Preliminary: From 2002 until at least 2004, GM manufactured, sold and/or distributed certain vehicles containing the Saturn Vti transmission. The Vti transmission is inherently prone to premature failure due to its defective design and/or due to negligent manufacture. (1st Am. Compl. ¶ 3.)

- Vti description: The Saturn Vti transmission is a "continuously variable" transmission (CVT). Unlike a conventional automatic transmission, which uses traditional gears to shift at a few fixed points, a CVT shifts through the use of a belt or chain that runs through pulleys that move closer together or farther apart. (*Id.* ¶ 14.)

- Nature of defect: Rather than using a chain, which is more durable than a belt, the Saturn Vti utilizes a steel belt, known as a "thrust belt." Due to the inherently defective nature of the Vti transmission, the thrust belt and the Vti transmission are extraordinarily prone to premature failure. For example, the transmission is defective in that the engine and/or the pump are underpowered to apply sufficient pressure on the thrust belt. As a result the thrust belt slips, and the resulting friction between the thrust belt and the pulleys causes the belt to wear until it prematurely fails. (*Id.* ¶ 15.)

- Consequences of defect: When the thrust belt and/or the transmission fails, it does not just affect the performance of the vehicle. Either it causes hesitation in the movement or acceleration of the vehicle, leading to an unreasonably dangerous driving condition, or it renders the vehicle completely immobile. In either event, this failure requires costly transmission replacement or service. The average service or replacement cost to the consumer exceeds five thousand dollars ($5,000.00). (*Id.* ¶ 16.) Necessary service or replacement to return the vehicle to operable condition often costs more than the value of the vehicle. (*Id.* ¶¶ 3, 74.) The defective Vti transmission is not a discreet, modular or incidental part of the vehicle but, rather, is an essential part of the drive train and is integral to the safe operation of the vehicle. (*Id.* ¶ 33.) Many customers have been required to service or replace their transmissions three or more times. (*Id.* ¶ 5.)

- GM's exclusive knowledge: GM was aware when it introduced the Vti transmission that it was inherently prone to premature failure. For example, in 1999 or 2000, GM recognized that "concerns exist over the durability of the belt under continuous high-load operations." So concerned was GM over the quality

and durability of the Vti transmission, and so plagued was the Vti with problems, that its initial launch was delayed by several months. (*Id.* ¶¶ 19-20.)

- Startup phase: GM did not inform consumers that it had bypassed the "startup" phase of production during which small quantities of vehicles or components typically are tested and quality-controlled prior to initiation of full-scale production, or that it had failed to undertake adequate or customary quality control measures concerning the Vti transmission. (*Id.* ¶¶ 21-22).

- Admission of materiality: In April of 2003, GM further recognized excessive durability problems with the Vti transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the Vti. In early 2004, GM again recognized durability problems with the Vti transmission when it voluntarily extended the warranty on vehicles containing the Vti from 3 years / 36,000 miles to 5 years / 75,000 miles. (*Id.* ¶¶ 23-24.)

- Failure to disclose: Despite GM's knowledge of the defect in the vehicles, GM failed or refused to disclose the existence of this defect (a material fact that GM was obliged to disclose) to Plaintiffs at the time they purchased their vehicles. (*Id.* ¶ 76.)

- GM's exclusive knowledge: Consumers could not have discovered the Vti transmission defects through any reasonable inspection of their vehicles prior to purchase. (*Id.* ¶ 27.)

- Repairs inadequate: Repairs under the voluntarily extended warranty failed to replace the defectively designed Vti transmission with a durable non-Vti transmission, and any replacement Vti transmissions carried the same defects and inherent and unreasonably elevated risk of premature failure. (*Id.* ¶ 24.)

- Consumer expectations: Transmissions are designed to, and ordinarily do, function for periods (and mileages) substantially in excess of those specified in GM's Saturn warranties, and given past experience, consumers legitimately expect to enjoy the use of an automobile without worry that the transmission would fail for significantly longer than the limited times and mileages identified in Saturn's express warranties, including the voluntarily extended warranty. (*Id.* ¶ 25.)

- Materiality: GM's omission is the type of omission which is likely to and tends to mislead or deceive reasonable consumers acting reasonably under the circumstances. But for GM's deceptive and unfair act of concealing from Plaintiffs the existence of the defect in the vehicles, Plaintiffs would not have purchased the vehicles. (*Id.* ¶¶ 79-80.)

SUMMARY OF LEGAL ANALYSIS

Consumer Fraud Statutes

1. Each class state at issue in GM's Motion to Dismiss has enacted a consumer protection statute creating a cause of action for fraudulent omission of material facts in consumer transactions, and each such statute creates a duty for GM to disclose material facts in GM's exclusive possession.[1]

2. Plaintiffs have pleaded facts demonstrating that the withheld information in GM's exclusive control regarding the Vti's defective condition was material.[2]

3. At a minimum, the materiality of the withheld information is a matter to be determined by the trier of fact and cannot be resolved at the pleading stage.[3]

---

[1] **California:** Cal.Civ.Code §§ 1750, *et seq.*, and Cal.Bus.& Prof.Code §§ 17200, *et seq.*; Falk v. General Motors Corp., 496 F.Supp.2d 1088 (N.D.Cal. 2007); **Georgia:** O.C.G.A. § 10-1-393(a); Regency Nissan, Inc. v. Taylor, 391 S.E.2d 467 (Ga.Ct.App. 1990); **Illinois:** 815 ILCS 505/2; **Michigan:** MCLA § 445.903(1)(s); Temborius v. Slatkin, 403 N.W.2d 821, 827 (Mich.Ct.App. 1986); **Missouri:** Mo.Rev.Stat. § 407.020(1); 15 C.S.R. 60-9.010(1)(C); **Oklahoma:** 15 Okl.St. § 752(13); **Virginia:** Va.Code.Ann. § 59.1-200(A)(14); Guy v. Tidewater Inv. Properties, 1996 WL 33465397, *10 (Va.Cir.Ct. 1996).

[2] *See, e.g.*, 1st Am. Compl. ¶¶ 25 and 79-80; Falk v. General Motors Corp., 496 F.Supp.2d 1088 (N.D. Cal. 2007); Perona v. Volkswagen of America, Inc., 292 Ill. App. 3d 59 (1997); In the Matter of Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984); Connick v. Suzuki Motor Co., 675 N.E.2d 584 (Ill. 1996); Lipinski v. Martin J. Kelly Oldsmobile, Inc., 759 N.E.2d 66 (Ill.Ct.App. 2001).

[3] Engalla v. Permanente Medical Group, Inc., 15 Cal.4th 951, 977, 64 Cal.Rptr.2d 843, 938 P.2d 903 (Cal. 1977) (a misrepresentation is judged to be material if a reasonable person would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question, and as such, materiality is generally a question of fact unless the "fact misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable person would have been influenced by it"); Cirone-Shadow v. Union Nissan, 955 F. Supp. 938, 944 (N.D. Ill. 1997) (the objective standard for materiality under ICFA is whether it is a matter upon which a "reasonable person could be expected to rely in determining" whether to proceed with the transaction); Thompson v. IFA, Inc., 536 N.E.2d 969, 973 (Ill.Ct.App. 1989) (materiality for purposes of fraud is a question of fact); VIP Homes, Inc. v. Weader, 454 S.E.2d 548, 550 (Ga.Ct.App. 1995) (materiality of representations made by a seller are "except in plain and indisputable cases, questions for the jury"); Cont'l Cas. Co. v. Maxwell, 799 S.W.2d. 882, 889 (Mo.Ct.App. 1990) ("the question of materiality is generally a question of fact for the jury" and may appropriately be decided as a matter of law only "when the misrepresentation is of such a nature that all minds would agree it is or is not material"); Washington Nat'l Ins. Co. v. DeLaney, 56 P.2d 134, 135 (Okla. 1936) (question of false statements and their materiality were questions of fact for the jury).

Express Warranty

1. GM's express warranty covers the defects Plaintiffs allege. It is inconsistent for GM to now deny that the warranty covers the defective Vti transmission after having previously honored warranty coverage of the defective Vti transmission and after having voluntarily extended the express warranty on the Vti. Any ambiguity in the scope of warranty coverage should be construed against GM as the drafter of the written warranty and as the party with superior bargaining power.
2. Plaintiffs have alleged that GM has made multiple unsuccessful attempts to correct the defects in the Vti transmissions of Plaintiffs and the proposed Class. These allegations defeat GM's argument that it cannot have breached the express warranty until it has refused or failed to repair the vehicles. At a minimum, Plaintiffs have alleged that the express warranty fails of its essential purpose.
3. The durational limits on GM's express warranty are unconscionable because GM failed to disclose the Vti defects of which GM had exclusive knowledge.

Unjust Enrichment

1. GM does not dispute that Plaintiffs have alleged facts to support all the necessary elements of a claim for unjust enrichment.
2. The existence of GM's express warranty is not inconsistent with Plaintiffs' unjust enrichment claim, because the express warranty is silent on the issue of the fraud which rendered GM's enrichment unjust.
3. Even assuming *arguendo* that GM's express warranty (which GM now argues does not apply) were somehow ultimately determined to be incompatible with Plaintiffs' unjust enrichment claim, Rule 8(d) nevertheless explicitly permits pleading in the alternative.

ARGUMENT

I. *PLAINTIFFS HAVE PLEADED VALID CLAIMS UNDER THE CONSUMER FRAUD AND CONSUMER PROTECTION STATUTES AT ISSUE.*

A. PLAINTIFFS HAVE PLEADED THEIR FRAUDULENT OMISSION CLAIMS WITH SUFFICIENT PARTICULARITY.

GM argues that Plaintiffs have not pleaded their allegations of fraud with the specificity required by Fed.R.Civ.P. 9, but GM fails to recognize the distinction between fraud claims based on *affirmative misrepresentations* and those based on fraudulent *omissions*. This is primarily a case about GM's fraudulent omission of the material fact that GM was releasing into the stream of commerce thousands of vehicles whose transmissions GM knew were defective and unusually prone to premature failure, rendering the vehicles unsafe or even immobile absent very costly service. As courts have recognized in scores of cases law, it is logically impossible to provide meaningful details about a conversation that never took place or a statement that was never uttered. Accordingly, the particularity requirements of Rule of 9 are relaxed so as not to place an impossible burden on plaintiffs asserting fraudulent omission claims.

The requirement of pleading fraud with specificity must be interpreted in light of Rule 8(a) requiring only notice pleading. "In balancing these two policies, 'the most basic consideration in making a judgment as to the sufficiency of a pleading is the determination of how much detail is necessary to give adequate notice to an adverse party and enable him to prepare an adverse pleading.'" Windsor Assoc., Inc. v. Greenfeld, 564 F.Supp. 273, 280 (D. Md. 1983), *quoting* Charles Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE, § 1297 at 415 (1969). *See also, e.g.*, David K. Lindemuth Co. v. Shannon Fin. Corp., 637 F.Supp. 991, 994 (N.D. Cal. 1986) (because a plaintiff "cannot state the 'time' of an omission," it was sufficient to allege that defendant possessed the omitted information prior to entering into contract; plaintiff also not required to allege the "place" where omission occurred – "There is no

'place' where the omission occurred, because plaintiffs are not alleging an act, they are alleging a failure to act"); Falk v. GMC, 496 F. Supp. 2d 1088, 1098-1099 (N.D. Cal. 2007); ("Clearly, a plaintiff in a fraud by omission suit will not be able to specify the time, place, and specific content of an omission as precisely as would a plaintiff in a false representation claim"); Washington v. Baenziger, 673 F.Supp. 1478, 1482 (N.D. Cal. 1987) ("a plaintiff cannot plead either the specific time of the omission or the place, as he is not alleging an act, but a failure to act"); Gelco Corp. v. Duval Motor Co., 2002 WL 31875537, *6 (N.D.Ill. 2002) (Rule 9(b)'s requirement of pleading with particularity is relaxed if the information the plaintiff is required to plead is within the defendants' control).

In this case, Plaintiffs have identified the information that GM withheld (the defective nature of the transmission and the consequences of the defect) (*see, e.g.*, 1st Am. Compl. ¶¶ 73-74), alleged that GM possessed exclusive knowledge of that information (*see, e.g., Id.* ¶ 75), alleged facts demonstrating the materiality of that information (*see, e.g., Id.* ¶ 79-80), and explained how the withholding of that information gave rise to fraud (*see, e.g., Id.* ¶ 80). Ironically, Plaintiffs provided significantly more detail to GM about the concealed defect and GM's fraudulent omission than GM provided to Plaintiffs and the proposed Class. At this stage, it is difficult to fathom what more Plaintiffs could have alleged, and these allegations provide GM with sufficient notice to launch a defense.

B. GM'S FRAUDULENT OMISSION IS ACTIONABLE UNDER BOTH CALIFORNIA'S UNFAIR COMPETITION LAW AND ITS CONSUMERS LEGAL REMEDIES ACT.

GM argues that the affirmative advertising described in the Complaint amount to mere "puffery." This argument misses the point. As explained above, Plaintiffs' claims under California's Unfair Competition Law (UCL)[4] and Consumers Legal Remedies Act (CLRA)[5] are

[4] Cal.Bus.&.Prof.Code § 17200, *et seq.*

based ultimately on the material information that GM failed to share, not on the half-truths in GM's affirmative advertising. GM's fraudulent omissions certainly are actionable under both the UCL and the CLRA.

1. BOTH THE UCL AND THE CLRA PROHIBIT FRAUDULENT OMISSIONS OF THE TYPE DESCRIBED IN THE COMPLAINT.

While it is true that UCL and CLRA claims *can* be based on fraudulent misrepresentations, GM makes a straw man argument by challenging the lack of specificity in its own advertising half-truths. Plaintiffs' UCL and CLRA claims are based on GM's fraudulent omissions, not the so-called puffery in GM's affirmative advertisements. Both the UCL and the CLRA absolutely prohibit fraudulent omission of material facts when a vehicle manufacturer is under a duty to disclose them.

In perhaps the most factually similar case to this one, Falk v. General Motors Corp., 496 F.Supp.2d 1088 (N.D. Cal. 2007), the plaintiffs alleged that GM violated the CLRA and UCL by failing to disclose a known defect in certain vehicle speedometers which rendered those vehicles potentially dangerous. After determining that GM had a duty to disclose this known defect and safety hazard, the court found that the omission of this material fact was likely to deceive members of the consuming public and, thus, was a violation of the CLRA.

> Although GM made no overt representations that suggested plaintiffs' speedometers would last beyond a certain point, it had a duty to disclose any known defects in the speedometers. Under the CLRA, plaintiffs adequately plead both that GM failed to disclose a material fact within its exclusive control and that GM actively concealed the existence of a known defect in their speedometers.

496 F.Supp.2d at 1097. Similarly, this fraudulent omission supported UCL claims for fraudulent conduct, unlawful practices, and unfair practices. *Id.* at 1098.

---

[5] Cal.Civ.Code § 1750, *et seq.*

The question for this Court, likewise, is whether GM had a duty to disclose the dangerously defective nature of the Vti transmission, not whether the affirmative representations in GM's advertising constitute mere puffery. For the reasons described below, Plaintiffs have pleaded facts demonstrating that GM did, indeed, owe such a duty, and Plaintiffs have stated valid CLRA and UCL claims.

2. GM HAD A DUTY TO DISCLOSE THE MATERIAL INFORMATION IT OMITTED.

GM was obligated to disclose the defect in the Vti transmission because it was a material defect that GM was under a legal duty to disclose, and because the omission is contrary to representations actually made by GM regarding the Vti. Daugherty v. American Honda Motor Co., Inc., 144 Cal.App.4th 824, 835 (Cal.Ct.App. 2nd Dist. 2006).

GM argues that it had no duty to inform consumers that their Vti transmissions were defective and likely to fail prematurely, nor that the failure would render their vehicles immobile (and dangerous if the failure occurred in traffic), nor that the failure would necessitate costly service that in many cases would exceed the value of the vehicle. GM relies primarily on Daugherty, *supra*, 144 Cal.App.4th 824 (Cal.Ct.App. 2nd Dist. 2006), in which the court dismissed CLRA and UCL claims predicated on Honda's failure to disclose a defective oil seal that could lead to oil leaks and ultimately damage the vehicle's engine. Id. at 828. In that case, the defect was easily repaired by installing a retainer bracket to maintain the oil seal in the proper position, *id.* at 827, and the only "unreasonable risk" alleged to be associated with the defective oil seal was the risk that other parts of the engine might be damaged and necessitate additional repairs. *Id.* at 836. There were no factual allegations regarding safety concerns, *id.*, and the complaint did not allege a single affirmative representation by Honda regarding the engine of which the defective oil seal was a component. *Id.* at 836-37.

Each of these factual differences meaningfully distinguishes Daugherty from this case.[6] But even more importantly, the Daugherty court stated explicitly that a CLRA claim may be predicated on a fraudulent omission when (1) the omission regards a fact the defendant was obliged to disclose, **or** (2) the omission is contrary to a representation actually made by the defendant. 144 Cal.App.4th at 835. As explained in the next two sections, facts supporting both of these alternatives are pleaded in Plaintiffs' Complaint.

(a). The Nature of the Defect in This Case Renders It Material and of the Variety GM Was Obligated to Disclose.

A defendant is under a duty to disclose facts in three circumstances pertinent to this case: (a) when the defendant had exclusive knowledge of material facts not known to the plaintiffs; (b) when the defendant actively conceals a material fact from the plaintiffs; or (c) when the defendant makes partial representations but also suppresses some material fact. Falk v. General Motors Corp., 496 F.Supp.2d 1088, 1094-95 (N.D.Cal. 2007).

(i). Exclusive Knowledge of Material Facts

The court in Falk determined that a defective speedometer was material and, since GM allegedly possessed exclusive information about the defect, GM should have disclosed it. For purposes of CLRA claims, materiality is judged by the effect on a "reasonable consumer." 496 F.Supp.2d at 1095. Unlike in Daugherty, in which the plaintiffs alleged no consumer expectations about the defective oil seal, the plaintiffs in Falk pleaded that a reasonable consumer would expect a speedometer to last for the life of a vehicle and that, had they known of the possibility of a failed speedometer, they would not have paid the full asking price. The Falk court

[6] The other case on which GM places significant reliance, Bardin v. DaimlerChrysler Corp., 136 Cal.App.4th 1255 (Cal.App. 4th Dist. 2006), likewise is distinguished from this case for similar reasons. The plaintiffs in Bardin merely complained that DaimlerChrysler manufactured certain exhaust manifolds using tubular steel instead of more durable but also more costly cast iron. The plaintiffs alleged neither any safety risks as a result of this manufacturing process, nor any consumer expectations giving rise to a duty to disclose this technique, nor any partial or inconsistent representations from the manufacturer regarding this subject matter.

held these allegations sufficient to plead a duty to disclose. "Common experience supports plaintiffs' claim that a potential car buyer would view as material a defective speedometer." Id. at 1096. Similarly in this case, Plaintiffs have pleaded that consumers reasonably expect transmissions to last far longer than the failed transmissions at issue in this case (*see* 1st Am. Compl. ¶ 25); they allege that GM had exclusive knowledge of the defect (*see id.* ¶¶ 4, 75); and they allege how they would have acted differently had this information been disclosed (*see id.* ¶ 31).[7]

The court in Falk determined the undisclosed defect to be material for the additional reason, not present in Daugherty, that plaintiffs had alleged an unreasonable safety risk associated with defective speedometers. 496 F.Supp.2d at 1096, n.1. Likewise in this case, Plaintiffs have alleged that the defect in the Vti transmission creates an unreasonable safety risk because of the potential for Vti-equipped vehicles to suddenly lose power. (*See*, e.g., 1st Am. Compl. ¶ 16.) This safety hazard is independently sufficient to render the Vti's defect a material fact.[8]

In addition, Plaintiffs in this case have alleged important additional facts not present even in Falk:

- the failure of the Vti transmission does not just adversely affect the performance of the vehicle but, rather, ultimately renders the vehicle completely inoperable (1st Am. Compl. ¶¶ 3, 16);

[7] Plaintiffs suspect that GM possesses internal studies confirming that reasonable consumers expect transmissions to last longer than the failed transmissions at issue in this case. Plaintiffs have requested any such internal studies in written discovery. In the event that Plaintiffs' current pleading is deemed insufficient, then Plaintiffs respectfully request leave to amend following receipt of this discovery from GM.

[8] Since the filing of Plaintiffs' Complaint, Plaintiffs' counsel have been contacted by multiple individuals who recounted stories of narrowly avoiding collisions when their Vti transmissions suddenly failed, causing their vehicles to lose power while traveling on busy freeways. In the event that Plaintiffs' current pleading is deemed insufficient, Plaintiffs respectfully request leave to amend to add this detail.

- the cost to service a Vti transmission to return it to operable condition is not merely on the order of a few hundred dollars but, rather, is believed to exceed an average of $5,000.00 (1st Am. Compl. ¶ 16) and often exceeds the value of the vehicle (*id.* ¶ 74); and
- Many customers have been required to service or replace their transmissions three or more times (*id.* ¶ 5).

A reasonable jury certainly could conclude that reasonable consumers would not expect to pay for service costing $5,000.00 or more -- or an amount exceeding the value of the vehicle -- in order to have a vehicle capable of more than just sitting in the driveway. The undisclosed defect in this case is material, as further evidenced by GM's voluntarily decision to extend its written warranty on the Vti.

(ii). Active Concealment of Material Fact

The plaintiffs in Falk argued that GM actively concealed the defective nature of the speedometers at issue because when "GM replaced the trucks' speedometers pursuant to warranty provisions, GM utilized equally defective speedometers and speedometer mechanisms such that the defect was not corrected even though GM informed consumers that it was." 496 F.Supp.2d at 1097. The court found this allegation sufficient to survive GM's Rule 12(b)(6) motion:

> This claim suggests that GM tried to gloss over the problems with its speedometers by replacing broken ones with the exact same model of speedometer, thereby giving the impression that any defects were unique cases. This might very well constitute active concealment of a systematic problem.

496 F.Supp.2d at 1097.

Plaintiffs in this case make allegations very similar to the active concealment allegations in Falk:

> In early 2004, GM again recognized durability problems with the Vti transmission when it voluntarily extended the warranty on vehicles containing the Vti from 3 years / 36,000 miles to 5 years / 75,000 miles. However, this temporary remedy

> was illusory because repairs under the voluntarily extended warranty failed to replace the defectively designed Vti transmission with a durable non-Vti transmission, and any replacement Vti transmissions carried the same defects and inherent elevated risk of premature failure.

(1st Am. Compl. ¶ 24.) Under the reasoning in Falk, these factual allegations suggesting active concealment are sufficient to plead that GM had a duty to disclose the Vti defect.

(iii). Partial Representations

Plaintiffs allege that through its advertising and promotional literature, GM boasted that the Vti transmission represented an "evolutionary step in automatic transmission technology" and touted the Vti's "robust design," "excellent performance," and "unobtrusive operation." (1st Am. Compl. ¶ 86.) GM's promotional literature highlighted that the Vti's "torque converter clutch is constructed of carbon fiber ***for durability***" (emphasis added). *Id.* GM represented that the Vti-equipped Saturn Vue was "tough, versatile [and] at home in almost any environment." *Id.*

GM may or may not be correct that this self-flattery is the sort of mere "puffery" which normally will not give rise to a claim for *affirmative misrepresentation.* However, it also constitutes the sort of partial representation which, under Falk, gives rise to a *duty to disclose* material information regarding the same subject matter. The representation that the Vti enjoys a "robust design" and "excellent performance," for example, is only partial information regarding the performance of the Vti. Once GM made this partial representation touting the performance and durability of the Vti, it was obligated under the reasoning in Falk to paint the complete picture by also disclosing the material defect.

(b). The Omission Is Contrary to Representations Actually Made by GM.

Not only does GM's above-described advertising include partial and incomplete representations regarding the performance and durability of the Vti, but it also arguably is directly contrary to GM's knowledge regarding the concealed defect. A reasonable jury could easily conclude, for example, that the claim of "excellent performance" is directly incompatible with 'no

performance at all,' which more accurately describes a Vti whose transmission has suffered a failure. This sort of directly contradictory representation gives rise under Falk to a duty for GM to disclose the known material defect.

3. PLAINTIFFS HAVE PLEADED AN ACTIONABLE "UNFAIRNESS" CLAIM UNDER THE UCL.

GM argues that Plaintiffs have not pleaded an actionable claim for unfairness under the UCL because they have not identified any legislatively declared policy that would support a finding of UCL unfairness. This argument relies on the California Supreme Court case of Cel-Tech Comm. v. Los Angeles Cellular Tel. Co., which held that certain UCL unfairness claims were actionable only if "any finding of unfairness to competitors [is] tethered to some legislatively declared policy or proof of some actual or threatened impact on competition." 20 Cal.4th 163, 186-87 (1999). However, this holding was limited explicitly to UCL claims between competitors and did not purport to apply to claims involving consumers. *Id.* at 187, n.12. As the Ninth Circuit pointed out in Lozano v. AT&T Wireless Servs., the "California courts have not yet determined how to define 'unfair' in the *consumer* action context after Cel-Tech." 504 F.3d 718, 736 (9th Cir. 2007) (emphasis in original). Some California courts have extended to the consumer context Cel-Tech's requirement that the alleged unfairness be tethered to a legislatively declared policy, while others continue to apply the pre-Cel-Tech balancing test that an "'unfair' business practice occurs when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." People v. Casa Blanca Convalescent Homes, Inc., 159 Cal.App.3d 509, 530 (Cal.Ct.App. 1984). Still others have adopted the "unfairness" definition developed under Section 5 of the Federal Trade Commission Act. *See* Camacho v. Automobile Club of Southern Calif., 142 Cal.App.4th 1394, 1403 (Cal.Ct.App. 2006) (adopting the following factors to evaluate unfairness: (1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits

to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided).[9] Regardless of which standard is applied, Plaintiffs have pleaded an actionable UCL unfairness claim.

(a). GM's Violation of the CLRA Is a Violation of a Legislatively Declared Policy.

In Falk, *supra*, the court held that GM's failure to disclose material information about defective speedometers constituted a violation of the CLRA, which in turn constituted a derivative unfair practice under the UCL. 496 F.Supp.2d 1088, 1098 (N.D.Cal. 2007). The same is true in this case. For all the reasons described above, by failing to disclose material information regarding the defective Vti, GM violated the CLRA. This violation of a separate California statute means that the unfairness at issue in Plaintiffs' UCL unfairness claim is tethered to a legislatively declared policy.

(b). The Safety Issues Addressed in Plaintiffs' UCL Claim Implicate Additional Legislatively Declared Policies.

Plaintiffs have pleaded that GM acted unfairly in violation of the UCL by failing to disclose a defect that creates an unreasonable safety hazard. (*See* 1st Am. Compl. ¶ 78.) Congress has enacted legislation demonstrating that Congress shares Plaintiffs' concern: 49 U.S.C. § 30118(c) requires a vehicle manufacturer to notify the Secretary of Transportation and all vehicle owners if the manufacturer learns that a vehicle contains a defect that the manufacturer in good faith decides is related to vehicle safety. In other words, the omission at issue in this case is indeed tethered to a legislatively declared public policy in favor of disclosing known safety hazards.

In addition, both federal and state statutes and regulations abound with myriad other legislatively declared policies addressing motor vehicle and highway safety. For example,

[9] *See* Lozano, *supra*, for a litany of California cases struggling to address this unresolved issue. 504 F.3d at 736 (9th Cir. 2007).

Congress has enacted 49 U.S.C. §§ 30101, *et seq.*, the stated purpose of which is to "reduce traffic accidents and injuries resulting from traffic accidents" by prescribing motor vehicle safety standards. 49 CFR § 571.208 regulates vehicle crashworthiness in order to reduce the number of deaths and severity of injuries that result in the event of collisions – logically including collisions which are likely to result from the type of defect at issue in this case. 49 CFR § 571.500 regulates safety requirements for low speed vehicles, which in effect is what Saturn vehicles become when their Vti transmissions fail on the freeway. The list goes on and on. Even if the Court were to apply the Cel-Tech standard in this consumer case, the unfairness at issue is indeed tethered to countless legislatively declared policies promoting vehicle and highway safety.[10]

(c). GM's Conduct As Alleged Is Immoral, Unethical, Oppressive, Unscrupulous and Substantially Injurious to Consumers.

If the Court applies the pre-Cel-Tech definition of unfairness to this consumer case, then GM's brief makes no effort to dispute that a reasonable jury could find GM's alleged conduct to be immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers so as to satisfy the unfairness prong of the UCL. At the very minimum, Plaintiffs have alleged that GM's conduct is substantially injurious to consumers (*see, e.g.*, 1st Am. Compl. ¶¶ 5, 6, 16, 31, 32, 33, and 34) and should be allowed to proceed past the pleadings stage.

(d). GM's Conduct as Alleged Is Unfair Under the Federal Trade Commission Definition.

If the Court applies the "Section 5" definition adopted in Camacho, *supra*, then GM makes no effort to dispute that the injury to consumers resulting from GM's omission is substantial, has identified no countervailing benefits that outweigh the consumer injury, and has

[10] Cel-Tech also provided that a UCL unfairness claim is actionable if the finding of unfairness is tethered to "proof of some actual or threatened impact on competition." 20 Cal.4th 163 at 186-87. In the event the Court applies the Cel-Tech standard and grants GM's Motion to Dismiss, then Plaintiffs respectfully request leave to amend to include allegations regarding the way in which GM's conduct threatens competition.

suggested no way in which consumers could reasonably have avoided the injury resulting from GM's fraudulent omission.

C. PLAINTIFFS HAVE PLEADED AN ACTIONABLE CLAIM UNDER GEORGIA'S CONSUMER FRAUD STATUTE.

As in the case of Plaintiffs' California claims, GM builds a straw man argument by portraying the affirmative representations in GM's advertising as mere "puffery." Again, this argument misses the point because Plaintiffs' claims under Georgia's Fair Business Practices Act ("FBPA"), OCGA 10-1-390, *et seq.*, are predicated on the fraudulent omissions discussed above.

1. GM'S FRAUDULENT OMISSION IS ACTIONABLE UNDER THE FBPA.

GM states, without providing a single case law citation, that the FBPA prohibits affirmative misrepresentations but not fraudulent omissions (*see* Doc. No. 23 at 12). This bold statement without authority is simply false.

The "unlawful acts and practices" section of the FBPA begins by declaring as unlawful all "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce." O.C.G.A. § 10-1-393(a). It then goes on to provide a non-exhaustive list of practices considered to be unlawful "[b]y way of illustration only and without limiting the scope of subsection (a)." *Id.* § 101-393(b). "Except in plain and indisputable cases, the question of whether a particular act or omission, or a series thereof, constitutes unfair or deceptive acts or practices within the meaning of OCGA § 10-1-393 generally is for jury resolution." Regency Nissan, Inc. v. Taylor, 391 S.E.2d 467 (Ga.Ct.App. 1990) (affirming jury determination that auto dealership committed unfair or deceptive act in violation of FBPA by selling stolen vehicle without investigating or informing buyer of information suggesting vehicle may have been stolen).

Moreover, the FBPA explicitly provides that it is to be liberally construed and applied to promote its underlying purpose of protecting consumers, OCGA § 10-1-391(a), and that it is to be

"interpreted and construed consistently with interpretations given by the Federal Trade Commission in the federal courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section 45(a)(1))." OCGA § 10-1-391(b). The FTC and the federal courts have held consistently that material omissions may be actionable as unfair or deceptive trade practices. *See, e.g.*, FTC v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994) (adopting FTC standard that an act or practice is deceptive "if, first, there is a representation, ***omission***, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and, third, the representation, ***omission***, or practice is material") (emphasis added); Simeon Management Corp. v. F. T. C., 579 F.2d 1137, 1145 (9th Cir. 1978) ("Failure to disclose material information may cause an advertisement to be false or deceptive within the meaning of the FTCA even though the advertisement does not state false facts").

As discussed in detail above, GM's omission of material information regarding the defective Vti transmission has *actually* mislead scores of reasonable consumers. Plaintiffs, therefore, have stated a valid claim under Georgia's FBPA predicated on GM's fraudulent omission.

2. GM'S FRAUDULENT CONDUCT HAS ADVERSELY AFFECTED THOUSANDS OF CONSUMERS, HAS DIRECTLY IMPACTED COMMERCE, AND CAN BY NO MEANS REASONABLY VIEWED AS A PRIVATE FRAUD.

GM argues that the FBPA does not apply to "private transactions," relying on Borden v. Pope Jeep-Eagle, Inc., 407 S.E.2d 128, 130-31 (Ga.Ct.App. 1991). This argument demonstrates a fundamental misunderstanding of both Borden and the FBPA. On its face, the FBPA purports to regulate only those unfair or deceptive practices that occur in the context of "consumer transactions" or take place "in trade or commerce." OCGA § 10-1-393(a). Borden merely stands for the common sense proposition that "[u]nless it can be said that the defendant's actions had . . .

potential harm for the consum[ing] public, the act or practice cannot be said to have 'impact' on the consumer marketplace" and is not regulated by the FBPA. 407 S.E.2d at 130-31.

The plaintiff in Borden claimed a violation of the FBPA when an automobile dealership allegedly failed to honor a unique one-time "simple interest installment loan" that was written specifically for the plaintiff at his own insistence. *Id.* at 129-30. The court rejected the plaintiffs' FBPA claim under these facts because:

> There is no evidence that the defendant's actions in this transaction had the potential for harming the general public. Defendant did not advertise simple interest contracts to the general public, nor was there evidence that it was defendant's practice to sell cars promising simple interest installment loans and later attempt to dishonor those contracts. Defendant entered into a simple interest installment loan with plaintiff at plaintiff's urging.

407 S.E.2d at 131.

Aside from labeling Plaintiff Nichole Brown's vehicle purchase as a "private transaction" without any explanation, GM does not attempt to argue (nor could it) that the unfair and deceptive conduct alleged by Ms. Brown did not involve a "consumer transaction" or that it took place outside "trade or commerce" so as to fall outside the reach of the FBPA. To the contrary, Plaintiffs have alleged that thousands of customers were defrauded and injured by the very same omission of the very same material fact.

These allegations are sufficient to invoke the FBPA. *See, e.g.*, Billy Cain Ford Lincoln Mercury, Inc. v. Kaminski, 496 S.E.2d 521 (Ga.Ct.App. 1998) ("Offering a product for sale by opening one's door to the general public should trigger the prohibitions of the act if some deceptive act or practice were involved); Regency Nissan, *supra*, 391 S.E.2d 467, (Ga.Ct.App. 1990) ("This court consistently has held that 'to be subject to direct suit under the FBPA. the alleged offender must have done some volitional act to avail himself of the channels of consumer commerce. The alleged offensive activity must have taken place 'in the conduct of . . . consumer acts or practices, i.e., within the context of the consumer marketplace").

3. PLAINTIFFS HAVE PROVIDED GM WITH THE REQUIRED PRE-SUIT NOTICE.

GM's argument that it did not receive the pre-suit notice required under OCGA § 10-1-399(b) completely disregards the August 30, 2007 written notice (Ex. 1 to Doc. No. 27) that was provided to GM by Plaintiffs' counsel more than 30 days before this action was filed. That written notice was explicitly sent on behalf of Plaintiff Kelly Castillo and all other similarly situated individuals (who, of course, would include Plaintiff Nichole Brown), and it specifically described the fraudulent omission and deceptive practice at issue. GM received the notice it was entitled to receive, and Plaintiffs were required to do no more. The notice requirement is to be liberally construed, and notice may be provided by the claimant's attorney on the claimant's behalf. Lynas v. Williams, 454 S.E.2d 570, 572-73 (Ga.Ct.App. 1995).

Even assuming *arguendo* that the notice provided to GM by Plaintiffs' counsel were somehow inadequate under OCGA § 10-1-399(b), it nevertheless would demonstrate the futility of providing additional notice. Neither Plaintiff Kelly Castillo nor Plaintiffs' counsel received any response to the August 30, 2007 written notice, and GM provided no relief to Plaintiff Castillo. There is no reason to believe that additional letters sent on behalf of the same class of people and describing the very same unfair and deceptive practices would have prompted a different response from GM. The statute does not require Plaintiffs to undertake an exercise in futility. In construing an analogous notice provision in the UCC, the Georgia Court of Appeals has said:

> The purpose of the reasonable notice requirement of OCGA § 11-2-607(3)(a) is to allow a seller an opportunity to, inter alia, inspect, ascertain facts, preserve evidence, cure, minimize damages, or negotiate a settlement. . . . BACI offered no authority and we know of none which requires a party to whistle in the wind. . . . In construing the notice statute at issue, we decline to ascribe to the legislature an intent to require a buyer to do a futile and useless thing.

BDI Distrib., Inc. v. Beaver Computer Corp., 501 S.E.2d 839, 841 (Ga.Ct.App. 1998). This rationale applies with equal weight in this case, and GM cannot avoid liability for its fraud by demanding notice beyond the reasonable notice it actually received.

D. PLAINTIFFS HAVE PLEADED AN ACTIONABLE CLAIM UNDER THE OKLAHOMA CONSUMER PROTECTION ACT.

GM's challenge to Plaintiff's claims under Oklahoma's Consumer Protection Act (OCPA), 15 Okl.St. § 753, *et seq.*, mirrors its challenge to the California and Georgia claims addressed above and fails for the same reasons. To avoid redundancy, Plaintiffs will not readdress the same issues again in detail but simply point out that the OCPA is quite explicit in prohibiting fraudulent omissions of the variety alleged by Plaintiffs. The statute defines a prohibited deceptive trade practice as "a misrepresentation, ***omission*** or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral." 15 Okl.St. § 752(13) (emphasis added). As explained above, GM's fraudulent omission has *actually* deceived thousands of Saturn customers who unwittingly purchased unreasonably dangerous vehicles that are rendered inoperable when the Vti transmission prematurely fails (often multiple times in a short period) and cannot be returned to operable condition without service or replacement costing thousands of dollars and often exceeding the value of the vehicle.

The OCPA further defines prohibited unfair trade practices as "any practice which offends established public policy" or any practice that "is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." 15 Okl.St. § 752(14). As explained above, a reasonable jury could easily conclude that the practices at issue in this case fall into each of these categories. *See also, e.g.*, Conatzer v. Am. Mercury Ins. Co., Inc., 15 P.3d 1252 (Okl.Ct.App. 2000) (holding that automobile seller committed both deceptive and unfair trade practices in violation of the

OCPA by, *inter alia*, failing to inform buyers that vehicles had been damaged in collisions).

E. GM'S FRAUDULENT OMISSION IS ACTIONABLE UNDER THE MICHIGAN CONSUMER PROTECTION ACT.

GM makes the remarkable argument that "omissions are not actionable" under the Michigan Consumer Protection Act ("MCPA"). (Doc. No. 28 at 5.) One need look no further than the plain language of the statute itself to see that this statement is categorically false. The definition section of the statute states, in pertinent part:

> Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:
>
> * * *
>
> (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

MCLA § 445.903(1)(s). *See also, e.g.*, Temborius v. Slatkin, 403 N.W.2d 821, 827 (Mich.Ct.App. 1986) (affirming judgment in which jury determined that auto dealership withheld material information in violation of MCPA by failing to inform buyer before she paid auto broker that, due to broker's financial difficulties, payments from broker to dealership would be applied to old debts, such that buyer might not receive vehicle for which she paid broker).

GM cites the case of Hendricks v. DSW Shoe Warehouse, Inc., 444 F.Supp.2d 775, 782 (W.D.Mich. 2006), for the proposition that Michigan courts would not recognize a cause of action under MCA § 445.903(1)(s) in the absence of a duty to disclose. While Hendricks did indeed state this common sense notion, GM failed to disclose the immensely important very next sentence in the Hendricks written opinion: "Here, no such duty is alleged." 444 F.Supp.2d at 782. In Hendricks, the defendant shoe store allegedly allowed the credit card information of the plaintiff and other customers to be "compromised" or stolen by a third party. Despite this compromise of her credit card information, no improper charges to the plaintiff's credit card

account had been made. Plaintiff alleged that the defendant nevertheless had violated § 903(1)(s) of the MCPA by failing to disclose that it allegedly had not implemented adequate security measures to protect her personal information. 444 F.Supp.2d at 781. The court determined that the plaintiff had no cause of action under the MCPA because, in addition to not alleging that the defendant had a duty to disclose this fact, the plaintiff had suffered no cognizable loss; the risk of a potential future financial loss was insufficient. *Id.* at 781-82.

In significant contrast in this case, not only have Plaintiffs alleged that GM was under a duty to disclose the known material defect in the Vti transmission, and not only have they alleged *actual past* losses resulting from GM's fraudulent omission, but they have alleged facts demonstrating exactly how thousands of GM customers have actually been deceived by GM's omission. (*See, e.g.*, 1st Am. Compl. ¶¶ 37, 76, 79-80.)

F. **GM'S FRAUDULENT OMISSION IS ACTIONABLE UNDER THE VIRGINIA CONSUMER PROTECTION ACT.**

As in the case of the Michigan statute, GM makes the bold and completely unsupported claim that "omissions are not actionable" under the Virginia Consumer Protection Act ("VCPA"). (Doc. No. 28 at 5.) Again, this citation-less characterization of the law is simply incorrect. The VCPA explicitly prohibits the use of any "deception, fraud, false pretense, false promise, **or** misrepresentation in connection with a consumer transaction" (emphasis added). Va.Code.Ann. § 59.1-200(A)(14). If the term "fraud" in this section were limited to affirmative representations at the exclusion of fraudulent omissions, then the use of the terms "fraud," "deception," and "misrepresentation" would be redundant, in violation of the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." Hernandez v. Ashcroft, 345 F.3d 824, 838 (9th Cir. 2003).

GM's suggestion also is directly contrary to Virginia case law interpreting the VCPA.

> The Virginia Supreme Court has continually emphasized in the fraud context that concealment can be the equivalent of an express misrepresentation. Van Deusen, 247 Va. at 327; Spence v. Griffin, 236 Va. 21, 28, 372 S.E.2d 595, 598-99 (1988); Allen Realty Corp. v. Holbert, 227 Va. 441, 450, 318 S.E.2d 592, 597 (1984); see also Restatement (Second) of Contracts, Sec. 160 (1979) ("action intended or known to be likely to prevent another from learning a fact is equivalent to an assertion that the fact does not exist ... (concealment) is always equivalent to a misrepresentation"). Regarding concealment, the *Allen Realty* Court stated that "[c]oncealment of a material fact by one who knows that the other party is acting upon the assumption that the fact does not exist constitutes actionable fraud." Allen Realty, 227 Va. 441, 318 S.E.2d 592 (1984). Thus concealment can satisfy the misrepresentation provisions of the Virginia Consumer Protection Act.

Guy v. Tidewater Inv. Properties, 1996 WL 33465397, *10 (Va.Cir.Ct. 1996).

G. PLAINTIFFS HAVE PLEADED AN ACTIONABLE CLAIM UNDER THE ILLINOIS CONSUMER FRAUD ACT BECAUSE GM'S OMISSION IS MATERIAL.

GM agrees that the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq.*, prohibits omission of material facts. (*See* Doc. No. 28 at 6.) GM disputes, however, the materiality of the concealed defect in the Vti transmission which renders the vehicle unreasonably dangerous and often necessitates service costing thousands of dollars.

The standard for materiality for consumer fraud claims is an objective standard, which is to be decided by the trier of fact, not on a motion to dismiss. Cirone-Shadow v. Union Nissan, 955 F. Supp. 938, 944 (N.D. Ill. 1997) (the objective standard for materiality under ICFA is whether it is a matter upon which a "reasonable person could be expected to rely in determining" whether to proceed with the transaction); Thompson v. IFA, Inc., 536 N.E.2d 969, 973 (Ill.Ct.App. 1989) (materiality for purposes of fraud is a question of fact). A "material fact exists where a buyer would have acted differently knowing the information, or if it concerned the type of information on which a buyer would be expected to rely in making a decision [regarding] whether to purchase the product." Perona v. Volkswagen of America, Inc., 684 N.E.2d 859, 866 (Ill. 1997). Accordingly, omitted facts are material typically if they pertain to the central

characteristics of the product or service, or where the omitted fact "concerns the purpose, safety, efficacy, or cost of the product or service . . . or if it concerns durability, performance, warranties or quality." In the Matter of Cliffdale Assocs., Inc., 103 F.T.C. 110, 190 (1984) (appending 1983 Federal Trade Commission Policy Statement on Deception).[11] As already discussed, Plaintiffs' Complaint explained how Plaintiffs would have acted differently had GM disclosed the VTi's defect, and a reasonable jury easily could agree with Plaintiffs' assessment.

The only Illinois case on which GM relies is Munch v. Sears Roebuck & Co., 2007 WL 2461660 (N.D.IL 2007), which is easily distinguished from this case. The plaintiffs in Munch complained merely that Sears had failed to disclose that certain clothes washers must have been defective because their repair and replacement rate was "high." The court was unimpressed with this allegation, "[s]ince it is understood that some percentage of all mass-produced complex machines will fail" and because plaintiffs "allege no facts that give meaning to the term 'high.'" *Id.* at *2-3.

> A product's rate of failure would be material to a reasonable person only if it exceeded a standard rate of failure in the industry for comparable machines produced by comparable manufacturers. Even then, the materiality of the rate of failure would turn on such considerations as (1) whether the machine typically fails during the warranty period or after its expiration; (2) what it costs on average to repair the machine; (3) whether the machine can be repaired once it fails; (4) whether the machine suffers from repeat failures; and (5) what component of the machine most commonly fails. Absent allegations concerning some or all of these and perhaps other similar facts, plaintiffs' complaint lacks plausible grounds to infer that Sears committed fraud by concealing that some percentage of HE washers required repair.

Munch, 2007 WL 2461660 at *3.[12]

Plaintiffs' claims in this case, in contrast, are about much more than the mere failure rate

[11] ICFA specifically provides that in "construing this section, consideration shall be given to the interpretations of the Federal Trade commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act." 815 ILCS 505/2.

[12] It should be noted that the plaintiffs in Munch were permitted to replead, 2007 WL 2461660 at *6, and that case remains pending today.

of the Vti transmission considered in a vacuum, and Plaintiffs' Complaint contains the same sort of detail the Munch court found to be lacking in that case. What makes the concealed defect material in this case is not just the fact that a high percentage of Vti transmissions fail, but also that (1) they fail at shorter times and mileages than consumers reasonably expect (*see* 1st Am. Compl. ¶¶ 25); (2) the failure creates an unreasonable safety hazard when it occurs in traffic (*id.* ¶¶ 16, 74); (3) the failure completely immobilizes the vehicles for which Plaintiffs paid (and which should otherwise be worth) thousands of dollars (*id.* ¶¶ 3, 6, 16, 74); (4) the service necessary to return the vehicles to operable condition costs an average of several thousand dollars (*id.* ¶¶ 16, 34); (5) the failure often occurs three or more times in the same vehicle, even after transmission replacement (*id.* ¶¶ 5); and (6) unlike in the case of replacing a defective part in a washing machine, even completely replacing a failed Vti transmission cannot adequately repair the problem because the replacement Vti transmission is still inherently defective and carries the same risk of failure. Again, GM's suggestion now that the concealed defect is "immaterial" also contradicts its voluntarily extension of it written warranty on the Vti.

This case is much less analogous to Munch than it is to several other cases in which Illinois courts have found similar allegations sufficient to support fraudulent omission claims under ICFA. For example, in Connick v. Suzuki Motor Co., 675 N.E.2d 584 (Ill. 1996), the plaintiffs alleged the Suzuki Samurai vehicles they purchased were unsafe due to their excessive rollover risk, and that Suzuki fraudulently concealed material facts by failing to inform consumers of the rollover tendency. The plaintiffs sought compensation for the diminution in the vehicles' resale value due to the perceived safety risk.

The court held plaintiffs adequately pled a consumer fraud violation based on a material omission by Suzuki:

> Plaintiffs alleged that Suzuki was aware of the Samurai's safety problems, including its tendency to roll over and its inadequate protection for passengers. Plaintiffs further

> alleged that Suzuki failed to disclose these defects. Finally, plaintiffs alleged that the safety problems of the Samurai were a material fact in that they would not have purchased the vehicles if Suzuki had disclosed the Samurai's safety risk.

Connick, 675 N.E.2d at 595.

Similarly in Perona v. Volkswagen of America, Inc., the plaintiffs alleged defendants knowingly concealed defects in their Audi vehicles that caused "unintended acceleration." 684 N.E.2d 859 (Ill. 1997). As a result of the defects, plaintiffs claimed their vehicles had lost their resale value, and they sought damages in the amount of the full cost of their vehicles, or, should defendants remedy the problem, in the amount of the diminution of the resale value. *Id.* at 862.

The court held plaintiffs adequately alleged a consumer fraud violation based on a material omission by Audi. Perona, 684 N.E.2d at 867. First, plaintiffs alleged Audi was aware of the Audi 5000's safety problems. Attached to the complaint were two press releases by Audi acknowledging the existence of excessive unintended accelerations of the Audi 5000. *Id. at* 862. Second, plaintiffs alleged Audi failed to disclose these defects. *Id.* at 867. Finally, plaintiffs alleged the unintended acceleration was a material fact in that they would not have purchased their vehicles if Audi had previously disclosed the safety risk. *Id.*

Lastly, in Lipinski v. Martin J. Kelly Oldsmobile, Inc., the plaintiff alleged his car was defective because it had an excess risk of oil migration into the PVC system, resulting in excessive oil consumption and severe damage to the engine from insufficient oil. 759 N.E.2d 66 (Ill.Ct.App. 2001). The plaintiff alleged the engine in his car failed as a result of the defect and that defendants knew of the car's "tendency for excessive oil consumption" when they sold the car to the plaintiff. *Id.* at 69. He said he would not have purchased the car had he known of the tendency, and he alleged he suffered damages for the cost of replacing the engine and for the diminution in the value of the car. *Id.* The court held these allegations were sufficient to state a claim for fraudulent omission under ICFA. *Id.* at 71.

The allegations in Plaintiffs' Complaint this case contained at least as much detail regarding the materiality of GM's omission as was deemed sufficient in Connick, Perona, and Lipinski, and significantly more than the court said was needed in Munch. Plaintiffs' allegations must be accepted as true at the pleading stage, and the materiality of GM's omission is for the jury to determine. Cirone-Shadow v. Union Nissan, 955 F. Supp. 938, 944 (N.D. Ill. 1997); Thompson v. IFA, Inc., 536 N.E.2d 969, 973 (Ill.Ct.App. 1989).

H. PLAINTIFFS HAVE PLEADED AN ACTIONABLE CLAIM UNDER THE MISSOURI MERCHANDISING PRACTICES ACT BECAUSE GM'S OMISSION IS MATERIAL.

As in the a case of the Illinois statute, GM agrees that the Missouri Merchandising Practices Act ("MPA"), Mo.Rev.Stat. § 407.010, *et seq.*, prohibits omission of material facts. (*See* Doc. No. 28 at 6.) GM has cited not a single authority to support its incorrect argument that the Vti defect is an immaterial fact under Missouri law.

Similar to the Illinois statute, the Missouri MPA explicitly declares as unlawful "the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce." Mo.Rev.Stat. § 407.020(1). MPA regulations define "material fact" as:

> [A]ny fact which a reasonable consumer would likely consider to be **important in making a purchasing decision**, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, **or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner**.

15 C.S.R. 60-9.010(1)(C) (emphasis added). "This definition of material is broader than the materiality requirement of common law fraud." Hess v. Chase Manhattan Bank, USA, N.A., 220 S.W.3d 758, 773 (Mo. 2007) (*en banc*).

Plaintiffs' Complaint specifically alleges that, had they known of the defect and the danger that GM concealed, "they would have taken steps to avoid that danger and/or would have

paid less for their vehicles than the amounts they actually paid, or would not have purchased the vehicles." (1st Am. Compl. ¶ 31.) For all the reasons discussed above, a sensible jury easily could agree with Plaintiffs that the Vti defect is a fact which reasonable consumers would consider important, and Plaintiffs' allegations must be accepted as true at the pleading stage. At a minimum, the materiality of GM's omission is for the jury to determine. Cont'l Cas. Co. v. Maxwell, 799 S.W.2d. 882, 889 (Mo.Ct.App. 1990) ("the question of materiality is generally a question of fact for the jury" and may appropriately be decided as a matter of law only "when the misrepresentation is of such a nature that all minds would agree it is or is not material"). GM's Motion to Dismiss Plaintiffs' statutory consumer fraud claims should be denied.

II. ***PLAINTIFFS HAVE PLEADED A CLAIM FOR BREACH OF EXPRESS WARRANTY.***

Plaintiffs' Complaint alleges that GM provided an express warranty, states the terms of the warranty, alleges that GM breached it, and claims that Plaintiffs suffered damages. (1st Am. Compl., ¶¶ 69-81). As alleged in the Complaint, GM would "at no cost, correct any vehicle defect related to materials or workmanship during the warranty period." (*Id.*, ¶ 71). Indeed, Plaintiffs alleged that "GM has breached these express warranties by . . . refusing to *adequately* repair or replace their transmissions" (emphasis added). (*Id.*, ¶ 77.) Plaintiffs alleged that repairing or replacing a defective Vti transmission with the same defective transmission was a breach of the express warranty. (*Id.*, ¶¶ 24, 80.) In other words, GM failed to "correct" the problem as promised in the written warranty. Likewise, Plaintiffs alleged that the exclusive remedy failed of its essential purpose. (*Id.*, ¶ 103.) In addition, Plaintiffs alleged that any warranty limitations were unconscionable under the Uniform Commercial Code ("UCC") due to GM's knowledge and Plaintiffs' lack of knowledge regarding the defective Vti transmission at the time of sale. (*Id.*, ¶ 79.) These allegations are sufficient to state a claim for breach of GM's express warranty.

A. **GM'S EXPRESS WARRANTY DOES NOT EXCLUDE DESIGN DEFECTS.**

GM argues that its warranty does not apply because it does not cover "design defects." (Doc. No. 23 at 15.) There are at least three problems with this argument. First, as GM admits, the warranty provides that GM will "correct any vehicle defect related to materials or workmanship. . . ." (*Id.*) Plaintiffs' Complaint alleges that the problems with the Vti transmission result from both design defects ***and*** manufacturing defects (1st Am. Compl., ¶¶ 3, 18), that the Vti-equipped vehicles are defective in ***both*** materials and workmanship, (*id.*), and that GM has failed to correct the defect in Plaintiffs' vehicles (id. at ¶ 93).

Second, had GM intended to exclude design defects from warranty coverage, it could easily have used clear language to do so. GM has provided no reason for a reasonable consumer reading GM's warranty language to think that if her vehicle suffered from a dangerous design defect, she would just be out of luck, especially in light of GM's promise to "correct" vehicle defects. Any ambiguity in the warranty should be construed against GM as the drafter of the warranty language and the party with superior bargaining power.

Third, Plaintiffs alleged that GM itself interpreted its warranty as covering the defective Vti transmission. (1st Am. Compl., ¶¶ 24, 46, 51, 52, 56, 59.) In fact, not only has GM provided warranty coverage for this purportedly uncovered 'design defect,' but GM even voluntarily extended the warranty period relating to the defective Vti transmission. (*Id.*, ¶ 24.)

None of the cases cited by GM alters the viability of the breach of warranty claim here. *See* Hines v. Mercedez-Benz USA, LLC, 358 F.Supp.2d 1222 (N.D. Ga. 2005) (granting summary judgment because a buyer's mere personal opinion that his luxury car was defective—because the remote trunk entry key had to be pressed two times instead of one to open the trunk, and because the driver's seat did not automatically move back as far as the buyer expected when the door was opened—was insufficient to show an unrepaired defect, especially in light of expert

testimony that the features functioned properly); Seeley v. White Motor Company, 63 Cal.2d 9 (1965) (eliminating the requirement for privity of contract for an injured person to recover for a personal injury in tort). As a result, Plaintiffs adequately pleaded that the express warranty covered the defective Vti transmission.

B. GM HAS BEEN GIVEN MULTIPLE OPPORTUNITIES TO "CORRECT" THE DEFECT BUT IN EACH INSTANCE HAS FAILED TO DO SO.

GM asserts that it cannot have breached its warranty unless and until it has refused or failed to repair the vehicle. (Doc. No. 23 at 17) (citing DeLoach v. General Motors Corp., 369 S.E.2d 484 (Ga.App.1988) (plaintiff refused to allow GM the opportunity to fix the allegedly defective door and instead demanded a new vehicle)). In DeLoach, the court stated "only when there is a refusal to repair or replace, or there is a lack of success in making repairs or replacement, has a breach of warranty occurred." DeLoach, 369 S.E.2d at 485. Here, Plaintiffs alleged that GM failed to correct (i.e., lacked success in correcting) the Vti transmission. (1st Am Compl. ¶¶ 1, 7, 39, 44, 51, 52, 53, 59, 60, 93.)

Inconsistent with the argument that it has been given no opportunity to repair the vehicles, GM next claims that it fulfilled its obligations under the express warranty, relying on allegations that it serviced the defective Vti transmission in several Plaintiffs' vehicles. (Doc. No. 23 at 17.) Yet, Plaintiffs have alleged that merely repairing or replacing a defective Vti transmission with the same defective transmission does not correct the defect. (1st Am. Compl. ¶¶ 24, 80.) In Seeley (a case cited by GM), the plaintiff recovered the purchase price of the vehicle and the lost profits for his business because the defendant, despite numerous attempts, did not repair a "galloping problem" with the vehicle. Seeley, 63 Cal.2d at 12. "[W]hen as here, the warrantor repeatedly fails to correct the defect as promised, it is liable for the breach of that promise as a breach of warranty." *Id.* at 14. As Plaintiffs alleged, GM (like the defendant in Seeley) has repeatedly failed to correct the defective Vti transmission. In its warranty, GM promised to

"correct" the defective Vti transmission—not merely attempt to correct it and fail repeatedly.

GM then argues that Plaintiffs are out of luck because the repair or replacement of the Vti transmission is the exclusive remedy under the warranty. (Doc. No. 23 at 14.) The remedy of repair or replacement of a defective part offers the seller an opportunity to cure the defect and minimize its liability exposure. Beal v. General Motors Corp., 354 F. Supp. 423, 426 (D. Del. 1973). This limited remedy fails where the defect is latent, Ritchie Enterp. v. Honeywell Bull, Inc., 730 F. Supp. 1041, 1048 (D. Kan. 1990); Marr Enterp. v. Lewis Refrig. Co., 556 F.2d 951, 955 (9th Cir. 1977); Lewis Refrig. Co. v. Sawyer Fruit, Vegetable, & Cold Storage Co., 709 F.2d 427, 432 (6th Cir. 1983), or "where repairs were . . . never effectively made." Ritchie Enterp., 730 F. Supp. at 1048. If repeated repairs fail to or cannot correct the defect, then the warranty limitation fails of its essential purpose under section 2-719 of the UCC. *See, e.g.*, Trgo v. Chrysler Corp., 34 F. Supp.2d 581, 590 (N.D. Ohio 1998) (involving chronic transmission, brake, and frame problems); Board of Dir. of City of Harriman Sch. v. Southwestern Petroleum Corp., 757 S.W.2d 669, 677 (Tenn. App. 1988) (finding that "no amount" of the same roofing materials could repair the leaking roof).

An exclusive remedy fails of its essential purpose "when unexpected circumstances presently prevent the agreed remedy from yielding its purported and expected relief. . . ." Ritchie Enterp., 730 F. Supp. at 1048 (citing White & Summers, *Handbook of the Law under the Uniform Commercial Code*). Section 2-719 provides:

> Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

UCC § 2-719(2).[13] Whether an exclusive remedy fails of its essential purpose is a question of

[13] All of the States at issue have adopted section 2-719(2) of the UCC without material alteration. N.J.S.A. 12a: 2-302 (New Jersey); Ga. Code Ann. § 11-2-719 (Georgia); Ohio Rev. Code § 1302.93 (Ohio); M.C.L.A. 440.2719 (Michigan); M.G.L.A. 106 § 2-719 (Massachusetts); V.A.M.S. 400.2-719 (Missouri); N.C.G.S.A. § 25-2-719 (North Carolina); 12A Okla. St. Ann. § 2-719 (Oklahoma); West's

fact. Trgo, 34 F. Supp.2d at 590.

In its express warranty, GM promised to *correct* the defective Vti transmission —not merely replace it with the same defective transmission. (1st Am. Compl., ¶¶ 24, 80.) Indeed, the definition of *correct* requires GM "to make or set right." WEBSTERS NINTH NEW COLL. DICT. at p. 293. As a result, GM cannot simply fulfill its duty under the warranty by repairing or replacing the Vti transmission when that repair or replacement does not "correct" the defect. *Compare with id.* at p.998 (defining "repair" as "to restore by replacing a part or putting together what is torn or broken"). Even if GM is not obligated to abide by its own promise to "correct" the defect, Plaintiffs pleaded facts demonstrating that the exclusive remedy of repair or replacement has failed of its essential purpose. (1st Am. Compl. ¶¶ 5, 39-40, 44, 46-47, 51-53, 103.) If a trier of fact agrees with Plaintiffs that the exclusive remedy fails of its essential purpose, then Plaintiffs may recover as otherwise provided under the UCC (UCC Section 2-719).

C. THE DURATIONAL LIMITS ON GM'S WARRANTY ARE UNCONSCIONABLE.

GM further contends that it did not breach the warranty where Vti transmission failures occurred outside of the warranty period. (Doc. No. 23 at 17.) Even though Plaintiffs excluded California express warranty claims, GM cites California law for the proposition that an express warranty does not cover problems after expiration of the warranty period. (*Id.*) (citing Daugherty v. American Honda Motor Co., 144 Cal.App.4th 824 (2006)). GM similarly cites Abraham v. Volkswagen of America, Inc., 795 F.2d 238 (2d Cir. 1986) for the proposition that a defect must manifest itself within the warranty period for coverage. Unlike this case, neither Abraham nor Daugherty involved allegations that the durational warranty limitations were unconscionable under Section 2-302 the UCC. Section 2-302 of the UCC provides:

F.S.A. § 672.719 (Florida); NY UCC § 2-719 (New York) McKinney's Uniform Commercial Code); 810 ILCS 5/2-719 (Illinois); Va. Code Ann. § 8.2-719 (Virginia).

> If the court as a matter of law finds the contract or any term of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of contract without the unconscionable term, or it may so limit the application of any unconscionable term as to avoid any unconscionable result.

UCC § 2-302.[14] Here, Plaintiffs alleged that any warranty limitations were unconscionable because of GM's concealment of the defect of which GM had exclusive knowledge, and because of the dire consequences to consumers resulting from that omission. (1st Am. Compl., ¶¶ 89, 90.)

This case is analogous to Bussian v. DaimlerChrysler Corp., 411 F.Supp.2d 614 (M.D.N.C. 2005). There, the owner of a Chrysler sports utility vehicle complained that the durational limitation of the express warranty was unconscionable. The court stated:

> Plaintiff has sufficiently pled unconscionability to state a claim for breach of express warranties. In his Complaint, Plaintiff specifically alleges that the limits of the express warranty are unconscionable because the Durangos contain a latent defect of which defendants were actually or constructively aware at the time of sale, and purchasers lacked a meaningful choice with respect to the terms of the warranty due to the unequal bargaining power and a lack of warranty competition.

Id. at 622. As a result, the court denied the motion to dismiss.

In response to the allegations regarding unconscionability, GM cites one case —Evitts v. Daimler Chrysler Motors Corp., 359 Ill.App.3d 504 (1st Dist. 2005). In Evitts, the court dismissed the warranty claim because the plaintiff failed to properly allege that the defendant knowingly sold a vehicle with a defective rear defroster. *Id.* at 511. Here, Plaintiffs have alleged that GM had knowledge of the defective Vti transmission before it sold the vehicles. (1st Am. Compl., ¶¶ 4, 8, 19, 20, 29, 35, 62.) Consequently, Plaintiffs have sufficiently alleged facts demonstrating unconscionability, and "the parties shall be afforded a reasonable opportunity to

[14] Unlike California (which has not adopted this UCC section), all of the other states have adopted section 2-302 without material alteration. N.J.S.A. 12a: 2-302 (New Jersey); Ga. Code Ann. § 11-2-302 (Georgia); Ohio Rev. Code § 13-02.15 (Ohio); M.C.L.A. 440.2302 (Michigan); M.G.L.A. 106 § 2-302 (Massachusetts); V.A.M.S. 400.2-302 (Missouri); N.C.G.S.A. § 25-2-302 (North Carolina); 12A Okla. St. Ann. § 2-302 (Oklahoma); West's F.S.A. § 672.302 (Florida); NY UCC § 2-302 (New York) McKinney's Uniform Commercial Code); 810 ILCS 5/2-302 (Illinois); Va. Code Ann. § 8.2-302 (Virginia).

present evidence as to its commercial setting, purpose and affect to aide the Court in making the determination." UCC § 2-302(b).

D. PLAINTIFFS HAVE ADEQUATELY ALLEGED ACTUAL DAMAGES.

GM also argues that Plaintiffs failed to allege actual damages. (Doc. No. 23 at 15-17.) For support, GM cites cases where a plaintiff only alleged a likelihood or a possibility of damages. See Briehl v. General Motors Corp., 172 F.3d 623 (8th Cir. 1999) (involving potential loss of resale value and/or an overpayment at the time of purchase because the ABS braking system allowed the pedal to go all the way to the floor, which the Plaintiffs alleged was counter-intuitive to drivers' experience); In re Bridgestone/Firestone Inc., Tire Prods. Liab. Litig., 288 F.3d 1012 (7th Cir. 2002) (involving allegedly defective tires that had not yet failed); Yost v. General Motors Corp., 651 F.Supp. 656 (D.N.J. 1986) (involving an automatic transmission without a park-brake interlock device with no allegation of actual damages); Ziegelmann v. DaimlerChrysler Corp., 649 N.W.2d 556 (N. Dak. 2002) (involving the absence of a part-brake interlock without any allegation of actual damages). Here, Plaintiffs alleged actual Vti transmission failures resulting in actual damages. (*See, e.g.*, 1st Am. Compl. ¶¶ 33-34.) In fact, Plaintiffs described the proposed class as Saturn owners whose Vti transmission "experienced a failure." (1st Am. Compl. ¶ 63.) Plaintiffs have properly alleged actual damages.

E. PLAINTIFF STANLEY OZAROWSKI PROVIDED TO GM THE REASONABLE NOTICE REQUIRED BY UCC SECTION 1-607.

GM's technical argument that Plaintiff Stanley Ozarowski "does not plead that he provided the pre-suit 'notice of breach' required by 810 ILCS 5/1-607(3)" [sic], (Doc. No. 28 at 10), completely disregards explicit allegations in the Complaint. Under Illinois law, the buyer is not required to notify the seller that the buyer considers the deficiencies of a product to constitute a "breach" in order to fulfill its obligation under section 2-607(3)(a). Arcor, Inc. v. Textron, Inc., 960 F.2d 710, 715 (7th Cir. 1992). Further, the buyer is deemed to have met the notice

requirement when the seller has actual knowledge of the product's failure based on the seller's own observations. *Id.* Plaintiffs' Complaint explicitly alleges that Mr. Ozarowski complained to GM's agents at its Saturn dealerships about the problems with his transmission on numerous occasions. (1st Am. Compl. ¶¶ 56-57.) This was easily sufficient to satisfy the reasonable notice requirements of UCC Section 2-607(3).

III. *PLAINTIFFS HAVE PROPERLY PLEADED A CLAIM IN THE ALTERNATIVE FOR UNJUST ENRICHMENT.*

A party may plead in the alternative or state separate claims regardless of consistency. Fed.R.Civ.P 8(d). As an alternative to the other pleaded remedies, Plaintiffs asserted a claim for unjust enrichment. (1st Am. Compl., ¶¶ 105-113.) GM does not argue that Plaintiffs failed to allege the elements of unjust enrichment. Instead, GM contends that the express warranty provides an adequate remedy at law, thereby precluding a claim for unjust enrichment. (Doc. No. 23 at 23; Doc. No. 28 at 13-14.) This argument, however, contradicts GM's earlier assertion that the express warranty does not cover the defective Vti transmission. (Doc. No. 28 at 7-8.) Indeed, the express warranty does not even involve the same subject matter as Plaintiffs' unjust enrichment claim, because the express warranty is silent on the issue of GM's fraud.

GM's argument ignores the basis of Plaintiffs' unjust enrichment claim. Plaintiffs allege that GM was unjustly enriched, not because GM refuses to correct their defective Vti transmissions under the express warranty but, rather, because GM failed to disclose the material defect at the time of sale, when Plaintiffs would have chosen not purchase their vehicles. This is a distinction that renders inapplicable the primary case on which GM relies, Owen v. General Motors Corp., 2007 WL 172355 (W.D.Mo. 2007), in which the primary basis for the plaintiffs' unjust enrichment claim was that plaintiffs conferred a benefit on GM by paying for their own repairs to their defective wiper blades, rather than

requiring GM to pay for the repairs. That is not the benefit at issue in this case.

The court in Owen also determined that the fact that GM's "wiper assemblies were likely to break after the warranty period expired" was not a material fact that GM was obligated to disclose at the time of sale. According to the Owen court, "every manufacturer knows its products are likely to break at some point outside the warranty period. That is precisely why products are warranted only for finite periods. . . ." 2007 WL 172355 at *4. In significant contrast, this is not a case in which Plaintiffs complain simply that a relatively inexpensive part like a windshield wiper would wear out after the warranty expiration. Rather, Plaintiffs allege that GM knew the expensive Vti transmission – a component absolutely essential to the most fundamental purpose of a vehicle (i.e., movement) – was defective from Day One, was likely to fail multiple times both in and outside the warranty period, would create significant safety hazards, and would cost thousands of dollars to repair. As explained above, this certainly is the sort of information that a reasonable jury could easily determine to be material, and it is the withholding of this information at the time of sale that makes GM's enrichment unjust.

As explicitly permitted by Rule 8(d), Plaintiffs have pleaded a valid alternate claim for unjust enrichment. GM's motion to dismiss this claim should be denied.

///

///

///

///

///

///

///

CONCLUSION

For all of the foregoing reasons, GM's Motion to Dismiss should be denied in its entirety. To the extent that any portion of Plaintiffs' Complaint is deemed insufficient, then Plaintiffs respectfully request leave to replead, and Plaintiffs respectfully request an opportunity to conduct discovery regarding any such issues.

Dated: February 19, 2008

Respectfully submitted,

THE LAKIN LAW FIRM, P.C.

s/ Mark L. Brown
THE LAKIN LAW FIRM, P.C.
Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Tuesday, February 19, 2008 7:32 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Memorandum/Response in Opposition to Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Cutter, C on 2/19/2008 at 5:32 PM PST and filed on 2/19/2008

Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer: Kelly Castillo
Nichole Brown
Barbara Glisson
Brenda Alixis Digiandomenico
Stanley Ozarowski
Donna Santi
Valerie Evans
Document Number: 31

Docket Text:
MEMORANDUM/RESPONSE in OPPOSITION re [29] MOTION to DISMISS *FIRST AMENDED COMPLAINT [Rules 9(b), 12(b)(6), F.R.Civ.P.].* Attorney Cutter, C Brooks added. (Cutter, C)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PRO HAC VICE markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W Schmieder PRO HAC VICE , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/19/2008] [FileNumber=2130207-0] [48fd90ae366fd8afe939da63d6744f49e2e4055dfbec98f89157004d75cd88fe773 e75b7350fb4616d8a038fba83ddae5d5717fcac38a9306d6c23e9fff05f90]]

EXHIBIT J

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.
_____/

NO. CIV. 07-2142 WBS GGH

MEMORANDUM AND ORDER RE: MOTION TO AMEND AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

----oo0oo----

Plaintiffs Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi brought this matter seeking a class action lawsuit against defendant General Motors Corporation. Plaintiffs allege that defendant concealed design and manufacturing defects regarding the transmission installed in certain models of defendant's 2002 through 2005 line of Saturn vehicles. Presently

before the court is the parties' joint motion for preliminary approval of the class action settlement.

I. Factual and Procedural Background

Between 2002 and 2005, defendant manufactured, sold, and distributed 4-cylinder Saturn Vues and Saturn Ions ("Saturn vehicles") containing the Saturn Vti transmission. (Proposed Second Am. Compl. ("SAC") ¶ 18.)[1] "Unlike a conventional automatic transmission, which uses traditional gears to shift at a few fixed points," the Vti transmission is a "continuously variable" transmission that utilizes a belt and pulley system to shift between gears. (Id. at ¶¶ 14, 15.) The alleged defective design of the belt and pulley system purportedly makes the Vti

---

[1] In addition to their motion for preliminary approval of class action settlement, plaintiffs--with the consent of defendant--also move to file their SAC in light of the court's pending approval of settlement. On December 19, 2007, this court issued a Status (Pretrial Scheduling) Order that explicitly prohibited further amendments to the pleadings without leave of the court pursuant to Federal Rule of Civil Procedure 16(b). (Feb. 19, 2008 Status (Pretrial Scheduling) Order 2:2-5); see also Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992) ("Once the district court ha[s] filed a pretrial scheduling order pursuant to Federal Rule of Civil Procedure 16[,] which establishe[s] a timetable for amending pleadings[,] that rule's standards control[].").

Under Rule 16(b), a party seeking leave to amend must demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." Johnson, 975 F.2d at 609; see also id. ("If [the moving] party is not diligent, the inquiry should end."). Here, plaintiffs demonstrate the requisite diligence in satisfaction of Rule 16(b) insofar as they filed their motion immediately after reaching the settlement agreement and "in large part to conform the pleadings to the facts as revealed in subsequent discovery and investigation, along with the proposed settlement." (Pls.' Mem. in Supp. of Mot. to Amend 2:22-23); see also Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999) (noting that "good cause" exists where the moving party shows that he or she was diligent in seeking an amendment once the need became apparent). Accordingly, the court will grant plaintiffs' motion for leave to file their SAC, a proposal of which is now in possession of the court.

transmission exceptionally prone to premature failure. (Id. at ¶ 15.)

On October 10, 2007, three of the named plaintiffs--all owners of a Saturn vehicle with Vti transmission--filed a putative Class Action Complaint alleging (1) state statutory consumer fraud, (2) breach of express warranties, (3) breach of implied warranty of merchantability,[2] and (4) unjust enrichment.

After plaintiffs amended their initial Complaint as a matter of course on January 14, 2008, Fed. R. Civ. P. 15(a)(1), defendant filed a motion to dismiss plaintiffs' First Amended Complaint on February 4, 2008. (Docket Nos. 20, 27-29.) Before the court could hear this motion, however, the parties engaged in settlement discussions and early mediation that resulted in an agreement on the settlement terms. (Docket No. 48.) As a result, the parties now seek preliminary approval of their Stipulation of Settlement.

II. Discussion

The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless, where, as here, "parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both [1] the propriety of the certification and [2] the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

---

[2] On February 29, 2008, the parties stipulated to a voluntary dismissal of Count III. (Notice of Stipulation of Voluntary Dismissal of Count III 1:25-28.)

In conducting the first part of its inquiry, the court "must pay 'undiluted, even heightened, attention' to class certification requirements" because, unlike in a fully litigated class action suit, the court will not have future opportunities "to adjust the class, informed by the proceedings as they unfold." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); accord Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). The parties cannot "agree to certify a class that clearly leaves any one requirement unfulfilled," and consequently the court cannot blindly rely on the fact that the parties have stipulated that a class exists for purposes of settlement. Berry v. Baca, No. 01-02069, 2005 WL 1030248, at *7 (C.D. Cal. May 2, 2005); see also Amchem, 521 U.S. at 622 (observing that nowhere does Rule 23 say that certification is proper simply because the settlement appears fair). In conducting the second part of its inquiry, the "court must carefully consider 'whether a proposed settlement is fundamentally fair, adequate, and reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness . . . .'" Staton, 327 F.3d at 952 (quoting Hanlon, 150 F.3d at 1026); see also Fed. R. Civ. P. 23(e) (outlining class action settlement procedures).

Procedurally, the approval of a class action settlement takes place in two stages. "In the first stage of the approval process, 'the court preliminarily approve[s] the Settlement pending a fairness hearing, temporarily certifie[s] the Class . . . , and authorize[s] notice to be given to the Class.'" Alberto v. GMRI, Inc., No. 07-1895, 2008 WL 2561106, at *2 (E.D. Cal.

June 24, 2008) (citation omitted). In this Order, therefore, the court will only "determine[] whether a proposed class action settlement deserves preliminary approval" and lay the ground work for a future fairness hearing. Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004). At the fairness hearing, after notice is given to putative class members, the court will entertain any of their objections to (1) the treatment of this litigation as a class action and/or (2) the terms of the settlement. See Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989) (holding that prior to approving the dismissal or compromise of claims containing class allegations, district courts must, pursuant to Rule 23(e), hold a hearing to "inquire into the terms and circumstances of any dismissal or compromise to ensure that it is not collusive or prejudicial").[3] Following the fairness hearing, the court will make a final determination as to whether the parties should be allowed to settle the class action pursuant to the terms agreed upon. DIRECTV, Inc., 221 F.R.D. at 525.

A. Certification of the Class

A class action will only be certified if it meets the four prerequisites identified in Federal Rule of Civil Procedure 23(a) and additionally fits within one of the three subdivisions of Federal Rule of Civil Procedure 23(b). Although a district court has discretion in determining whether the moving party has

---

[3] As noted by this court in a previous Order, Diaz's assumption that a court could approve settlement without certifying a class appears to have been overruled by the United States Supreme Court in Amchem. Alberto, 2008 WL 2561106, at *2 n.2.

satisfied each Rule 23 requirement, Califano v. Yamasaki, 442 U.S. 682, 701 (1979); Montgomery v. Rumsfeld, 572 F.2d 250, 255 (9th Cir. 1978), the court must conduct a rigorous inquiry before certifying a class. Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 161 (1982); E. Tex. Motor Freight Sys. v. Rodriguez, 431 U.S. 395, 403-05 (1977).

1. Rule 23(a)

Rule 23(a) restricts class actions to cases where

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). These requirements are more commonly referred to as numerosity, commonality, typicality, and adequacy of representation, respectively. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

a. Numerosity

While courts have not established a precise threshold for determining numerosity, Gen. Tel. Co. v. E.E.O.C., 446 U.S. 318, 330 (1980), a class consisting of one thousand members "clearly satisfies the numerosity requirement." Sullivan v. Chase Inv. Servs., Inc., 79 F.R.D. 246, 257 (N.D. Cal. 1978). The SAC significantly increases the Settlement Class size, expanding the scope from putative members in only thirteen states to putative members in all fifty states.[4] (SAC ¶ 53.)

---

[4] The parties' Stipulation of Settlement defines the Settlement Class as "all persons who are residents of the United States and who as of the date of entry of the Preliminary

Plaintiffs maintain that defendant sold over 90,000 Saturn vehicles outfitted with Vti transmissions, suggesting that the actual class size could easily number in the tens of thousands.[5] (Id. at ¶ 64.) Plaintiffs thus assert that this, in addition to the geographical dispersion of putative members, makes joinder of all class members in a single action impracticable. (Id.)

When, as here, plaintiffs have not provided the court with any official documents or explicit calculations in support of their estimation regarding numerosity,[6] a court may rely on common sense assumptions to support findings of numerosity. Manual for Complex Litigation (Fourth) § 23.22(3) (2008); see Sherman v. Griepentrog, 775 F. Supp. 1383, 1389 (D. Nev. 1991) (finding that a court may draw reasonable inferences of class

---

Approval Order . . . own or have owned a" "2002 through 2005 model year Saturn Vue equipped with Vti transmission [or a] 2003 through 2004 model year Saturn ION equipped with Vti transmission." (Stipulation of Settlement 4:24-26, 5:4-6.) The Stipulation of Settlement specifically excludes "(i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles from [defendant]," "or any entity related or affiliated with [defendant], for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has instituted an action for damages for property damage or personal injury against [defendant] in connection with a Vti transmission." (Id. at 4:27-5:3.)

[5] In their memorandum plaintiffs' counsel asserts that it was contacted by more than 250 Saturn owners who reported similar failures relating to their Vti transmission. (Pls.' Mem. in Supp. of Mot. for Preliminary Approval of Class Action Settlement 3:23-25.) At oral argument, plaintiffs' counsel indicated that the total had reached about 350.

[6] Asserting that the bulk of discovery conducted involved confidential documents and/or testimony subject to a Protective Order, plaintiffs have eschewed filing any actual products of discovery; instead, they only provide the court with a sealed "addendum" that generally repeats the above information related to numerosity. (Docket No. 51.)

size from facts before it); cf. Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975) (satisfying burden of Rule 23(a) requirements can be met by providing court with sufficient basis for forming a "reasonable judgment" on each requirement). Even if plaintiffs have significantly overestimated the class size, it is reasonable to assume that the actual size will surpass previous Ninth Circuit thresholds. See, e.g., Gay v. Waiter's & Dairy Lunchmen's Union, 549 F.2d 1330 (9th Cir. 1997) (finding numerosity requirement to be met with approximately 110 potential class members); Leyva v. Buley, 125 F.R.D. 512, 515 (E.D. Wash. 1989) (allowing certification of a fifty-member class).

b. Commonality

Rule 23(a) also requires that "questions of law or fact [be] common to the class." Fed. R. Civ. P. 23(a)(2). Because "[t]he Ninth Circuit construes commonality liberally," "it is not necessary that all questions of law and fact be common." West, 2006 WL 1652598, at *3 (citing Hanlon, 150 F.3d at 1019). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

Plaintiffs identify several questions of law and fact that would have been common to all class members had their respective cases gone to trial, including whether: (1) Saturn vehicles containing the Vti transmission are defective; (2) defendant knew of the defect and its potentially dangerous nature; (3) defendant misrepresented the characteristics of Vti-equipped Saturn vehicles; (4) defendant made promises regarding

the Vti transmissions that created an express warranty between buyer and seller; (5) the Vti-equipped vehicles conformed to defendant's express warranties; (6) the Vti-equipped vehicles are merchantable; (7) the Vti-equipped vehicles have the value represented by defendant; (8) defendant's active concealment of the Vti transmission's defective nature constituted fraud or misrepresentation; and (9) plaintiffs entitlement, if any, to compensatory damages. (SAC ¶ 66.)

The court agrees that the potential claims of putative class members would arise from a common set of legal and factual conditions similar to that of named plaintiffs. See Dukes v.Wal-Mart, Inc., 509 F.3d 1168, 1177-78 (9th Cir. 2007) (stating that the standard in Rule 23(a)(2) is "qualitative rather than quantitative--one significant issue common to the class may be sufficient to warrant certification"). Because it therefore appears that the same alleged conduct of defendant would "form[] the basis of each of the plaintiff's claims," Acosta v. Equifax Info. Servs., L.L.C., 243 F.R.D. 377, 384 (C.D. Cal. 2007), class relief based on commonality is appropriate. See Califano v. Yamasaki, 442 U.S. 682, 701 (1979) (holding that commonality issues of the class "turn on questions of law applicable in the same manner to each member of the class").

c. Typicality

Rule 23(a) further requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality requires that named plaintiffs have claims "reasonably coextensive with those of absent class members," but their claims

do not have to be "substantially identical." Hanlon, 150 F.3d at 1020. The test for typicality "'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

The initial circumstances underlying the named plaintiffs' claims are substantively identical to the class members' claims because the named plaintiffs and class members all purchased Saturn vehicles with Vti transmissions. Even amongst themselves, however, disparity exists between the damages the named plaintiffs allege. Similar to the differences in damages the named plaintiffs seek, their damages also vary from the class members' damages because not all class members experienced problems with their transmissions and, of the class members who did, not all incurred the same amount of damages. Nonetheless, the source of the named plaintiffs' claims is typical of the source of the class members' claims and the settlement's provision for an individualized determination of damages cures the lack of typicality with respect to damages. See Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1185 (9th Cir. 2007) ("Some degree of individuality is to be expected in all cases, but that specificity does not necessarily defeat typicality.").

d. Adequacy of Representation

Finally, Rule 23(a) requires "representative parties [who] will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To resolve the question of

legal adequacy, the court must answer two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) have the named plaintiffs and their counsel vigorously prosecuted the action on behalf of the class? Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). This adequacy inquiry considers a number of factors, including "the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." Brown v. Ticor Title Ins., 982 F.2d 386, 390 (9th Cir. 1992).

The examination of potential conflicts of interest in settlement agreements "has long been an important prerequisite to class certification. That inquiry is especially critical when [] a class settlement is tendered along with a motion for class certification." Hanlon, 150 F.3d at 1020. Here, the interests of plaintiffs and their course of legal redress are not ostensibly at variance with those of putative class members. Although the definition of the settlement class encompasses a large number of members, the class itself is narrowly defined: all United States residents who, as of the date of entry of this Order, own or have owned a 2002 through 2005 model year Saturn Vue equipped with Vti transmission or a 2003 through 2004 model year Saturn ION equipped with Vti transmission. This definition effectively minimizes the probability that the certification procedure will overlook legitimate yet dissimilar claims of class members; rather, "the potential for conflicting interests will remain low while the likelihood of shared interests remains

high." Alberto v. GMRI, Inc., No. 07-1895, 2008 WL 2561106, at *5 (E.D. Cal. June 24, 2008).

The second prong of the adequacy inquiry examines the vigor with which named plaintiffs and their counsel have pursued the common claims. "Although there are no fixed standards by which 'vigor' can be assayed, considerations include competency of counsel and, in the context of a settlement-only class, an assessment of the rationale for not pursuing further litigation." Hanlon, 150 F.3d at 1021. Based on its representations, plaintiffs' counsel appears to have approached this action with the requisite competency, as it purportedly conducted pre-litigation investigation, consulted with putative class members and industry experts, and negotiated the settlement's mileage and duration limitations. (Pls.' Mem. in Supp. of Mot. for Preliminary Approval of Class Action Settlement 3:13-18.)

Probing plaintiffs and their counsel's rationale for not pursuing further litigation, however, is inherently more complex. "District courts must be skeptical of some settlement agreements put before them because they are presented with a 'bargain proffered for . . . approval without the benefit of an adversarial investigation.'" Hanlon, 150 F.3d at 1022 (quoting Amchem, 521 U.S. at 620). This logic is certainly applicable here, because little documentation has been offered to confirm that the settlement terms are adequate. The fact that the parties reached an agreement before an experienced mediator, while commendable, does not preclude a detailed review of the settlement terms. Settlement adequacy should be scrutinized when there is evidence of fee-driven settlements, exorbitant service

payments, or collusion between the parties. Hanlon, 150 F.3d at 1022. An examination of such concerns is addressed below in the preliminary fairness assessment. See infra, Section II(B)(2).

The court reiterates the need for documentation illuminating plaintiffs' decision not to proceed with the litigation. Nonetheless, pending the introduction at the final fairness hearing of further evidence in support of counsel's findings, plaintiffs' proffered "adequacy of representation" showing preliminarily demonstrates that plaintiffs can sufficiently represent the class.

2. Rule 23(b)

An action that meets all the prerequisites of Rule 23(a) may be maintained as a class action only if it also meets the requirements of one of the three subdivisions of Rule 23(b). Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 163 (1974). In this case, plaintiffs seek certification under Rule 23(b)(3), "which is appropriate 'whenever the actual interests of the parties can be served best by settling their differences in a single action.'" Hanlon, 150 F.3d at 1022 (citation omitted). A class action may be maintained under Rule 23(b)(3) if (1) "the court finds that questions of law or fact common to class members predominate over any questions affecting only individual members" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a. Predominance

Because Rule 23(a)(3) already considers commonality, the focus of the Rule 23(b)(3) predominance inquiry is on the

balance between individual and common issues. Hanlon, 150 F.3d at 1022; see also Amchem, 521 U.S. at 623 ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."). The parties' Stipulation of Settlement sufficiently demonstrates that "[a] common nucleus of facts and potential legal remedies dominates this litigation." Hanlon, 150 F.3d at 1022. Where the aforementioned common questions "present a significant aspect of the case and . . . can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Hanlon, 150 F.3d at 1022.

The existence of the individualized assessment of damages in this action does not preclude a finding of predominance. See, e.g., West v. Circle K Stores, Inc., No. 04-0438, 2006 WL 1652598, at *7-8 (E.D. Cal. June 13, 2006) ("[I]ndividual issues regarding damages will not, by themselves, defeat certification under Rule 23(b)(3)." (citing Blackie v. Barrack, 524 F.2d 891, 905-09 (9th Cir. 1975))); see also Alberto v. GMRI, Inc., No. 07-1895, 2008 WL 2561106, at *7 (E.D. Cal. June 24, 2008) ("[P]redominance inquiry satisfied despite the fact that 'individual differences in accrual caps, accrual rates, and amount of vacation time accrued' would result in individualized damages.") (citation omitted).

b. Superiority

In addition to the predominance requirement, Rule 23(b)(3) provides a non-exhaustive list of matters pertinent to the court's determination that the class action device is

superior to other methods of adjudication. Fed. R. Civ. P. 23(b)(3)(A)-(D). The factors relevant to this case include "the interest of members of the class in individually controlling the prosecution or defense of separate actions" and "the extent and nature of any litigation concerning the controversy already commenced by or against members of the class." Id.; Amchem, 521 U.S. at 620. At this time, the court is unaware of any concurrent litigation and does not have reason to believe that other individuals have an interest in controlling this action, thus the class action device appears to be the superior method for adjudicating this controversy.

B. Rule 23(e): Fairness, Adequacy, and Reasonableness of Proposed Settlement

Having determined that class treatment appears to be warranted,[7] the court must now address whether the terms of the parties' Settlement Agreement appear fair, adequate, and

---

[7] The court notes that it has conducted an analysis of the class certification question at this stage to determine if all of the effort that will necessarily go into preparing for the fairness hearing is appropriate. This initial determination that class certification is warranted is not binding on the court, and the parties are discouraged from changing their positions on the terms of the settlement in reliance on this Order. The court is not required to make a final determination that class treatment is appropriate until the final settlement approval, and it therefore does not herein make that final determination. See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 797 (3d Cir. 1995) (holding that while the trustworthiness of the negotiation process used to approve the settlement can be relied on to justify provisional certification of a settlement class, "final settlement approval depends on the finding that the class met all the requisites of Rule 23"). Moreover, because the analysis of the Rule 23(b) requirements depends in part on the terms of the settlement and the superiority component, the parties cannot assume that the court's instant class certification analysis would necessarily be the same should circumstances change.

reasonable. In conducting this analysis, the court must balance several factors including

> the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026. But see Molski v. Gleich, 318 F.3d 937, 953-54 (9th Cir. 2003) (noting that a district court need only consider the facts designed to protect absentees). "Given that some of these factors cannot be fully assessed until the court conducts its fairness hearing, 'a full fairness analysis is unnecessary at this stage.'" Alberto v. GMRI, Inc., No. 07-1895, 2008 WL 2561106, at *8 (E.D. Cal. June 24, 2008) (citation omitted). At this stage, the court is "[e]ssentially . . . concerned only with 'whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys . . . .'" Id. at *10 (citation omitted).

1. Terms of the Settlement Agreement

Definitions

> (1) **The Settlement Class:** Class Members include all non-excluded residents of the United States who, as of the date of the Preliminary Approval Order own or have owned a Class Vehicle. (Stipulation of Settlement 4:24-26.) Defendant or its designee will determine if the Class Member is eligible for any of the relief available under the Agreement. Unresolved disputes regarding eligibility will be turned over to an impartial mediator who will render a final, non-appealable decision. (Id. at 11:4-10.)

(2) **The Class Vehicles:** "Class Vehicles" include 2002 through 2005 model year Saturn VUEs equipped with Vti transmissions and 2003 through 2004 model year Saturn IONs equipped with Vti transmissions. (Id. at 5:4-6.)

(3) **Judgment:** "Judgment" means the judgment to be entered by the court finally approving this Settlement Agreement and dismissing this action with prejudice. (Id. at 5:7-10.)

(4) **Effective Date:** "Effective Date" means ten (10) business days after the later of (a) the date upon which the time for seeking appellate review of the Judgment (by appeal or otherwise) shall have expired; or (b) the date upon which the time for seeking appellate review of any appellate decision affirming the Judgment (by appeal or otherwise) shall have expired and all appellate challenges to the Judgment shall have been dismissed with prejudice without any person having any further right to seek appellate review thereof (by appeal or otherwise). (Id. at 5:14-20.)

(5) **Class Notice:** "Class Notice" means the notice provided to Class Members after issuance of the Preliminary Approval Order. (Id. at 5:21-22.)

(6) **Final Notice:** "Final Notice" means the notice that will be provided to Class Members after the Effective Date. (Id. at 5:23-24.)

(7) **Claim Form:** "Claim Form" means the forms to be sent to Class Members who purchased their Class Vehicles, new or used, along with the Final Notice. (Id. at 5:25-27.)

(8) **Authorized Saturn Retailer:** "Authorized Saturn Retailer" means any Saturn Retailer in the United States that is a signatory to an existing and effective Saturn Retailer Agreement. (Id. at 6:10-11.)

(9) **Released Claims:** "Released Claims" means any and all past, present, and future claims, demands, causes of actions or liabilities based on or related in any way to Vti transmissions in Class Vehicles or (b) the factual allegations and legal claims that were made or could have been made in the Action. Released Claims do not include any claim, demand or cause of action against defendant for property damage or personal injury in connection with Vti transmission. (Id. at 6:12-17.)

(10) **Unknown Claims:** "Unknown Claims" means any Released Claim that any plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release provided for herein, including those claims which would have affected his, her or its settlement and release. (Id. at 6:21-26.)

Class Relief

(1) **Generally:** The relief available to Class Members under the terms of the parties' Stipulation of Settlement is reimbursement for certain out-of-pocket expenses and losses relating to the Vti transmissions of Class Vehicles. (Id. at 7:9-11.) Reimbursable Expenses include (a) costs to inspect, repair or replace a malfunctioning Vti transmission, (b) costs to rent a replacement vehicle or secure other transportation while the malfunctioning Vti transmission was or is being inspected, repaired, or replaced, (c) costs to tow or transport the Class Vehicle to the place where the malfunctioning Vti transmission was or is being inspected, repaired, or replaced, and (d) documented expenses relating to the trade-in of a Class Vehicle with Vti transmission failure at time of trade-in as further limited and defined below ("trade-in costs"). (Id. at 7:11-18.) To be reimbursable, such costs must be incurred by the Class Member within 125,000 miles after the original retail-sale or lease of the Class Vehicle or within the time limitations set forth in Chart A below, whichever occurs first. (Id. at 7:18-22.) The relief provided shall not be assigned. (Id. at 7:22-26.)

(2) **Past Reimbursable Expenses:** Defendant will reimburse Class Members who incur Reimbursable Expenses for repair, rental, and towing costs relating to a Vti transmission on or before the date of Final Judgment ("Past Reimbursable Expenses") based on the percentages shown in Chart B below. (Id. at 8:2-5.) To obtain reimbursement, the Class Member must submit a Claim Form along with the requisite documentation of the Reimbursable Expenses incurred by the Class Member within one (1) year after the Effective Date. (Id. at 8:5-14.)

(3) **Past Trade-In With Vti Transmission Malfunction Reimbursement:** To claim reimbursement for "trade-in expense," the Class Member must submit a Claim Form and provide the requisite contemporaneous dealer documentation. (Id. at 8:16-21.) The reimbursement shall equal the repair estimate multiplied by the appropriate percentage from Chart B based on the Class Vehicle's mileage and the Class Member being either a new or used Vehicle purchaser. (Id. at 8:21-23.) Class Members may seek reimbursement of trade-in losses only upon proof that the Class Vehicle was traded-in before the date Class Notice was mailed to potential Class Members. (Id. at 8:23-25.) All claims for reimbursement of trade-in expense must be submitted within one (1) year after the Effective Date. (Id. at 8:23-9:2.)

(4) **Future Reimbursable Expenses:** Defendant will reimburse Class Members who incur an expense relating to a Vti transmission after the date of Final Judgment (except trade-in expense) ("Future Reimbursable Expenses") based on the percentages shown in Chart B below. (Id. at 9:4-6.) To obtain reimbursement, the Class Member must submit a Claim

Form along with the requisite documentation of the Reimbursable Expenses incurred by the Class Member. (Id. at 9:6-19.)

CHART A

Model Year Date Before Which Expense is Reimbursable

2002	January 1, 2010
2003	January 1, 2011
2004	January 1, 2012
2005	January 1, 2012

(Id. at 9:20-26.)

CHART B

Vehicle Mileage	Reimbursement (New)	Reimbursement (Used)
100,000 or less	100 percent	75 percent
100,101-125,000	75 percent	30 percent

(Id. at 10:1-5.)

Notification

Defendant, in addition to all other relief provided herein, shall pay all costs of Class Notice and claims administration, which payments shall not diminish any relief provided to Class Members. (Id. at 10:19-21.) Defendant, subject to the terms of the Preliminary Approval Order, shall use its best efforts to direct or cause to be directed first-class mail notice to Class Members. (Id. at 10:21-25.) Defendant also agrees to provide appropriate notification to authorized Saturn Retailers. (Id. at 10:25-26.)

Requests for Exclusion

Any putative Class Member who wishes to be excluded from the Class must deliver a proper written request for exclusion to Class Counsel within the stipulated time-frame. (Id. at 13:27-14:1.) Any putative Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders and judgments in the Action. (Id. at 14:5-7.)

Objections to the Settlement

Any Class Member who has not submitted a timely written request for exclusion and who wishes to object to the Agreement, the proposed settlement, or to the request for Attorneys' Fees and Expenses, must serve a proper written objection within the stipulated time-frame. (Id. at 14:19-22.)

2. Preliminary Determination of Adequacy

Although "assessing the fairness, adequacy and reasonableness of the substantive terms of a settlement agreement can be challenging," Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003), the court is assisted in its inquiry where, as here, "the stipulation and settlement appear to be, for the most part, the result of vigorous, arms-length bargaining." Alberto, 2008 WL 2561106, at *10.

Before addressing the primary concerns at this stage of the inquiry--"attorneys' fees and the distribution of relief"--the court notes its concern with the administration of the settlement agreement. Staton, 327 F.3d at 960. While most settlement agreements provide for an equal, or easily definable, division of a lump sum between the class members, the parties' settlement contemplates an individualized assessment of damages for each member. For obvious reasons, administration of such a settlement will require more time and resources than a traditional settlement, thus greater consideration about how the settlement will be administered will provide the court with greater confidence as to its fairness and adequacy. The court also lacks confidence that all of the class members will have retained the requisite receipts and estimates described at oral argument, which raises concerns as to the reasonableness of a blanket requirement for receipts and estimates.

a. Attorneys' Fees

For a settlement to be fair and adequate, "a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement." Id. at 963.

The district court has discretion to use either the percentage-of-the-fund method[8] or the lodestar/multiplier method[9] in calculating fee awards in common fund cases. In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1295 (9th Cir. 1994). Because "no presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other," the choice between percentage calculation and lodestar depends upon the circumstances of the case. Id. at 1295, 1296 (citing Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)). Irrespective of the chosen method, "the district court should be guided by the fundamental principle that fee awards out of common funds be 'reasonable under the circumstances.'" Id. (quoting Florida v. Dunne, 915 F.2d 542, 545 (9th Cir. 1990)).

Plaintiffs' counsel requests an attorneys' fee award in the amount of $4,425,000.00, (Pls.' Mem. in Supp. of Mot. for Preliminary Approval of Class Action Settlement 16:22), and insists that this amount is reasonable because it constitutes less than five percent of the estimated settlement amount--i.e., a number significantly below the Ninth Circuit's twenty-five percent benchmark for attorneys' fees in common fund cases. See

---

[8] Under the percentage-of-the-fund method, the court calculates the fee award by designating a percentage of the total common fund. Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

[9] Under the lodestar method, the court calculates the fee award by multiplying the number of hours reasonably spent by a reasonable hour rate and then enhancing that figure, if necessary, to account for the risks associated with the representation. Paul, Johson, Alston & Hunt v. Graulty, 886 F.2d 268, 272 (9th Cir. 1989).

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."). Nonetheless, the Ninth Circuit has also stated that "[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases. Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002); see also In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d at 1295-96 (holding that, in passing on post-settlement fee applications, "courts cannot rationally apply any particular percentage--whether 13.6 percent, 25 percent or any other number--in the abstract, without reference to all the circumstances of the case").

While the instant record shows no evidence of bribery or collusion in reference to the requested attorneys' fees, it is nonetheless devoid of any direct support for plaintiffs' counsel's requested fee amount. Specifically, this action is less than a year old. There has not been a single hearing in the matter, and the only motions filed--defendant's two motions to dismiss--were mooted by the plaintiffs' decision to amend its original Complaint as a matter of course and the parties' stipulated continuance pending mediation, respectively. The parties also fail to proffer a reliable estimate as to the final class size, and the nature of the relief being granted to the class makes it difficult to predict the final amount of the class

award.[10] Thus, while the parties estimate that $4,425,000.00 is less than five percent of the value of the estimated class relief, this percentage remains entirely speculative.

Other than filing three complaints, one opposition, and the instant motion--as well as engaging in limited discovery and the subsequent mediation--any circumstances necessitating a $4,425,000.00 fee award for plaintiff's counsel are not readily apparent to the court. Compare Fischel v. Equitable Life Assur. Soc'y of the U.S., 307 F.3d 997, 1007 (9th Cir. 2002) ("The fact that the case was settled early in the litigation supports the district court's ruling [not to award class counsel's requested fee award request because] the percentage-of-the-fund approach might very well have been a 'windfall.'"); with Vizcaino, 290 F.3d at 1050 (upholding percentage of the fund fee award where class counsel submitted evidence showing that they "achieved excellent results" in a "extremely risky" matter, their "performance generated benefits beyond the cash settlement fund," and their representation of the class "extended over eleven years, entailed hundreds of thousands of dollars of expense, and required counsel to forgo significant other work, resulting in a

---

[10] Outside of the seven named plaintiffs, none of the class relief is currently subject to calculation. Unlike most "percentage of the fund" cases, the instant "fund" is not a predetermined award amount from which the parties can readily articulate a precise attorneys' fee percentage. Rather, defendant must wait at least until the putative Class Members' responses to find out whether they purchased a new or used Saturn, whether they will benefit directly from the extended warranty provisions, and whether their vehicle's Vti transmission failed (or will fail) within the mileage and time limits as delineated in the parties' Stipulation of Settlement. Thus, only years after this settlement is approved will the parties have the capability to denote an specific class relief amount and, inter alia, an accurate "percentage of the fund" fee award.

decline in the firm's annual income"); see also Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990) (affirming percentage of the fund fee award where "the litigation lasted more than 13 years, obtained substantial success, and involved complicated legal and factual issues"); Santos v. Camacho, No. 04-0006, 2008 WL 1699448, at *34 (D. Guam Apr. 10, 2008) (holding that, given "the minimal amount of discovery conducted" and the lack of "any pre-trial or trial proceedings," "[i]t seems quite clear that the requested 10% of the common fund would be unreasonable").

Where, as here, plaintiffs' counsel cannot provide sufficient documentation in support of its fee and the circumstances "indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors," the "benchmark percentage should be adjusted, or replaced by a lodestar calculation." Six Mexican Workers, 904 F.2d at 1311. "At the very least, a court should employ the lodestar method as a cross-check on the percentage method in order to ensure a fair and reasonable result." Alberto v. GMRI, Inc., No. 07-1895, 2008 WL 2561106, at *13 (E.D. Cal. June 24, 2008) (citing In re Immunex Sec. Litig., 864 F. Supp. 142, 144 (W.D. Wa. 1994)); see also Santos, 2008 WL 1699448, at *34 ("[A]fter doing a lodestar cross-check with the percentage requested, this request of 10% seems far less reasonable.").

Because significant questions remain regarding the fair and reasonable allocation of attorneys' fees, the court will decline plaintiff's invitation to employ only the percentage-of-

the-fund method and will instead exercise its discretion to calculate and/or cross-check the requested fee award via the lodestar method. Recognizing that plaintiffs' counsel has already indicated that it intends to "prepare and file a memorandum in support of the attorneys' fee request prior to the final approval hearing," (Pls.' Mem. in Supp. of Mot. for Preliminary Approval of Class Action Settlement 17:5-6), the court will instruct plaintiffs' counsel to include a thorough petition detailing the hours reasonably spent representing plaintiffs in this action and the justification for any enhancement due to risks associated with its representation.

b. Distribution of Award to Named Class Members

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." Staton, 327 F.3d at 977. The district court, however, must "evaluate their awards individually" to detect "excessive payments to named class members" that may indicate "the agreement was reached through fraud or collusion." Id. at 975. To assess whether an incentive payment is excessive, district courts balance "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." Id.

The proposed Settlement Agreement provides that each named plaintiff shall receive an incentive payment of $2,500 for his or her role as class representative. (Pls.' Mem. in Supp. of Mot. for Preliminary Approval of Class Action Settlement 16:13.) Courts have generally found that incentive payments of up to $5,000 are reasonable. See, e.g., In re Mego Fin. Corp. Sec.

Litig., 213 F.3d 454, 463 (9th Cir. 2000) (approving incentive awards of $5,000 each to the two class representatives of 5,400 potential class members in a settlement of $ 1.725 million); In re SmithKline Beckman Corp. Sec. Litig., 751 F. Supp. 525, 535 (E.D. Pa. 1990) (approving incentive awards of $5,000 for one named representative of each of the nine plaintiff classes involving more than 22,000 claimants in a settlement of $22 million). As noted above, the size of the Class and the amount of the proposed relief remain uncertain; however, given the general scope of proposed settlement, the court is confident that the $2,500 incentive award for each named plaintiff will not amount to an excessive percentage of the ultimate award.[11] See In re Mego Fin. Corp., 213 F.3d at 463 (approving $5,000 incentive payments to two named plaintiffs as such award did not exceed 0.56% of total settlement).

While portions of the parties' proposed settlement agreement admittedly suffer from the aforementioned shortcomings, the court trusts that the deficiencies can be cured prior to the final fairness hearing in order to ensure a fair, adequate, and

---

[11] Plaintiffs' counsel shall, however, be prepared to inform the court as to "the services [that each named plaintiff] provided and the risks they incurred during the course of the class action litigation," as such awards are only "justified when the class representatives expend considerable time and effort on the case, especially by advising counsel, or when the representatives risk retaliation as a result of their participation." Ingram v. The Coca-Cola Co., 200 F.R.D. 685, 694 (N.D. Ga. 2001); see also Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving an incentive payment of 0.17% of total settlement to the named plaintiff because he had "spent hundreds of hours with his attorneys and provided them with an abundance of information"); In re Cont'l Ill. Sec. Litig., 962 F.2d 566, 571-72 (7th Cir. 1992) (upholding a district court's rejection of a proposed $10,000 award to a named plaintiff "for his admittedly modest services" in a settlement of $45 million).

reasonable settlement. Accordingly, because the court preliminarily finds that the Settlement Class meets the requisite certification standards and the terms of the parties' Settlement Agreement are acceptable pending the fairness hearing, the Stipulation for Settlement will be granted.

IT IS THEREFORE ORDERED that (1) plaintiffs motion for leave to amend their Complaint be, and the same hereby is GRANTED and (2) the parties' joint motion for preliminary approval of settlement be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that:

(1) the following class be provisionally certified for the purpose of Settlement in accordance with the terms of the Stipulation for Settlement: all non-excluded residents of the United States who, as of the date of the Preliminary Approval Order, own or have owned a Class Vehicle;

(2) if the Stipulation for Settlement does not receive the court's final approval, should final approval be reversed on appeal, or should the stipulation otherwise fail to become effective for any reason (including any party's exercise of a right to terminate under the Stipulation for Settlement), the court's preliminary grant of certification of the class shall be vacated and become null and void without further action or order of the court;

(3) the Stipulation for Settlement--and the Settlement provided therein--are preliminarily approved as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23, subject to final consideration at the fairness hearing provided for below;

(4) for purposes of the Stipulation for Settlement and carrying out the terms of the settlement only:

a. plaintiffs Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi are appointed as the representatives of the Settlement Class;

b. The Lakin Law Firm, P.C. and Kershaw Cutter & Ratinoff, L.L.P. are appointed as Class Counsel for the Settlment Class and shall be responsible for the acts and activities necessary or appropriate to present this Stipulation for Settlement and the proposed Settlement to the court for approval and, if the Settlement is finally approved, to implement the Settlement in accordance with the terms of the Stipulation for Settlement and orders of the court;

(5) defendant General Motors Corporation is hereby approved and appointed as the Settlement Administrator to carry out the duties of the Claims Administrator set forth in the Stipulation for Settlement;

(6) the form and content of (a) the Notice of Settlement of Class Action and (b) the Request for Exclusion from Settlement (Notice of Proposed Class Action Settlement Ex. 1) is approved;

(7) the form and content of the Class Claim Forms (Notice of Proposed Class Action Settlement Exs. 6, 7) is approved;

(8) a hearing (the "Final Fairness Hearing") shall be held before this court on February 17, 2009 at 2:00 p.m. in Courtroom 5 to determine whether the proposed settlement, on the

terms and conditions set forth in the stipulation, is fair, reasonable, adequate, and should be approved by the court; to determine whether a judgment as provided in the Stipulation for Settlement should be entered finally approving the Settlement; and to consider Class Counsel's applications for attorneys' fees, reimbursement of costs, and service payments. The court may continue the Final Fairness Hearing without further notice to the members of the Settlement Class;

(9) within thirty-one (31) days prior to the Final Fairness Hearing, Class Counsel shall serve and file with the court the Settlement Administrator's declaration setting forth the services rendered, proof of mailing, and list of all Class Members who have time opted out of the Settlement;

(10) within thirty-one (31) days prior to the Final Fairness Hearing, Class Counsel shall file and serve all papers in support of the Settlement, request for enhancement for the class representatives, and any request for attorneys' fees and costs;

(11) any person who has standing to object to the terms of the proposed Settlement may appear at the Final Fairness Hearing in person or by counsel, if an appearance is filed as hereinafter provided, and be heard to the extent allowed by the court in support of, or in opposition to, (1) the fairness, reasonableness, and adequacy of the proposed Settlement; (2) the requested award of attorneys' fees, reimbursement of costs, and incentive payment to class representative; and/or (3) the propriety of class certification. To be heard in opposition, a person must, within forty-five (45) calendar days after notice is

mailed, (a) serve by hand or through the mails written notice of his, her, or its intention to appear, stating the name and case number of this litigation and each objection and the basis therefore, together with copies of any papers and briefs, upon class counsel and upon counsel for defendant, and (b) file said appearance, objections, papers, and briefs with the court, together with proof of service of all such documents upon counsel for the parties. Responses to any such objections and Class Counsel's application for attorneys' fees, reimbursement of costs, and the class representatives' incentive payment shall be served by hand or through the mails on the objectors (or on the objector's counsel if any there be) and filed with the Clerk of this court no later than fourteen (14) calendar days before the Final Fairness Hearing. Objectors may file optional replies no later than one week before the Final Fairness Hearing in the same manner described above. Any Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed settlement as memorialized in the Stipulation for Settlement, the judgment entered, and the award of attorneys' fees, expenses, and the incentive payment unless otherwise ordered by the court;

(12) pending final determination of whether the Settlement should be ultimately approved, the court preliminarily enjoins all Class Members (unless and until the Class Member has submitted a timely and valid Request for Exclusion) from filing

or prosecuting any claims, suits, or administrative proceedings regarding claims to be released by the Settlement.

DATED: September 5, 2008

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

Tana Burton

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Monday, September 08, 2008 6:18 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 9/8/2008 at 4:17 PM PDT and filed on 9/8/2008
Case Name: Castillo et al v. General Motors Corporation
Case Number: 2:07-cv-2142
Filer:
Document Number: 54

Docket Text:
MEMORANDUM AND ORDER signed by Judge William B. Shubb on 9/5/08 ORDERING that pltfs [47] motion for leave to amend their cmplt is GRANTED; and the parties' [48] joint motion for preliminary approval of settlement is GRANTED. (Yin, K)

2:07-cv-2142 Electronically filed documents will be served electronically to:

Mark L. Brown-PHV markb@lakinlaw.com, shawnb@lakinlaw.com

C Brooks Cutter bcutter@kcrlegal.com, kgradwohl@kcrlegal.com, landerson@kcrlegal.com, lkelly@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Robert W. Schmieder PHV , II robs@lakinlaw.com, mattc@lakinlaw.com, paulas@lakinlaw.com, tanab@lakinlaw.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=9/8/2008] [FileNumber=2532570-0]
[500382ddf51f5a8cf86ff3aced78c9db442d5a384ff86dc4c64f8fba978f066baf3b
2a05b91c280bb95ad99ea2f5f06b85aff7ecc1f11e56369f967043b84174]]

EXHIBIT K

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS NOTICE IS BEING SENT TO YOU BECAUSE
YOU MAY CURRENTLY OWN OR MAY PREVIOUSLY HAVE OWNED

A 2002, 2003, 2004 OR 2005 MODEL YEAR SATURN VUE

OR

A 2003 OR 2004 MODEL YEAR SATURN ION

EQUIPPED WITH A CONTINUOUSLY VARIABLE VTi TRANSMISSION

THIS NOTICE MAY AFFECT YOUR RIGHTS,

SO PLEASE READ IT CAREFULLY

THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION AND, IF YOU ARE A CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS REGARDING THE PROPOSED SETTLEMENT.

In the action styled Kelly Castillo, et al. v. General Motors Corporation, United States District Court for the Eastern District of California, plaintiffs and defendant General Motors Corporation ("GM") have negotiated the following proposed settlement which they believe will, if approved by the Court, benefit Class Members. The following is only a summary of the proposed settlement terms and background. Complete copies of the proposed settlement documents are on file with the Court.

1. WHO IS IN THE CLASS

The Class consists of all persons who are residents of the United States and who purchased a new or used 2002, 2003, 2004 or 2005 model year Saturn VUE or 2003 or 2004 model year Saturn ION equipped with a continuously variable VTi transmission ("Vehicles"). Excluded from the Class are (i) any person, firm, trust, corporation, or other entity that purchased Class Vehicles for resale or fleet purposes (including without limitation any authorized Saturn Retailer) and (ii) any person who has filed a lawsuit against GM seeking damages for alleged personal injury or property damage in connection with a VTi transmission.

2. DESCRIPTION OF THE LAWSUIT

In October 2007, Plaintiffs filed this lawsuit styled *Kelly Castillo et al.*, v. *General Motors Corporation*, Case No. 2:07-CV-02142 WBS-GGH, in the United States District Court for the Eastern District of California (the "Action"). Plaintiffs on their own behalf and on behalf of the proposed Class allege that the continuously variable VTi transmissions of Class Vehicles are prone to premature failure. They claim that GM by marketing and selling the Class Vehicles equipped with VTi transmissions violated state consumer protection statutes, breached express and implied warranties and was unjustly enriched. GM denies Plaintiffs' legal allegations and contends that it is fully satisfying its warranty obligations to Vehicle owners after it voluntarily extended warranty repair coverage for the VTi transmission in March of 2004 from three years or 36,000 miles, whichever comes first, to five years or 75,000 miles, whichever comes first. GM nonetheless believes that it is appropriate in the interests of customer satisfaction to provide the additional benefits to Class Members that would be made available if the proposed settlement is approved.

3. REASONS FOR THE SETTLEMENT

Counsel for Plaintiffs and the proposed Class ("Class Counsel") have conducted a detailed investigation which included depositions and review of voluminous documents concerning the design, testing and marketing of the VTi transmissions, as well as consultation with independent automotive experts. Based on this investigation Class Counsel have concluded that the proposed settlement, negotiated at arm's length with the assistance of a retired judge, is in the best interests of members of the proposed Class because it will provide immediate and substantial benefits to Class Members while avoiding the uncertainties, substantial delay and expense that would be incurred if litigation of the case continued.

In reaching this settlement, Class Counsel have fully assessed the risks associated with the claims asserted in the Action, including without limitation the requirements that Plaintiffs prove: (i) that the Action is appropriate for class certification treatment; (ii) that the Class Vehicles have a defect that GM was unable to effectively repair under warranty; (iii) that GM in connection with the marketing of the VTi-equipped Vehicles violated differing state consumer protection statutes in fifty states; and (iv) the fact and amounts of damage, if any, experienced by Class Members with respect to more than 90,000 Class Vehicles. Class counsel have also assessed the significant delay in providing benefits to Class Members that would occur even if they were successful in litigating the case through class certification proceedings, trial and a possible appeal. In light of these considerations, Class Counsel believe that the terms of the settlement are fair, adequate, and in the best interests of the Class.

GM vigorously denies any liability in this Action, but also considers it desirable in the interests of customer satisfaction with Saturn products and avoidance of the expense, inconvenience and distraction of litigation that the Action be compromised, settled and dismissed as set forth in the settlement agreement and proposed Final Judgment.

This notice does not express any opinion by the Court concerning the merits of the respective claims or defenses asserted in the Action. This notice is sent merely to advise you of the proposed settlement and of your rights in connection therewith.

4. RELIEF AVAILABLE TO CLASS MEMBERS

If the Court approves the proposed settlement, the benefits available to Class Members will include the following:

(1) Reimbursement for out-of-pocket expenses relating to the previous inspection, repair, or replacement of a malfunctioning VTi transmission, including related towing and rental car expenses, subject to specific time and mileage limitations ("Past Reimbursable Expenses");

(2) Reimbursement for out-of-pocket expenses based on a previous trade-in of a Class Vehicle with VTi transmission malfunction at the time of trade-in ("Trade-In with Transmission Malfunction Reimbursement"), subject to specific time and mileage limitations; and

(3) Reimbursement for out-of-pocket expenses relating to the future inspection, repair or replacement of a malfunctioning VTi transmission, including related towing and rental care expenses, subject to specific time and mileage limitations ("Future Reimbursable Expenses").

Under the terms of the proposed settlement, reimbursable expenses will include (a) costs to inspect, repair or replace a malfunctioning VTi transmission, (b) costs to rent a replacement vehicle or secure other transportation while the Class Vehicle's malfunctioning VTi transmission is/was being inspected, repaired or replaced, (c) costs to tow or transport the Class Vehicle to the place(s) where the VTi transmission is/was inspected, repaired or replaced, and (d) costs relating to the trade-in of a Class Vehicle with a malfunctioning VTi transmission at the time of trade-in, as further limited and defined below.

To be reimbursable, the expense must be incurred (1) within 125,000 miles of the original retail sale or lease of the Class Vehicle and (2) within the time limitations set forth in Paragraph B (if applicable) and Chart A on page 4.

A. Past Expense Reimbursement

GM will reimburse any Class Member who incurs Past Reimbursable Expenses on or before the date of Final Judgment (*i.e.*, the date of final approval of the settlement by the United States District Court) based on the percentages shown in Chart B on the reverse side. To obtain reimbursement, the Class Member must submit a Claim Form from the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the repair costs paid by the Class Member and, if applicable, receipts showing the rental car, alternative transportation or towing costs incurred by the Class Member.

All claims for Past Expense Reimbursement will have to be submitted no later than one year after the Effective Date of the proposed settlement, as more specifically defined in the Stipulation of Settlement, but essentially the date upon which the Final Judgment of the Court approving the settlement becomes final and is no longer subject to any possible appeal. This deadline will be clearly stated on the Claim Forms that Class Members will receive after the Effective Date.

B. Past Trade-In With Transmission Malfunction Reimbursement

To claim reimbursement if the Class Member traded in a Class Vehicle with a VTi transmission malfunction, the Class Member must submit a Claim Form and provide contemporaneous dealer documentation including (1) a sales contract including the Vehicle Identification Number ("VIN") of the Class Vehicle that was traded in and (2) a contemporaneous VTi transmission repair estimate referencing the same VIN dated on or before the trade-in date. The reimbursement to the Class Member shall equal the repair estimate multiplied by the applicable percentage shown on Chart B based on the Vehicle's mileage and the Class Member being either a New or Used Vehicle Purchaser. ***Class Members will be entitled to seek reimbursement of trade-in losses only upon proof that the Class Vehicle was traded in before January 9, 2009***.

C. Future Expense Reimbursement

GM will reimburse any Class Member who incurs Future Reimbursable Expenses after the date of Final Judgment based on the percentages shown in Chart B on the reverse side, provided that the Class Member incurs the expense and submits the claim within the time limits set forth in Chart A on the reverse side. To obtain reimbursement, the Class Member must submit a Claim Form from the Saturn Retailer or other repair shop bills showing the date, mileage and amount of the repair costs paid by the Class Member and, if applicable, receipts showing the rental car, alternative transportation or towing costs incurred by the Class Member. GM shall use its best efforts to issue checks for Future Reimbursable Expenses to Class Members within ten (10) General Motors business days of receipt of the Claim Form with all required supporting documentation. Upon written request by the Class Member, GM shall also issue checks for Future Expense Reimbursement payable jointly to the Class Member and a Saturn Retailer or other repair shop specified by the Class Member.

CHART A

Model Year	Date Before Which Expense is Reimbursable	Claim Submission Deadline for Future Service Expenses
2002	January 1, 2010	March 1, 2010
2003	January 1, 2011	March 1, 2011
2004	January 1, 2012	March 1, 2012
2005	January 1, 2012	March 1, 2012

CHART B

Vehicle Mileage[1]	GM Reimbursement (New[2])	GM Reimbursement (Used)
100,000 or less	100 percent	75 percent
100,101–125,000	75 percent	30 percent

For each VTi transmission repair or replacement using genuine Saturn or GM parts, such replacement parts will be covered by the standard GM Service Parts Operations warranty for a period of 12 months or 12,000 miles, whichever comes first.

For a claim involving a Past Reimbursable Expense, a Trade-in With Transmission Malfunction Expense Reimbursement or a Future Reimbursable Expense incurred before the Effective Date of the Settlement, GM will have the right to reduce the amount to be reimbursed by any amount previously paid by GM or any affiliate of GM for that same repair or trade-in expense. GM, however, will have no right to reduce the amount of any other claim for Future Reimbursable Expenses subject to appropriate verification of the amount of such expenses and the Class Member's eligibility for reimbursement. Notwithstanding the foregoing, GM shall have the right to enforce fully the terms of any release, judgment, arbitration award or other adjudication obtained in connection with any Class Member's prior claim relating to the alleged malfunction or failure of a VTi transmission.

If the settlement is approved by the Court, you will receive another notice that will include the Claim Form and explain how you can claim benefits under the settlement.

5. DISMISSAL AND RELEASE OF CLAIMS

If the proposed Settlement Agreement is approved by the Court, then all claims that were or could have been asserted in this Action will be dismissed with prejudice. None of those claims may thereafter be asserted by anyone who remains in the Class. If the Court does not approve the proposed settlement, the Settlement Agreement will terminate and shall be null and void, and this Action will remain before the Court.

1) Mileage at time Past or Future Reimbursable Expense is incurred.
2) To qualify for reimbursement as a "new" vehicle purchaser, the Class Member must be the original retail purchaser or lessee of the Class Vehicle.

6. CHOICES OF CLASS MEMBERS

If you qualify to be a Class Member, you have the following choices: (a) you may remain in the Class and be eligible to request benefits under the proposed settlement if it is approved by the Court by submitting a Claim Form that will be mailed to you; (b) if you do not wish to remain in the Class, you may exclude yourself by sending a formal, written request for exclusion; or (c) you may remain in the Class and file with the Court a written objection to the proposed settlement. **If you wish to remain in the class, you do not need to take any action.**

7. EXCLUSION FROM THE CLASS

To request exclusion, you must send a written request for exclusion to Class Counsel: The Lakin Law Firm, P.C., 300 Evans Avenue, P.O. Box 229, Wood River, IL 62095. You must include in your request for exclusion *(i)* your name, address, and telephone number, *(ii)* a statement that you want to be excluded from the Class, *(iii)* the name of the Action appearing in this Notice, and *(iv)* your signature. If you exclude yourself from the Class, you will not be eligible for any settlement relief or be permitted to participate in the proposed settlement. Your written request for exclusion must be received no later than February 18, 2009, or you will lose your right to request exclusion and you will be bound by the settlement and by all orders and judgments in this Action.

8. FAIRNESS HEARING, DATE AND LOCATION

The Court will hold a Fairness Hearing to consider and then decide whether to certify the proposed Class, approve the proposed Settlement Agreement and determine the amount of Incentive Fees to award to Class Representatives and Attorneys' Fees and Expenses to award to Class Counsel. The hearing is scheduled for March 30, 2009, at 2:00 p.m., in the United States District Court for the Eastern District of California, Courtroom 5 (Hon. William B. Shubb), 501 I Street, Sacramento, CA 95814.

9. PRELIMINARY INJUNCTION PENDING FAIRNESS HEARING

Pending the Fairness Hearing, all potential Class Members who do not timely exclude themselves from the Class are preliminarily enjoined and barred (*i*) from filing, commencing, prosecuting, intervening in, or participating as class members in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims; and *(ii)* from filing, commencing or prosecuting any other lawsuit as a class action on behalf of Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

10. YOUR RIGHT TO OBJECT AND APPEAR

If you do not exclude yourself from the class, you may file a written objection to the proposed settlement. Your written objection must be verified by sworn affidavit and include: *(i)* the objector's name, address and telephone number; *(ii)* the name of the Action and the case number, *(iii)* a statement of each objection; and *(iv)* a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). If the objection is presented through an attorney, the written objection must also include: *(i)* the identity and number of Class Members represented by objector's counsel; *(ii)* the number of such represented Class Members who have opted out of the settlement; *(iii)* the number of such represented Class Members who have remained in the settlement and have not objected; *(iv)* the date the objector's counsel assumed representation for the objector, and *(v)* a list of the names of all cases where the objector's counsel has objected to a class action settlement in the last three years. Objecting Class Members who intend to testify in support of their objection either in person or by affidavit must also make themselves available for deposition by Plaintiffs' counsel and/or Defendants' counsel in their county of residence, between the time the objection is filed and at least seven (7) days before the date of the Fairness Hearing. You must file your written objection with the Clerk of the Court and send copies to Class Counsel and Defendants' counsel for receipt no later than February 23, 2009, at the following addresses:

Robert W. Schmieder II
Mark L. Brown
The Lakin Law Firm, P.C.
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095

Gregory R. Oxford
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, CA 90503

As a Class Member, if you file and serve a written objection as described above, you may appear at the Fairness Hearing, either in person or through an attorney paid by you, to object to the proposed settlement. If you or your attorney intend to appear, you must file a Notice of Intention to Appear with the Clerk of the Court that includes *(i)* how much time you or your lawyer anticipates will be required to present the objection; *(ii)* the name, address and telephone number of all witnesses who will testify and a detailed summary of such testimony; *(iii)* identification of all exhibits to be offered in support of your objection and attach complete copies of all such exhibits. Notices of Intention to Appear must be filed with the Court and delivered to Class Counsel and Defendants' Counsel no later than February 23, 2009, in order to be allowed to appear at the Fairness Hearing.

11. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND LITIGATION COSTS AND EXPENSES

Subject to Court approval, GM has agreed to pay up to $2,500.00 to each of the seven named plaintiffs in the Action for the time, effort and expense incurred by them in connection with the litigation. GM has also agreed, subject to Court approval, to pay a separate sum not to exceed $4,425,000.00 in full payment of the fees, costs and expenses of Class Counsel. In addition, GM shall pay the cost of notice and of the claims administration. These amounts do not reduce the relief available to Class Members and are in addition to and separate from all other benefits available to Class Members under the settlement. Class Members will have no personal liability for any attorneys' fees or costs associated with the Action.

12. ADDITIONAL INFORMATION

This Notice is only a summary of the proposed settlement. The full proposed Agreement, along with the pleadings and other papers, are on file with the Clerk of the Court. If you have any questions regarding the proposed settlement, then you may contact Class Counsel at saturnvti.classaction@lakinlaw.com, (618) 251-2498, or at the above address.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT L
Part 1

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN, LLC
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Class Representatives and Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.

Case No.: 2:07-CV-02142 WBS-GGH

MEMORANDUM IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT

Class Representatives Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi, by and through Class Counsel, hereby request that this Court grant final approval of the Settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure.

I. INTRODUCTION

The Relief Sought in the Complaint and Achieved Through the Settlement

This case involves the 83,718 Saturn vehicles sold in the United States with a VTi

transmission, a unique transmission that unfortunately has experienced an extraordinarily high rate of premature and costly failure. Plaintiffs' Complaint alleged that this unusually high premature failure rate was the result of design and manufacturing defects of which GM was aware but failed to disclose to consumers. The Complaint sought, in essence, to obtain an involuntary extension of GM's warranty on the VTi transmissions, both prospectively and retroactively, so that they would be covered during a period commensurate with consumers' reasonable expectations regarding the life of a transmission. The proposed Settlement accomplishes precisely that, and then some.

Under the Settlement, class members will receive reimbursement for transmission inspections, repairs, and replacements, regardless of whether the transmission work was performed by a GM dealership or a third-party repair shop. In addition, class members will receive reimbursement for the cost of obtaining rental vehicles and for towing costs in connection with their transmission repairs. For class members who traded in their vehicles with malfunctioning transmissions rather than paying for costly repairs, they will receive reimbursement for trade-in losses, defined under the Settlement as equaling the repair cost as indicated on contemporaneous repair quotes.

The relief under the Settlement is both retrospective and prospective. Class members who purchased their vehicles new will receive 100% reimbursement for expenses incurred at 100,000 miles or less, and 75% reimbursement for expenses incurred between 100,000 and 125,000 miles. Class members who purchased used vehicles (who lack privity with GM and therefore have arguably weaker legal positions) will receive 75% reimbursement for expenses incurred at 100,000 miles or less, and 30% reimbursement for expenses incurred between 100,000 and 125,000 miles. Under the Settlement, this relief essentially provides 7 or 8 years of coverage for each model year.

Under the Settlement, there is no cap—either per-incident, per-vehicle, per-class member, or otherwise in the aggregate—on the amount that GM will pay to reimburse class members. There are no deductibles or limitations regarding the cause of the VTi transmission problem—class members will receive coverage regardless of the cause of the transmission failure. Based

upon a very conservative estimate, the value of the relief under the Settlement to the class members is at least $61,742,250.

The Pre-Filing Investigation and the Complaint

In the Spring of 2007, an unhappy Saturn owner contacted Class Counsel about possible problems with the Saturn VTi transmission. *Doc. 48-3; Ex. NN* For the next six months, Class Counsel consulted extensively with Saturn customers, potential class representatives, and automotive industry consulting experts. *Id.* In addition, counsel obtained and analyzed technical service bulletins, general background literature regarding CVTs, and other documentation pertaining to the VTi. *Id.* In fact, Class Counsel identified two former GM employees, along with two GM suppliers, as significant witnesses. *Id.* After completing an exhaustive pre-suit investigation and legal analysis of certification and merits issues, this action was filed in October of 2007. *Id.* Before filing the original complaint, sixty-six (66) potential class members had contacted Class Counsel about their VTi transmissions. *Id.* From these potential class members were gathered statements and often documents, including owner's manuals, warranty documents, warranty extension letters from GM, repair histories, repair invoices, repair quotes, and extended warranty information and pricing. *Id.*

The vehicles at issue are Model Year 2002-2005 Saturn Vues and Model Year 2003-2004 Saturn Ions equipped with GM's VTi (variable transmission intelligence) transmission. *Doc. 55.* GM sold 90,350 Saturn vehicles equipped with the VTi transmission in the U.S. and Canada, of which 83,718 were sold in the U.S. *Exs. W, II.* The VTi is a continuously variable transmission ("CVT") utilizing a belt-and-pulley system, rather than traditional gears, to transmit torque from the vehicle's engine to the transaxle. *Doc. 55.* Plaintiffs alleged that the VTi transmissions were defective, that GM was aware but failed to disclose that they were defective, and that the defect made the transmissions extremely prone to premature failure, often rendering the vehicles completely immobile and frequently resulting in the need for transmission service or replacement costing thousands of dollars. *Id.*

The Second Amended Complaint asserts claims for statutory consumer fraud, breach of express warranties, breach of the UCC implied warranty of merchantability, and unjust enrichment. *See Doc. No. 55.*

Discovery and Mediation

On December 20, 2007, this Court entered an order allowing the parties to conduct discovery, ordering final class certification briefs to be filed no later than July 18, 2008, and setting this case for trial starting on August 25, 2009. *Doc. 17.* On that same day, Plaintiffs served GM with written discovery. *Ex. NN.*

On February 5, 2008, GM responded to the first set of written discovery. *Id.* Nowhere in GM's discovery responses did it identify the four witnesses uncovered by Class Counsel in their investigation. *Id.* Consequently, Plaintiffs subpoenaed two former GM employees on February 26, 2008. *Id.* Shortly thereafter, the parties met in Chicago on March 13, 2008 to discuss discovery matters and the possibility of a class settlement. *Id.* That full-day meeting did not result in a resolution, however, and the parties continued to engage in discovery while simultaneously working to coordinate the formal mediation that ultimately took place with Judge Sabraw in San Francisco on May 21, 2008. *Id.* Plaintiffs then subpoenaed two GM suppliers for documents relating to the VTi transmission on March 20, 2008. *Id.*

In addition to the pre-lawsuit research and investigation, Class Counsel continued to research and prepare class certification pleadings to comply with the then upcoming July 18, 2008 court-ordered class certification deadline. *Id.* Class Counsel thoroughly analyzed thousands of pages of documents produced by GM, reviewed thousands of pages of responsive third-party documents, interviewed numerous potential testifying experts, and read numerous industry publications relating to CVT technology in general and the VTi in particular. *Id.* On May 7 and 8, 2008, Class Counsel deposed two current GM executives familiar with the facts at issue. *Id.* Simultaneously, Class Counsel continued to research the laws of the other States to prepare for the class mediation and, if necessary, file companion class actions involving the other States. *Id.*

The May 21 mediation took place before the Honorable Ronald Sabraw, former complex litigation judge of Alameda County, California, from approximately 9:00 a.m. until approximately 10:30 p.m. *Ex. MM-NN.* The mediation, an arm's-length negotiation with significant back-and-forth assistance from Judge Sabraw, resulted late in the day in agreement regarding the substantial relief to the Class, and the signing of a term sheet memorializing the basic terms of that agreement. *Id.* The term sheet provided, among other things, that incentive awards to the Representative Plaintiffs, attorneys' fees and costs would be paid by GM in addition to (i.e., without diminishing) the relief to the Class. *Id.* The parties then negotiated the amount of the incentive awards for Representative Plaintiffs. *Id.* Finally, the parties began negotiations regarding the issue of attorneys' fees and costs. *Id.* Unable to resolve this issue by 10:30 p.m. on the day of the mediation, the parties continued telephonic negotiations until ultimately reaching final agreement regarding attorneys' fees on June 5. *Id.*

II. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

A settlement class may be certified under Rule 23. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 618 (1997); In re General Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 792-94 (3rd Cir. 1995). The fact of settlement is relevant to and a factor in the calculus of class certification. Amchem Prods., Inc., 521 U.S. at 619-22. Namely, a court need not decide whether the case, if tried, would present intractable management problems. Id. at 620.

A. THE SETTLEMENT CLASS SATISFIES RULE 23(a) REQUIREMENTS.

A member of a class may sue on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. FRCP 23(a). The settlement class here meets all of these requirements.

1. *The Class Is So Numerous That Joinder of All Members Is Impracticable.*

The first prerequisite is that the class must be so numerous that joinder of all members is impracticable. FRCP 23(a)(1). Although courts have not defined a precise number to establish

numerosity, federal diversity jurisdiction exists where there are at least 100 class members. 28 U.S.C. §1332(d)(5)(B). Indeed, numerosity is presumed when a class consists of 40 or more members. Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir.), *cert. denied*, 515 U.S. 1122 (1995); Parker v. Time Warner Enter. Co., 239 F.R.D. 318, 329 (E.D.N.Y. 2007).

GM sold 90,305 Saturn vehicles that contained the VTi transmission, of which 83,718 were sold in the U.S. ("Class Vehicles"). *Exs. W,II.* Based upon the Polk data, there are 149,541 persons who own or have owned a Class Vehicle during the relevant time period. *Ex. II.* At least 2,022 class members have contacted Class Counsel from the Spring of 2007 through February 20, 2009. *Ex. NN.* From 2006 through September 2008, there were 9,720 replacement transmissions shipped by a GM vendor. *Ex. BB.* As a result, the class is so numerous that joinder of all members is impracticable.

2. *There Are Questions of Law or Fact Common to the Class.*

The next prerequisite is that "there are questions of fact or law common to the class." FRCP 23(a)(2). It is not required that all questions of fact and law be common. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). Rather, the class representatives need only share at least one question of fact or law regarding the grievances of the prospective class. Baby Neal v. Casey, 43 F.3d 48, 56 (3rd Cir. 1994); O'Keefe v. Mercedes-Benz USA, LLC, 214 F.R.D. 266, 288 (E.D. Pa. 2003). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

There are both common legal questions and common factual issues. Some common questions include, for example: whether GM breached the express warranty "to correct any vehicle defect;" whether the warranty limitations were unconscionable; whether the warranty failed of its essential purpose; whether GM disclosed that the VTi transmission was prone to premature failure; and whether information about the VTi transmission problems was a material fact. *Doc. 55.* There is clearly a common core of salient facts to bind the class members together. Hanlon, 150 F.3d at 1019. As a result, there are questions of fact and law common to

the class.

3. *The Representative Parties' Claims Are Typical of the Class Claims.*

The next requirement is that "the claims or defenses of the representative parties are typical of the claims or defense of the class." FRCP 23(a)(3). "A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members ...." Oshana v. Coca-Cola Co., 472 F.3d 506, 514 (7th Cir. 2006). The representative claims need not be substantially identical, but only reasonably co-extensive. Hanlon, 150 F.3d at 1020. "The typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work for the benefit of the entire class through the pursuit of their own goals." O'Keefe, 214 F.R.D. at 289. Typicality may exist despite factual distinctions between the claims of the class representatives and the claims of the proposed class. Baby Neal, 43 F.3d at 58; O'Keefe, 214 F.R.D. at 289. Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct. Beck v. Maximus, Inc., 457 F.3d 291, 295-96 (3rd Cir. 2006).

Here, all Class Representatives have owned a Saturn equipped with a VTi transmission, have experienced VTi transmission failures, and have paid out-of-pocket to inspect, repair, and/or replace their VTi transmission, or to tow their vehicle or rent a replacement vehicle during repair. *Exs. A-G.* GM did not disclose the problems associated with the VTi transmission to any Class Representative—let alone, to any class member. The claims of the Class Representatives and the class members arise out of the same practice or course of conduct. As a result, the claims of the Class Representatives are typical of the claims of the class.

4. *The Representative Parties Will Fairly and Adequately Protect the Interests of the Class.*

The next requirement is that "the representative parties will fairly and adequately protect the interests of the class." FRCP 23(a)(4). The adequacy of representation requirement "tend[s] to merge" with commonality and typicality requirements because all serve as guideposts for determining whether the named plaintiffs' claim and a class claim are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. General

Telephone Co. v. Falcon, 457 U.S. 147, 157 n.13 (1982); Amchem Prods., Inc., 521 U.S. at 626 n.20.

The first inquiry regarding adequacy is whether the class representatives have any conflicts of interest with other class members. Hanlon, 150 F.3d at 1020. The class representatives must be "part of the class and 'possess the same interest and suffer the same injury' as the class members." Amchem Prods., Inc., 521 U.S. at 625-26. None of the Class Representatives have any conflict of interest with other class members. All Class Representatives have paid out-of-pocket to inspect, repair, and/or replace their VTi transmission, or to tow their vehicle or rent a replacement vehicle during repair. *Exs. A-G.* Both Class Representatives and Class Members are likewise covered by the extended warranty relief in the event of another future VTi problem. *Doc. 48-2.* The Settlement does provide differing rates of reimbursement for new and used purchasers, but the Class Representatives include both new and used purchasers to avoid any conflicts regarding the amount of settlement reimbursement relief. *Doc. 48-2; Exs. A-G.* Therefore, the interests of the Class Representatives are aligned with the interests of the absent class members.

The final inquiry regarding adequacy is whether the class representatives and their counsel will prosecute the action vigorously on behalf of the class. Hanlon, 150 F.3d at 1020. Class Representatives sought out Class Counsel to pursue this class action. *Exs. A-G, NN.* Class Counsel are experienced trial counsel with significant experience in class action litigation, and have achieved substantial results in all facets of litigation. *Ex. V.* Class Counsel conducted an in-depth investigation and vigorously pursued this case through the Settlement. *Ex. NN.* For example, by February 2008, Class Counsel had identified and subpoenaed two former GM employees in charge of the VTi transmission—witnesses that GM did not disclose in initial disclosures or interrogatory responses. *Id.* After reaching the Settlement, Class Counsel have continued (and will continue) to respond to inquiries from class members regarding their rights under the Settlement through at least March of 2012. *Id.* As a result, the representative parties will fairly and adequately protect the interests of the class.

B. THE SETTLEMENT CLASS SATISFIES RULE 23(b)(3) REQUIREMENTS.

In addition to the prerequisites of Rule 23(a), a class action must satisfy one of the requirements in Rule 23(b). FRCP 23(b). Because the Class Representatives sought and the Settlement provides for monetary relief, certification demands that predominance and superiority exist. FRCP 23(b)(3).

1. *Questions of Law and Fact Common to the Class Members Predominate Over Any Questions Affecting Only Individual Members.*

To satisfy Rule 23(b)(3), the court must find that the questions of law or fact common to the class members predominate over any questions affecting only individual members. FRCP 23(b)(3). The predominance inquiry tests whether the classes are "sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc., 521 U.S. at 623.

"The predominance requirement calls only for predominance, not exclusivity, of common questions." In re Visa Check/Master Money Antitrust Litig., 280 F.3d 124, 140 (2d Cir. 2001). In other words, the rule does not require that all issues be common to the class. Smilow v. Southwestern Bell Mobile Systems, Inc., 323 F.3d 32, 39 (1st Cir. 2003). Instead, predominance is a qualitative—not quantitative—inquiry.

> There may be cases in which class resolution of one issue or a small group of them will so advance the litigation that they may fairly be said to predominate. Resolution of common issues need not guarantee a conclusive finding on liability, nor is it a disqualification that damages must be assessed on an individual basis.

In re School Asbestos Litig., 789 F.2d 996, 1010 (3d Cir. 1986). *See also* McKenzie v. City of Chicago, 175 F.R.D. 280, 288 (N.D. Ill. 1997) (stating that the common link between class members "need not be dispositive of the entire litigation" for predominance to exist); Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1162 (9th Cir. 2001) (finding that two common fact issues and three common legal issues dominated individual questions); Bellows v. NCO Financial Systems, Inc, 2008 WL 4155361 at *7 (S.D. Cal. 2008) (involving three factual issues and a common legal remedy). Therefore, individual issues may exist, and class members need not have identical situations as to all issues. O'Keefe,

214 F.R.D. at 290. There need only be "a sufficient constellation of common issues" to bind class members together. In re Visa Check/Master Money Antitrust Litig., 280 F.3d at 138.

To determine whether an issue predominates, a court should consider "what value the resolution of the class-wide issue will have in each class member's underlying cause of action." Klay v. Humana, Inc., 382 F.3d 1241, 1255 (11th Cir. 2004). An issue is common to the class when it is susceptible to generalized common class-wide proof. In re Nassau County Strip Search Cases, 461 F.3d 219, 227 (2d Cir. 2006). Common issues predominate if they have a "direct impact on every class member ever to establish liability and on every class member's entitlement to ... relief." Klay, 382 F.3d at 1255. If common issues predominate over individualized issues, then the addition or subtraction of any of the plaintiffs will not have any substantial effect on the substance or quantity of evidence offered. Id. In other words, predominance exists where the common questions comprise a "significant aspect" of the case. Hanlon, 150 F.3d at 1022-23 (involving nationwide class action where defective minivan rear latch gates created common questions constituting a "significant aspect" of the case despite numerous individual issues and local remedies—including products liability, breaches of express and implied warranties, and "lemon laws"—noting that these remedies are local variants of a generally homogenous collection of causes). *See also* Jenson v. Fiserv Trust Co., 256 Fed. Appx. 924, 2007 WL 4163889 (9th Cir. 2007) (affirming class certification involving materially differing oral representations where the "center of gravity" of the fraud predominates over a multitude of individual communications); Rutstein v. Avis Rent-A-Car Sys., Inc., 211 F.3d 1228, 1233 (11th Cir. 2000) (finding predominance where consumer fraud is the result of pervasive acts of defendant applicable to class members as a whole, amenable to generalized proof); Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris, Inc., 188 F.R.D. 365, 376 (D. Or. 1998) (finding predominance because defendant's course of conduct was "heart of the dispute" despite many individualized issues, including proximate causation, mitigation of damages, and statute of limitations).

At the preliminary approval hearing, this Court raised questions regarding the nationwide scope of the class. *Ex. RR. p.3.* Any differences in state laws, however, are irrelevant for certifying a settlement class. In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 529 (3d Cir.

2004); O'Keefe, 214 F.R.D. at 291 n.19 (citing Amchem Prods. Inc., 521 U.S. at 593); In re Diet Drugs Prod. Liab. Litig., 2000 WL 1222042 at *41 (E.D. Pa. Aug. 28, 2000). Regardless, "the fact that there may be variations in the rights and remedies available to injured class members under the various laws of the fifty states ... does not defeat commonality and predominance." In re Warfarin Sodium Antitrust Litig., 391 F.3d at 530. Courts "have expressed a willingness to certify nationwide classes on the ground that relatively minor differences in state law could be overcome at trial by grouping similar state laws together and applying them as a unit." In re Prudential Ins. Co. of Am. Sales Practice Litig., 148 F.3d 283, 315 (3d Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999).

Class Representatives asserted, among other theories, a breach of warranty claim against GM. *Doc. 55.* The breach of warranty claim involved uniform warranty language promising "to correct any vehicle defect ...." *Id.*, ¶83. *See also Exs. H-L, M at pp 73:2-76:2.* In addition, Class Representatives asserted rights under the Uniform Commercial Code ("UCC") to limit the effect of any express warranty limitations based upon GM's failure to disclose the problems with the VTi transmission—the same conduct that forms the basis of the unjust enrichment and consumer fraud claims. *Doc. 55, ¶¶ 81-91.* All States have adopted either the UCC or similar rights, and there are no outcome-determinative differences among the state laws. *Exs. T-U.* Not surprisingly, courts have found that predominance exists under similar circumstances. *See, e.g.,* Bussian v. DaimlerChrysler Corp., 2007 WL 1752059 (M.D.N.C. June 18, 2007) (certifying breach of warranty claim involving defective ball joint); General Motors Corp. v. Bryant, 374 Ark. 38 (Ark. 2008), *cert. denied*, 129 S. Ct. 901 (2009) (certifying nationwide class where breach of warranty, unjust enrichment, and fraud claims centered around whether the parking brake system was defective and whether GM concealed that defect); Chamberlan et al v. Ford Motor Company, 402 F.3d at 952 (involving uniform defective engine intake manifolds in various 1996 through 2002 model year vehicles); In re Telectronics Pacing Sys. Inc., 172 F.R.D. 271 (S.D. Ohio 1997) (certifying nationwide class where single course of conduct predominated, notwithstanding individual issues of causation and damages). Similarly, the Supreme Court of the United States has stated that "[p]redominance is a test readily met" in

certain cases alleging consumer fraud. Amchem Prods., Inc., 521 U.S. at 625.

With a sufficient nucleus of common questions, the presence of individual issues does not prevent certification. "Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members' positions, and that the issue may profitably be tried in one suit." Blackie v. Barrack, 524 F.2d 891, 902 (9th Cir. 1975) (involving purchasers allegedly defrauded over a period of time by similar misrepresentations). As a result, a common scheme by the defendant predominates over individual issues affecting class members. O'Keefe, 214 F.R.D. at 291; In re Prudential Ins. Co. of Am. Sales Practice Litig., 148 F.3d at 314-15 (involving common scheme to defraud millions of life insurance policyholders); In re Warfarin Sodium Antitrust Litig., 391 F.3d at 528-29 (involving "broad-based, national campaign conducted by and directed from corporate-headquarters"); Allapattah Services, Inc. v. Exxon Corp., 333 F.3d 1248, 1260 (11th Cir.2003) (finding predominance amidst defendant's common scheme); In re Wells Fargo Home Mortg. Overtime Pay Litig., 527 F.Supp2d 1053, 1063 (N.D. Cal. 2007) (finding predominance based upon defendant's uniform treatment of class members); Alba v. Papa John's Inc., 2007 WL 953849 at *1 (C.D. Cal. 2007) (involving standardized practice initiated from centralized location); In re First Alliance Mortg. Co. 471 F.3d 977, 991 (9th. Cir. 2006) (involving "systematically committed fraud" using a standardized sales presentation); In re American Continental Corp./Lincoln Savings & Loan Sec. Litig., 140 F.R.D. 425, 430-31 (D. Ariz. 1992) (finding defendant's "centrally orchestrated strategy" predominated over individualized oral representations); Grainger v. State Sec. Life Ins. Co., 547 F.2d 303, 307-08 (5th Cir. 1977) (involving defendant's "standardized sales pitch"); In re Monumental Life Ins. Co., 365 F.3d 408, 421 (5th Cir. 2004) (noting that the presence of time-barred class members "does not establish that individual issues predominate, particularly in the face of defendant's common scheme of fraudulent concealment."); Westways World Travel, Inc. v. AMR Corp., 218 F.R.D. 223, 239-240 (C.D. Cal. 2003) (finding that common scheme unjustly enriching defendant and

affecting all class members created predominance); Lerch v. Citizens First Bancorp, Inc., 144 F.R.D. 247, 252 (D. N.J. 1992) (finding predominance where defendant's challenged activity was a common course of conduct); In re Western Union Sec. Litig., 120 F.R.D. 629, 637 (D. N.J. 1988) (same); Brooks v. Educators Mut. Life Ins. Co., 206 F.R.D. 96, 104 (E.D. Pa. 2002) (stating that "predominance requirement is satisfied in cases where the class alleges a common scheme or course of conduct"); In re Community Bank of N. Va. & Guar. Bank Second Mortg. Litig., 2008 WL 239650, 7 (W.D. Pa. 2008) (involving defendant's unlawful scheme); Ingram v. Coca-Cola Co., 200 F.R.D. 685, 699 (N.D. Ga. 2001) (finding predominance where a "pattern and practice" has a "direct impact on every class member's effort to establish liability"); Duhaime v. John Hancock Mut. Life Ins. Co., 177 F.R.D. 54, 65 (D. Mass. 1997) (certifying class where insurance agents fraudulently induced sales pursuant to a common scheme implemented by the home office); Vandenbroeck v. CommonPoint Mortg. Co., 2004 WL 1778933 (Mich. App. 2004) (certification appropriate where breach of contract claims predicated on Defendant's "common course of conduct"); Ritt v. Billy Blanks Ents., 870 N.E.2d 212, 220 (Ohio App. 2007) (finding predominance where buyers alleged common scheme to use of deceptive script to "upsell" membership); Garner v. Healy, 184 F.R.D. 598, 602-03 (N.D. Ill. 1999) (finding that defendant's uniform scheme predominated over individual issues of reliance and variations in state laws); Christakos v. Intercounty Title Co., 196 F.R.D. 496, 501 (N.D. Ill. 2000) (finding predominance where defendant's fraud arose from a standard business practice); Tylka v. Gerber Products Co., 178 F.R.D. 493, 497 (N.D. Ill. 1998) (involving defendant's common scheme despite "some factual variations among class members' experiences"); In re Diet Drug Prod. Liab. Litig., 2000 WL 1222042 at *42 (finding that "the common class-wide focus on AHP's knowledge and conduct" predominated). Indeed, predominance exists where defendant's conduct alone establishes liability. Vasquez-Torres v. McGrath's Publick Fish House Inc., 2007 WL 4812289 at *5 (C.D. Cal. 2007).

Here, Class Representatives alleged that the VTi transmission was defective, GM failed to disclose the VTi transmission problems to the class before selling, GM failed "to correct" the defect during warranty claims, and GM's warranty limitations were unconscionable. *Doc. 55.*

That common scheme or course of conduct predominates over any individual issues. The fact that a defense "may arise and may affect different class members differently" does not defeat predominance. In re Visa Check/Master Money Antitrust Litig., 280 F.3d at 138; Cameron v. E.M. Adams & Co., 547 F.2d 473, 478 (9th Cir.1976). Even the existence of individualized affirmative defenses, applicable to some but not all class members, does not defeat the predominance of common questions. Cameron v. E.M. Adams & Co., 547 F.2d 473, 478 (9th Cir.1976); Allapattah Services, Inc. v. Exxon Corp., 333 F.3d 1248, 1261 (11th Cir. 2003); Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 924 (3d Cir.1992). Likewise, liability issues predominate over differing driving conditions (*i.e.*, product use), especially where a class alleges a design or manufacturing defect or deceptive scheme. O'Keefe, 214 F.R.D. at 292. In fact, GM tested the VTi transmissions to eliminate varying driving conditions as a factor in the product life. *Exs. N-R, S at pp.76:5-80:25.* There are few, if any, individual issues—none of which predominates over the questions common to the class.

At the preliminary approval hearing, this Court expressed concern over the varying damages sustained by class members. *Exs.H-K, RR pp.3-5.* "The amount of damages is invariably an individual question and does not defeat class action treatment." Blackie, 524 F.2d at 905; Smilow, 323 F.3d at 40; In re Visa Check/Master Money Antitrust Litig., 280 F.3d at 139. Indeed, a pure economic injury supports a finding of commonality and predominance because there are little or no individual proof problems. In re Warfarin Antitrust Litig., 391 F.3d at 529. Regardless, the settlement provides an objective formula to calculate the cash reimbursement benefits. *Doc. 48-2.* "Determination of damages sustained by individual class members ... is often a mechanical task involving the administration of a formula." Newberg on Class Actions §22:65 at 304 (4th ed. 2002). "It is appropriate to take the settlement into account to see how the settlement solves individual damage calculation problems." O'Keefe, 214 F.R.D. at 292. Individual calculation of damages is not an impediment to class certification, especially where damages are computed according to a formula or other easy or essentially mechanical method. Klay, 382 F.3d at 1259-60; O'Keefe, 214 F.R.D. at 292. Under the Settlement, class

members who expend or have expended money[1] related to the VTi transmission receive monetary reimbursement based upon a formula using objective criteria. *Doc. 48-2.*

Class Representatives alleged that GM engaged in a common scheme or course of conduct regarding the sale and repairs of the VTi transmission. There are no outcome-determinative differences among state laws, and the settlement solves any individual damage calculations with a simple formula based upon objective criteria. As a result, the questions of law or fact common to the class members predominate over any questions affecting only individual members.

2. *A Class Action Is Superior to Other Available Methods.*

In addition to predominance, a class action must be superior to other available methods for fairly and efficiently adjudicating the controversy. FRCP 23(b)(3). The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication. O'Keefe, 214 F.R.D. at 293.

> [A] class action has to be unwieldy indeed before it can be pronounced an inferior alternative – no matter how massive the fraud or other wrongdoing that will go unpunished if class treatment is denied – to no litigation at all.

Carnegie v. Household Int'l, Inc., 376 F.3d 656, 661 (7th Cir. 2004). *See also* In re Allstate Ins. Co. Agent Transition Severance Plan, 400 F.3d 505, 508 (7th Cir. 2005) (finding that class determination of liability issue followed by individual hearings "would be a more efficient procedure than litigating the class-wide issue of Allstate's policy anew in more than a thousand separate lawsuits"). Matters pertinent to this requirement include: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties in managing a class action. FRCP 23(b)(3)(A-D).

[1] All class members who do not expend or have not expended money related to the VTi transmission within the settlement parameters (125,000 miles/7-8 years) will still receive the value of the extended warranty. *See Exs. KK, OO, UU-VV.*

The key factor is manageability, which focuses on pragmatic concerns. New England Carpenters Health Benefits Fund, 244 F.R.D. at 88.

The certification of this settlement class provides a fair and efficient means to adjudicate class members' claims relating to the VTi transmission. Before this class action, class members faced various obstacles to obtaining any relief whatsoever. Class Counsel are not aware of any legal claim filed by any class member, and any class members who tried to negotiate individually with GM's dealerships did so, in most cases, without complete knowledge of GM's conduct. Now, class members will receive substantial class relief based upon objective criteria, have continued representation by Class Counsel into 2012, and realize the reasonable expectations of a consumer regarding the VTi transmission. *Doc. 48-2.*

Furthermore, there are no difficulties in managing this class action where there is a settlement. Amchem Prods., Inc., 521 U.S. at 619-22. GM, or a settlement claim administrator approved by Class Counsel, will handle all claims. For Past Reimbursement claims, GM will handle them with Class Counsel monitoring the claims process, and provide monthly reports to Class Counsel. For Future Reimbursement claims, a dealer notification will describe the terms of the Settlement, explaining how to handle claims, and providing Class Counsel's contact information. Since preliminary approval, Class Counsel has maintained a dedicated phone number, e-mail address, and portion of its web-site to address class member inquiries. *Ex. NN.* GM also trained its Customer Assistance Center to handle inquiries related to this settlement, and refer class members to Class Counsel if there were any questions. Therefore, a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Conclusion

The Settlement Class meets all of the criteria for certification under Rule 23(a) and Rule 23(b)(3). For all of the foregoing reasons, Class Representatives and Class Counsel request that this Court certify the Settlement Class and grant final approval of the Settlement.

III. THE NOTICE TO THE CLASS COMPORTS WITH DUE PROCESS.

Before approving a class settlement, a court must direct notice in a reasonable manner to all class members who would be bound by the proposal. FRCP 23(e)(1). Where parties seek to simultaneously certify a settlement class and settle a class action, the elements of Rule 23(c)

notice are combined with the elements of Rule 23(e) notice. Grunewald v. Kasperbauer, 235 F.R.D. 599, 609 (E.D. Pa. 2006).

For a Rule 23(b)(3) class, "the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FRCP 23 (c)(2)(B). "[T]he due process clause does not amount to a guarantee of notice to a class member." Peters v. National R.R. Passenger Corp., 966 F.2d 1483, 1486 (D.C. Cir. 1992). It "does not mean that [a class member] [i]s entitled to actual notice of the litigation." Gross v. Barnett Banks, Inc., 934 F. Supp. 1340, 1344 (M.D. Fla. 1995). Neither Rule 23 nor due process require "receipt of actual notice by all class members...." Mangone v. First Bank, 206 F.R.D. 222, 231 (S.D. Ill. 2001). Instead, the proper inquiry is "whether the *method* of providing the notices was 'reasonably calculated, under all the circumstances,' to inform him of the pendency of the class action and his right to be excluded from it." Peters, 966 F.2d at 1486 (emphasis added).

The hallmark of the notice inquiry is reasonableness. Sollenbarger v. Mountain States Telephone & Telegraph Co., 121 F.R.D. 417, 436 (D. N.M. 1988). In every case, reasonableness is a function of anticipated results, costs, and amount involved." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1099 (5th Cir. 1977). "Rule 23 does not require the parties to exhaust every *conceivable* method of identifying the individual class members." Carlough v. Amchem Products, Inc., 158 F.R.D. 314, 325 (E.D. Pa. 1993).

GM enlisted the services of R.L. Polk & Co. ("Polk") to compile the mailing list of past or present owners of 2002-2005 Saturn Vues and 2003-2004 Saturn IONs that contain a VTi transmission. *Ex. II.* Polk maintains a database of motor vehicle registrations throughout the United States. *Id.* To construct the mailing list, GM provided Polk a list of 83,718 Vehicle Identification Numbers ("VINs") for Class Vehicles sold in the United States. *Id.* Polk was instructed to provide GM, "the most current mailing information for all past and current owners" of the VINs provided by GM. *Id.* Polk used the VINs provided by GM and matched them up to the VINs in Polk's database, and extracted the information to identify the past and current owners. *Id.* Polk also sent the VINs to the states that appended current owner names and

address, and compared that data to the data results from the Polk database and removed duplicates. *Id.* Polk then processed the names and addresses through the United States Postal Service's NCOA (Nation Change of Address) database. On January 9, 2009, GM's vendor mailed notice via first class mail to 149,541 past or present owners of 2002-2005 Saturn Vues and 2003-2004 Saturn Ions as identified by Polk. *Ex. JJ.* It is beyond dispute that notice by first class mail satisfies the best notice practicable under the circumstances. Peters, 966 F.2d at 1486.

The Class Notice clearly and concisely stated in plain, easily understood language: the nature of the action, the class claims, the right of a class member to be excluded from the settlement class, the right of a class member to object to the terms of the Settlement, the time and manner for requesting exclusion and/or objecting, the terms of the Settlement, and the binding effect of the Settlement. *Doc. 49-2.* The form and content of the class notice are committed to the sound discretion of the court. Mangone, 206 F.R.D. at 231; Langford v. DeVitt, 127 F.R.D. 41, 44 (S.D.N.Y. 1989). On September 8, 2008, the form and content of the class notice was approved by the Court. *Doc. 54.* In addition, the Final Notice likewise clearly and concisely states in plain, easily understood language the effect of approval of the Settlement and attaches a simple claim form. *Doc. 49-5.*

The parties provided class members the best notice practicable under the circumstances—providing individual notice to all class members based upon the efforts of Polk in conjunction with State records. The method and form of notice to the class members complied with Rule 23 and due process.

IV. THE DEFENDANT COMPLIED WITH CAFA NOTIFICATION.

The parties filed the Settlement with this Court on July 22, 2008. *Doc. 48-2.* "Not later than 10 days after a proposed settlement is filed in court, each defendant ... shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement ...." 28 U.S.C. § 1715(b). GM served all of the appropriate State and Federal officials with the applicable information on August 1, 2008. *Doc. 49-9.*

In addition, an order giving final approval to a proposed settlement may not be issued

earlier than 90 days after the date on which the appropriate State and Federal officials were served. 28 U.S.C. § 1715(d). Here, the Fairness Hearing is set for March 30, 2009—well beyond the required 90 day period.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

To approve a class settlement, a court must find that the settlement is "fair, reasonable, and adequate." FRCP 23(e)(2). A court must examine the settlement as a whole—rather than the individual components—for overall fairness. Hanlon, 150 F.3d at 1026.

Federal courts look with great favor upon the voluntary resolution of litigation, particularly class action litigation, through settlement. Air Line Stewards & Stewardesses Assn., Local 550 v. Trans World Airlines, Inc., 630 F.2d 1164, 1166-67 (7th Cir. 1980). Parties settle cases because of "the very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense ...." Id. at 1167.

The essence of settlement is compromise. Isby v. Bayh, 75 F.3d 1191, 1200 (7th Cir. 1996). The focus is not upon the substantive law governing the asserted claims. Id. at 1197. A court should not reach ultimate conclusions of fact or law on the issues in the case, but instead should examine the overall fairness and adequacy of the settlement. Reed v. Rhodes, 869 F. Supp.1274, 1279 (N.D. Ohio 1994).

The Settlement is the culmination of protracted discussions between counsel for the parties, extensive consultation with their respective clients, and thorough analysis of the pertinent facts and applicable law. When assessing a class settlement, a court should balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. Hanlon, 150 F.3d at 1026. Each of these factors favors approval of the Settlement in this case.

A. *The Risk, Expense, Complexity, and Likely Duration of Further Litigation.*

Had the mediation been unsuccessful and further litigation proceeded, Plaintiffs faced the

significant risk of forfeiting the substantial relief afforded under the Settlement, as the Court made abundantly clear at the preliminary approval hearing on September 2, 2008, when it noted that GM's motion to dismiss presented "a serious question as to whether the plaintiffs were entitled to recover on their various claims. . . ." *Ex. RR, at p.2, See also p. 17.* While all litigants face a certain degree of risk, it is rare for the decision to settle a case to be vindicated as clearly as was Plaintiffs' decision in this case in light of the Court's comments at the preliminary approval hearing.

What makes this Settlement all the more extraordinary from the Plaintiffs' perspective is that there was little or no discount in the class relief as a result of any perceived weaknesses in Plaintiffs' legal theories. As the Court noted at the preliminary approval hearing, Class Counsel negotiated the settlement in such a way that GM will pay claims as if it were strictly liable for any VTi transmission failure, regardless of the specific cause of the failure. *Doc. 48-2.* Those class members experiencing transmission failures at up to 100,000 miles on vehicles they purchased new will receive 100% reimbursement for their out-of-pocket loss, representing no compromise whatsoever. *Id.*

The only compromise comes in the form of reimbursement rate discounts for (1) those class members who purchased their vehicles pre-owned (breaking the chain of privity with GM and, according to GM, placing them in weaker legal position than purchasers of new vehicles, especially with respect to the claims for breach of warranty), and (2) those class members whose transmissions fail(ed) at more than 100,000 miles. *Doc. 48-2.* This latter compromise acknowledges a legitimate debate about consumers' reasonable expectations concerning the life expectancy of a transmission, and it is well justified in light of the Court's comments at the preliminary approval hearing: "And you start to get up to the number of miles that most people don't even expect to own a car anyway." *Ex. RR, at p.4* (referring to the Class Representative whose transmission failure occurred at 116,000 miles).

In short, not only is the substantial relief to the Class justified in light of the genuine risks of proceeding with further litigation, but the relief actually would seem to *defy* that risk, not having been materially compromised from the Plaintiffs' perspective.

The duration of further litigation avoided by the Settlement also greatly favors its approval. If the Court had dismissed this action, then no recovery for the Class would have been possible absent a successful appeal, which would likely have delayed ultimate relief by another several years. If the Court had denied the motion to dismiss, then the trial was not scheduled to begin until August 25, 2009. *Doc. 17.* The Class would not have obtained any relief awarded at trial until after exhaustion of GM's appellate rights. In contrast, the Settlement allows class members to begin submitting claims almost immediately upon final approval. *Doc. 48-2.* The expedited nature of this relief is a very tangible benefit to the class members, many of whom will be entitled under the Settlement to receive thousands of dollars in relief, and some of whom have been unable to afford necessary repairs. *See, e.g., Ex. XX.*

B. *The Risk of Not Maintaining Class Action Status Throughout the Trial.*

Like the risk of not prevailing on the merits, the very genuine risk of not maintaining class action status throughout trial was made clear at the preliminary injunction hearing. While it is strongly believed that class treatment is entirely appropriate for all the reasons discussed in detail above—especially considering that administration concerns are analyzed differently for settlement classes than for contested classes—the Court's views at the preliminary approval hearing were clear: "You know, I look at this as a real headache to administer, and I see that as a real problem with certifying the class." *Ex. RR, at p.5.* This sentiment may have presented a significant obstacle to class certification over GM's objection, and it now weighs in favor of approving the Settlement because it highlights another risk that the Class has avoided through the Settlement. GM now has agreed to carry the burden of any administrative headaches (with assistance and oversight from Class Counsel), and as explained above, this burden is manageable.

C. *The Amount Offered In Settlement.*

A court cannot reject a settlement solely because it does not provide a complete victory to the plaintiffs. Isby, 75 F.3d at 1200; Mangone, 206 F.R.D. at 228. Settlements, by their nature, typically do not yield 100 percent recovery for plaintiffs. Mangone, 206 F.R.D. at 228. Likewise, the absence of an admission of liability does not make a settlement unfair. Id. at 230.

Furthermore, punitive damages are not appropriate in measuring the fairness of a proposed class settlement. Id. at 229.

The Settlement provides a formula for Class Members to obtain reimbursement for up to 100% of their out-of-pocket loss. A formula settlement avoids the uncertainties of a lump sum settlement. Newberg on Class Actions §12:7 at 294 (4th ed. 2002). A formula settlement involves a promise to pay all claims submitted by class members according to a formula. Id. The claims procedure may require class members to file proofs of loss. Id. "[W]hen individual claimants have relatively large claims, or when they are otherwise highly motivated to file claims, a formula per unit settlement will result in a ***maximum overall recovery*** ...." Id. § 11:18 at 27, §12:7 at 294 (emphasis added).

The Settlement provides automatic relief to class members who own a Class Vehicle with less than 125,000 miles. *Doc. 48-2.* This Court expressed concern about how GM will "adjust" or administer the claims. *Ex. RR, at p. 5.* There will be no need for individual claims "adjustment" in the traditional insurance adjustment sense, as the claim amount for each class member will be determined on the basis of submitted repair bills and estimates. Class settlements regularly involve simplified proof of claim procedures requiring affidavits or documentary evidence. Newberg on Class Actions §9:64 at 457, §9:72 at 473, §10:12 at 507, §18:54 at 185. New England Carpenters Health Benefits Fund v. First Databank, Inc., No. 05-11148-PBS (D. Mass. March 19, 2008). Indeed, "[p]urchase records or other evidence may be required where claims are more substantial or are more likely to be susceptible to supporting proofs." Newberg on Class Actions at §10:12 at 508, §18:54 at 186. The Settlement requires that GM pay claims according to the formula without any per incident, per claimant, per vehicle, or overall class limitation on the benefit. In addition, the Settlement does not require that inspections, repairs, or replacements occur at a GM dealership. *Doc. 48-2.*

"To the extent that the claims of class members are distinguishable based upon differences intrinsic to the lawsuit, asymmetrically allocated damage awards may be justified." Parker, 239 F.R.D. at 339.

> Allocation formulas ... are recognized as an appropriate means to reflect the comparative strengths and values of different categories

> of the claim.... An allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel.

Lucas v. Kmart Corp., 234 F.R.D. 688, 695 (D. Colo. 2006).[2] Under the Settlement, class members will be reimbursed for their transmission-related expenses at a rate of either 100%, 75%, or 30%, depending on their ownership status (new or used) and the vehicle mileage at the time of the occurrence. The reasonable consumer expectations built into the 100,000 and 125,000 mile thresholds are applied to the claims of all class members. The dichotomy between new and used purchasers is in recognition of the fact that purchasers of used vehicles lack privity with GM and, thus, have an arguably weaker legal position that purchasers of new vehicles. A court should consider cash and non-cash benefits to determine whether the total consideration for the class members is sufficient. Parker, 239 F.R.D. at 337. The value of the Settlement is the value of the benefit to the class—not the cost to the defendant. O'Keefe, 214 F.R.D. at 304; *see also*, In re Prudential Ins. Co. of Am. Sales Practice Litig., 962 F.Supp. 450, 557 (D.N.J. 1997) ("[T]he cost of the relief to Prudential is not the measure of the class member benefit. The value of the relief to the class, which may be substantial, is what matters"), *aff'd* 148 F.3d 283. Here, the value of the Settlement includes two components: (1) Past Reimbursable Expenses; and (2) Future Reimbursable Expenses. *Doc. 48-2.*

At least 2,000 class members who experienced transmission-related problems have contacted Class Counsel through February 20, 2009. *Ex. NN.* Even assuming that only those class members (and no others) submit claims under the Past Reimbursement Expenses category with an average transmission repair cost of $3,989[3], a conservative estimate of the value of Past Reimbursable Expenses is $7,978,000.

---

[2] As courts have noted, "Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate." Parker, 239 F.R.D. at 339; *accord* In re WorldCom, Inc. Sec. Litig., 388 F.Supp.2d 319, 343 (S.D.N.Y. 2005).

[3] Actuarial expert Mark Johnson calculated that the average claim amount for warranty claims in the first 36 months of vehicle ownership, based on actual historical GM warranty data, was $4,283 for the Vue and $3,989 for the Ion. *Ex. KK.* Because there are far more Vues than Ions in the Class Vehicles, the average for all Class Vehicles is greater than the Ion average.

The value of the Future Reimbursable Expenses is even more significant. Whatever the label, the Future Reimbursable Expenses is the "core relief" because it is an extended warranty, which insulates (to varying degrees) class members from expenses associated with the VTi transmission. *See* O'Keefe, 214 F.R.D. at 272, 305. In that case, the court stated:

> We believe that the benefits to the class are most accurately measured by making an estimation of the Extended Coverage Program's market price. We realize that this figure is difficult to estimate because the Extended Coverage Program—or any other similar warranty product—is not on the market. Yet, economists, actuaries, investors and business people must estimate and value risk in all types of market transactions. A warranty is simply the ex ante market price of insuring against a foreseeable risk. Any other measure except the market price would over or underestimate the benefit to the class.

O'Keefe, 214 F.R.D. at 305.

In *O'Keefe*, the extended warranty only covered damage associated with the allegedly defective Flexible Service System caused by using conventional instead of synthetic motor oil. O'Keefe, 214 F.R.D. at 272 (damage involved excessive oil consumption, oil sludging, and bearing wear). Unlike the extended warranty in *O'Keefe*, the Settlement does ***not*** limit the scope of the Future Reimbursable Expenses. *Doc. 48-2.* The Settlement protects against ***any*** transmission failure or related problem whatsoever. *Id.*

For GM to purchase coverage to transfer its liability under the Settlement to a third-party insurer, it would conservatively cost GM approximately $57,317,250 according to actuarial expert, Mark Johnson. *See Ex. KK.* Mr. Johnson is the same expert who computed the value of the class relief adopted by the court in *O'Keefe*. Assuming that each class member in current possession of a class vehicle could purchase a pro rata share of GM's coverage without any premium increase, the average cost per class member would be $684.65 (*i.e.*, $57,317,250 divided by 83,718 class vehicles). That estimate, however, is understated because it reflects the cost to GM to transfer its liability under the Settlement—not the cost to a class member in a consumer market.

While there are similar warranty products available on the market, none provide the same coverage as the Settlement. Therefore, comparing the "Future Reimbursable Expenses" portion of the Settlement to actual extended warranty products in the marketplace requires a variety of adjustments to the scope and benefit levels. *Ex. OO.* For example, the Settlement provides broader coverage with rental vehicle coverage and does not contain exclusions, limitations, or deductibles per claim. *Id.* On the other hand, available warranty products also cover certain non-transmission related problems, and the Settlement provides varying reimbursement rates. To purchase actually available extended warranty coverage from 75,000 miles to 125,000 miles, the average cost of the two representative scenarios analyzed in Class Counsel's declaration would be $5,965. *Id.* Assuming that only $1,000 of this approximately $6,000 warranty cost equates to the transmission Settlement relief (*i.e.*, less than 17% of the market price), the total consumer market value of the Future Reimbursable Expenses portion of the Settlement would be approximately $83,718,000.00 (*i.e.*, $1,000 multiplied by 83,718 class vehicles).

In addition, settlement classes often bear the cost of notice, settlement administration, and attorneys' fees and costs. Mangone, 206 F.R.D. at 228. Where the settlement provides that the defendant pay those fees, expenses, and costs in addition to other class relief, a court should consider them to determine the overall value of the settlement. Id. (finding an additional $12.6 million in class benefit by defendants' agreement to pay attorneys' fees, notice costs, and class settlement administration costs). Here, the Settlement does just that. *Doc. 48-2.* Therefore, the value of Class Counsel's fees and costs, the notice costs, and the claims administration expenses paid by GM also increase the total value of the benefits to the class. *Id.*

This is a settlement in which individual class members will receive very substantial relief. Using as examples only a few of the class members who contacted Class Counsel and wanted to submit affidavits in support of the Settlement, their losses would correspond to the following relief under the settlement:

Richard Courson: **$1,087** (Ex. AAA)
Shannon Sinclair: at least **$1,173** (Ex. WW)
Christopher Lewis: **$2,589** (Ex. JJJ)
Sharon Blackburn: **$2,766** (Ex. FFF)
Bertha LoCurto: **$3,112** (Ex. ZZ)

Ray Richey: **$3,764** (Ex. HHH)
Joy Broggi: **$3,863** (Ex. BBB)
Cory Deal: **$4,005** (Ex. III)
Fernando Garcia: **$4,365** (Ex. EEE)
Joanna Law: **$6,750** (Ex. CCC)

In short, the Settlement offers significant relief to the Class. A conservative estimate of the relief to the class members under the Settlement exceeds $61,742,250 (*i.e.*, $57,317,250 estimate of actuarial expert M. Johnson + $4,425,000 attorneys' fees and costs).

D. *The Extent of Discovery Completed and the Stage of the Proceedings.*

A court should consider class counsels' investigation, formal discovery, informal discovery, and confirmatory discovery. Mangone, 206 F.R.D. at 226; Levell v. Monsanto Research Corp., 191 F.R.D. 543, 557 (S.D. Ohio 2000). Since filing this action, Plaintiffs have served GM with extensive written discovery requests, thoroughly analyzed thousands of pages of documents produced by GM, deposed two current GM executives familiar with the facts at issue, subpoenaed two of GM's third-party vendors involved in manufacturing and testing the VTi, reviewed thousands of pages of responsive third-party documents, interviewed numerous potential testifying experts, and read numerous industry publications relating to CVT technology in general and the VTi in particular. *Ex. NN.* Class Counsel have created an *Addendum* summarizing the results of their investigation and discovery efforts pertinent to the negotiated relief for the Class. *Doc. 52.* In short, Class Counsel had developed an excellent understanding of the factual and legal strengths and weaknesses of the case at the time of the mediation that resulted in the proposed Settlement.

E. *The Experience and Views of Counsel.*

A court should not substitute its own judgment with a judgment of the parties and experienced counsel as to the optimal settlement terms. Alliance to End Repression v. City of Chicago, 561 F. Supp. 537, 548 (N.D. Ill. 1982). Indeed, the court should place significant weight on endorsement of counsel, and a presumption of fairness, adequacy, and reasonableness attaches to a class settlement reached through arms-length negotiations between experienced, capable counsel after meaningful discovery. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396

F.3d 96, 116 (2d Cir.), *cert. denied sub nom.* Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc., 544 U.S. 1044 (2005); Mangone, 206 F.R.D. at 226.

Class Counsel are sophisticated and skilled attorneys with substantial class action experience. Based upon their experience and particular work in this action, Class Counsel believe that the Settlement is in the best interests of the Class, and their endorsement weighs in favor of approving the Settlement. *See Exs. V, NN, OO, QQ.*

F. *The Presence of a Governmental Participant.*

This factor is neutral in this case in the sense that there are no governmental parties to this action. It is noteworthy, however, that the CAFA-required notice of the proposed Settlement was delivered to the Attorneys General in all fifty states, and not one has objected to the Settlement.

G. *The Reaction of the Class Members to the Proposed Settlement.*

This case has generated an unusually high degree of interest on the part of class members, and the vast majority of responses have been overwhelmingly favorable. In the few weeks since notice of the Settlement was mailed to the Class on January 9, Class Counsel have fielded telephone calls, e-mails, and written communications from more than 1500 class members. *Ex. NN.* Most of these class members contacted Class Counsel to confirm the procedure for submitting claims, to verify that they actually were class members entitled to relief, to express their support for the settlement and thank Class Counsel for their efforts, or some combination of the above. Many class members even wanted to submit written declarations (attached as *Exs. WW-JJJ*) formally expressing their support for the proposed Settlement.

> "The settlement gives me the means to fix my 2003 Saturn Vue that has been sitting in my driveway the last six months as I continue to make payments. I am absolutely happy with the help that the settlement provides. When I purchased my Saturn vehicle I was really wanting to purchase a vehicle manufactured in the U.S., and I definitely feel that I was taken advantage of. *Ex. XX.*
>
> "Due to the information I received from Class Counsel I was able to get fully reimbursed for the transmission repairs. I believe that the settlement is great because not only will it reimburse people for past failures, but it puts a plan in place for future problems I may have with the VTi transmission in my 2003 Saturn Vue." *Ex. YY.*

> "I am very disappointed in the quality and workmanship of the Saturn Vue transmission. I feel that the transmission should last longer than it did. I bought this vehicle because my husband's employer took all company vehicles away from its employees. Five to six months later I was putting $4,150 into a rebuilt transmission. This was a lot of money for us to put out because we just bought the car six months earlier. We could really benefit from the recovery that the settlement provides to all others who have had and may have similar problems with the VTi transmission." *Ex. ZZ.*
>
> "I have owned several Saturn vehicles since 1994. The problems with the VTi transmission has left a very bitter taste in my mouth, and makes me very angry considering how good of a Saturn owner I have been. I take the 2003 Saturn Vue in approximately every 3,000 miles for maintenance, and all repairs that have been made since I have owned the vehicle have been at a Saturn repair shop. I do not think I would purchase another Saturn product. I am happy about the settlement, and I feel much more secure going forward because of the settlement." *Ex. AAA.*
>
> "I am a Hurricane Katrina victim. At the time that I needed to pay to replace the VTi transmission in my 2004 Saturn Vue, I was just getting my head above water from the financial status I was in from Hurricane Katrina. Once my transmission failed and I was told it would cost me over $4,500 to replace the transmission, I felt financially drained and emotionally spent. There were times I would just cry about the financial and emotional stress I was under due to money needed to replace the transmission. The settlement provides great financial relief, and I am ecstatic about the settlement." *Ex. BBB.*

Of the 149,541 class members who received notice, only 68 have asked to exclude themselves from the Class. *Ex. SS.* Of those, 43 have explained that their decision to opt out was based on the fact that they no longer own their vehicles and did not suffer any out-of-pocket losses during their ownership; these class members obviously are not opting out in order to preserve individual claims against GM, as they would have no past or future claims to preserve. *Id.* The remaining 25 class members who opted out represent only .017% of the 149,541 class members who received notice. *Id.* This opt-out rate is *de minimis*. *See, e.g.*, In re Cuisinart Food Processor Anti-Trust Litig., 1983 WL 153, *6 (D. Conn. 1983) (914 opt-outs and 45

objections were "miniscule" in light of class size in excess of 1.5 million members, 925,451 of whom received direct mail notice) (opt-outs equaled approx. 1/10 of 1% of direct mail notices); Sutton v. Med. Serv. Ass'n, 1994 WL 246166 at *7 (E.D. Pa. 1994) (approving class settlement where 850 opt-outs were a "tiny" percentage of the 1.35 million class members who received notice and noting that – as in this case – "over 99.9% did *not* opt out") (opt-outs equaled approx. 6/100 of 1%).

It is apparent that the relative absence of opt-outs and objections in this case did not result from mere apathy. First, the class member apathy that is sometimes characteristic of smaller class settlements would not be expected in a case such as this one, where the product at issue is an expensive transmission and many individual class members will receive one or more cash reimbursements of several thousand dollars each. Second, the enthusiasm that one intuitively would expect for such a settlement is confirmed and illustrated by the more than 2,000 class members who have contacted Class Counsel and those who have volunteered the declarations. *Exs. NN, WWW-JJJ.*

Of the 149,541 Class Members who received notice, only three have objected. *Docs. 60-62.* A court should not withhold approval merely because some class members object to the agreement. Reed, 869 F. Supp. at 1281. When considering an objection, a court should not isolate individual components of the settlement, but must view the agreement in its entirety. Id. at 1282. In accordance with the Court's scheduling order, Class Counsel will respond in more detail to these objections by the March 16 deadline. *Doc. 54.* For present purposes, the three objectors, while understandably passionate about the problems they experienced with their transmissions (demonstrating the genuineness and the severity of the problem this class action was filed to address), have unrealistic expectations. They appear to seek additional relief to which they almost certainly would not be entitled even had they filed their own individual actions against GM, and relief that would be nearly impossible to achieve by way of the class action mechanism.

CONCLUSION

For all of the foregoing reasons, Class Representatives and Class Counsel request that this Court approve the proposed Settlement Agreement and enter judgment thereon, and grant them such further relief as this Court deems just and proper.

Dated: _February 27, 2009

Respectfully submitted,

LAKINCHAPMAN LLC

s/ Robert W. Schmieder II
LAKINCHAPMAN LLC
Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN LLC
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2009, I electronically filed the Memorandum in Support of Final Approval of Class Settlement with the Clerk of Court using the CM/ECF system, which will send notification of such filings(s) to the following:

Gregory Oxford
goxford@icclawfirm.com; arobinson@icclawfirm.com

Respectfully submitted,

s/ Robert W. Schmieder II
LAKINCHAPMAN LLC
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095-0229
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

EFiled: Aug 27 2009 1:56PM EDT
Transaction ID 26808058
Case No. 4840-VCP

EXHIBIT L
Part 2

TABLE OF EXHIBITS

A. Declaration of Class Representative Barbara Allen
B. Declaration of Class Representative Brenda Digiandomenico
C. Declaration of Class Representative Stanley Ozarowski
D. Declaration of Class Representative Donna Santi
E. Declaration of Class Representative Valerie Evans
F. Declaration of Class Representative Kelly Castillo
G. Declaration of Class Representative Nichole Brown
H. 2002 Warranty & Owner Assistance Information (excerpts)
I. 2003 Warranty & Owner Assistance Information (excerpts)
J. 2004 Warranty & Owner Assistance Information (excerpts)
K. 2005 Warranty & Owner Assistance Information (excerpts)
L. Warranty Language Analysis chart
M. FILED UNDER SEAL—Deposition of John Ellison (excerpts)
N. FILED UNDER SEAL—GM Engineering Standards GMN11275 (excerpt)
O. FILED UNDER SEAL—GM Engineering Standards GMN9543 (excerpt)
P. FILED UNDER SEAL—GM Engineering Standards GMN9807 (excerpt)
Q. FILED UNDER SEAL—GM Engineering Standards GMW15016 (excerpt)
R. FILED UNDER SEAL—GM Engineering Standards D-95 (excerpt)
S. FILED UNDER SEAL—Deposition of Mark Gilmore (excerpts)
T. Survey of UCC 2-719 Contractual Modifications or Limitation of Remedy
U. Survey of UCC 2-302 Unconscionable Contract or Clause or Term
V. LakinChapman LLC Firm Biography
W. FILED UNDER SEAL—Ex. A. to Interrogatory Responses
X. FILED UNDER SEAL—Field Performance Evaluation Report (5/18/2004) Castillo2969-2974
Y. FILED UNDER SEAL—Excerpts from CVT Variator Drive System Failure Castillo2981-2999
Z. FILED UNDER SEAL—CVT Review Joint PDS/PT Leadership May 16, 2003 Castillo3133, 3141
AA. FILED UNDER SEAL—CVT Warranty Projections Castillo3163-3170
BB. FILED UNDER SEAL—Letter from GM counsel regarding rebuilt transmissions
CC. Extended Warranty Sample Agreement (Smart Protection Coverage)
DD. Extended Warranty Sample Agreement (Basic Guard)
EE. Extended Warranty Sample Agreement (Major Guard)
FF. Extended Warranty Sample Agreement (Value Guard)
GG. Extended Warranty Sample Agreement (Goodwrench Care Coverage)
HH. Extended Warranty Sample Agreement (Smart Care Coverage)
II. Declaration of R.L. Polk & Co.
JJ. Declaration of Campbell-Ewald Regarding Notice

KK. FILED UNDER SEAL—Report of Mark Johnson
LL. Report of Mark Johnson (Redacted)
MM. Declaration of Ronald Sabraw
NN. Declaration of Robert W. Schmieder II
OO. FILED UNDER SEAL—Declaration of Mark L. Brown
PP. Declaration of Mark L. Brown (Redacted)
QQ. Declaration of C. Brooks Cutter
RR. Transcript of Preliminary Approval hearing
SS. Lists of Opt-Outs
TT. GM Web-Site Basic Guard
UU. FILED UNDER SEAL—Extended Warranty Pricing and Coverage
VV. FILED UNDER SEAL—Third-Party Extended Warranty Pricing and Coverage
WW. Declaration of Class Member Shannon Sinclair
XX. Declaration of Class Member Erin Sullivan
YY. Declaration of Class Member Bruce Willix
ZZ. Declaration of Class Member Bertha LoCurto
AAA. Declaration of Class Member Richard P. Courson
BBB. Declaration of Class Member Joy Broggi
CCC. Declaration of Class Member Joanna Law
DDD. Declaration of Class Member Melody Walthour
EEE. Declaration of Class Member Fernando Garcia
FFF. Declaration of Class Member Sharon Blackburn
GGG. Declaration of Class Member Tom Gernand
HHH. Declaration of Class Member Ray Richey
III. Declaration of Class Member Cory Deal
JJJ. Declaration of Class Member Christopher Lewis

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Barbara Allen

Pursuant to 28 U.S.C. § 1746, Barbara Allen hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in September of 2003 from a Saturn dealership in Jacksonville, Florida. During the warranty period the transmission failed twice. When the vehicle reached approximately 107,000, a Saturn dealership in Tulsa, Oklahoma diagnosed a transmission failure and quoted $5,500.00 to replace the transmission. I have yet to have the transmission replaced following the third transmission failure.

3. On April 15, 2008, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit A

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Barbara L Allen
Barbara Allen

Dated: 11-30, 2008

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Brenda Alexis Digiandomenico

Pursuant to 28 U.S.C. § 1746, Brenda Alexis Digiandomenico hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2002 Saturn Vue new in July 2002 from a Saturn dealership in Fredericksburg, Virginia. I had problems with the transmission during the warranty period. When the vehicle reached approximately 116,000, the Saturn dealership in Fredericksburg, Virginia diagnosed transmission failure. I paid $1,900 to have the dealership replace the transmission. Since then I have had another transmission failure above 125,000 miles.

3. On October 15, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

4. Since that time, my husband (Carmen Digiandomenico) and I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the

Exhibit B

settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Brenda Alexis Digiandomenico

Dated: Nov 24, 2008

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Stanley Ozarowski

Pursuant to 28 U.S.C. § 1746, Stanley Ozarowski hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new (demo) on October 14, 2002 from a Saturn dealership in Schaumburg, Illinois. I had repeated problems with the transmission during the warranty period. When the vehicle reached approximately 83,665, the transmission failed and was towed to Saturn of Barrington and then Saturn of Dundee. Saturn of Dundee diagnosed a transmission failure. I paid $1,200.00 to have the dealership replace the transmission.

3. On November 13, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

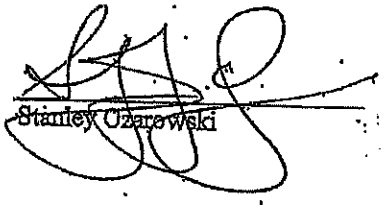
4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit C

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.



Stanley Ozarowski

Dated: Nov. 21, 2008

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Donna Santi

Pursuant to 28 U.S.C. § 1746, Donna Santi hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in November 2002 from a Saturn dealership in Ft. Myers, Florida. I had repeated problems with the transmission during the warranty period, and just outside the warranty period. When the vehicle reached approximately 102,459 miles a Saturn dealership in Sterling Heights, Michigan diagnosed a transmission failure. I paid $377.26 to have the dealership replace the transmission.

3. On August 31, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit D

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Donna Santi

Dated: November 25, 2008

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Indivdually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Valerie Evans

Pursuant to 28 U.S.C. § 1746, Valerie Evans hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in September 2002 from a Saturn dealership in St. Louis, Missouri. When the vehicle reached approximately 83,232, the transmission failed and was towed to Saturn of North County. Saturn of North County diagnosed a transmission failure. I paid $323.79 for a rental car and tow as the Saturn dealership replaced the transmission.

3. On September 27, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit E

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Valerie E. Evans

Valerie Evans

Dated: December 10, 2008

Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Kelly Castillo

Pursuant to 28 U.S.C. § 1746, Kelly Castillo hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in January of 2003 from a Saturn dealership in Roseville, California. I had repeated problems with the transmission during the warranty period. When the vehicle reached approximately 80,000 miles in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. I paid $4,200 to have the dealership replace the transmission.

3. On June 1, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit F

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Kelly Castillo

Dated: 12/12, 2008

Exhibit F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Nichole Brown

Pursuant to 28 U.S.C. § 1746, Nichole Brown hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue used in or about December of 2006, when it had slightly over 75,000 miles. When the vehicle reached approximately 78,000 miles in July of 2007, a Saturn dealership in Georgia quoted her a price of approximately $6,000 to replace the transmission. I paid $4,000 to have the transmission replaced by an independent mechanic.

3. On May 23, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

12/22/2008 13:30 3087835541 CONESTOGA BOOKKEEPIN PAGE 02

Exhibit G

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Nichole Brown

Dated: Dec. 18th, 2008.

12/22/2008 13:38 3087835541 CONESTOGA BOOKKEEPIN PAGE 03

Exhibit G

SATURN

2002 Warranty & Owner Assistance INFORMATION

Warranty Coverage at a Glance

The 2002 warranty coverages are summarized below. Please read pages 7 through 30 for complete details.

TIRE INFORMATION: Tires are warranted separately (refer to page 8 for additional information).

Defects in material and workmanship continue to be covered under the "Bumper to Bumper" Coverage in the New Car Limited Warranty.

2002 Saturn Corporation New Car Limited Warranty

SATURN.

Saturn Corporation will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the following terms, conditions, and limitations.

WHAT IS COVERED

Warranty Applies

This warranty is for Saturn cars registered in the United States and normally operated in the Continental United States, Hawaii,* Alaska, or Canada, and is provided to the original and any subsequent owners of the car during the WARRANTY PERIOD.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.

* In the state of Hawaii, authorized Saturn Service is available only on the island of Oahu.

Needed repairs will be performed using new or remanufactured parts.

Warranty Period

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the COVERAGE period.

Bumper to Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What Is Not Covered" on pages 8 through 10.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Exhibit H

Damage Due to Accidents, Misuse, or Alteration

Damage caused as the result of any of the following, is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the vehicle;
- Misuse of the vehicle such as driving over curbs, overloading, racing or other competition. Proper vehicle use is discussed in the Owner's Handbook;
- Alteration or modification to the vehicle including the body, chassis or components, after final assembly by Saturn. In addition, coverages do not apply if the odometer has been disconnected or its reading has been altered, or the mileage cannot be determined.

Note: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.) stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See page 14 for details on Chemical Paint Spotting.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended Maintenance Schedule intervals and/or failure to use or maintain fluids, fuel, lubricants or refrigerants recommended in the Owner's Handbook is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the Owner's Handbook or Maintenance publications are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear or exposure are not covered.

Produced by GM in Castillo, et al v. GM CASTILLO0000000529

Exhibit H

SATURN.

2003 Warranty & Owner Assistance INFORMATION

Exhibit I

Warranty Coverage at a Glance

The 2003 warranty coverages are summarized below. Please read pages 7 through 30 for complete details.

TIRE INFORMATION: Tires are warranted separately (refer to page 8 for additional information).

☐ Defects in material and workmanship continue to be covered under the "Bumper to Bumper" Coverage in the New Car Limited Warranty.

2003 Saturn Corporation New Car Limited Warranty

Saturn Corporation will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the following terms, conditions, and limitations.

WHAT IS COVERED

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the Continental United States, Hawaii,* Alaska, or Canada, and is provided to the original and any subsequent owners of the car during the WARRANTY PERIOD.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.

* In the state of Hawaii, authorized Saturn Service is available only on the island of Oahu.

Needed repairs will be performed using new or remanufactured parts.

Warranty Period

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the COVERAGE period.

Bumper to Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed hereunder. "What is Covered" and those items listed under "What is Not Covered" on pages 8 through 10.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Exhibit I

Damage Due to Accidents, Misuse, or Alteration

Damage caused as the result of any of the following, is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the vehicle;
- Misuse of the vehicle such as driving over curbs, overloading, racing or other competition. Proper vehicle use is discussed in the Owner's Handbook;
- Alteration or modification to the vehicle including the body, chassis or components, after final assembly by Saturn. In addition, coverages do not apply if the odometer has been disconnected or its reading has been altered, or the mileage cannot be determined.

Note: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.) stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See page 12 for details on Chemical Paint Spotting.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended Maintenance Schedule intervals and/or failure to use or maintain fluids, fuel, lubricants or refrigerants recommended in the Owner's Handbook is not covered.

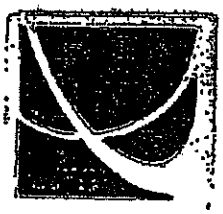
Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the Owner's Handbook are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear or exposure are not covered.

Exhibit I

2004

WARRANTY AND OWNER ASSISTANCE INFORMATION



Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

Emission Control Systems Warranty

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty engines are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously.
  - Catalytic converters, engine control modules, and powertrain control modules are covered for the first 8 years or 80,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars, light duty, and medium duty engines are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with either light duty or medium duty engines are covered for the first 7 years or 70,000 miles, whichever comes first.

Produced by GM in Castillo, et al v. GM

New Vehicle Limited Warranty

Saturn will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

In the state of Hawaii, authorized Saturn service is available only on the island of Oahu.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Saturn retail facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the retail facility to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered.

- collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual
- alteration or modification to the vehicle including the body, chassis or components after final assembly by Saturn.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.), stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 7* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are at the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

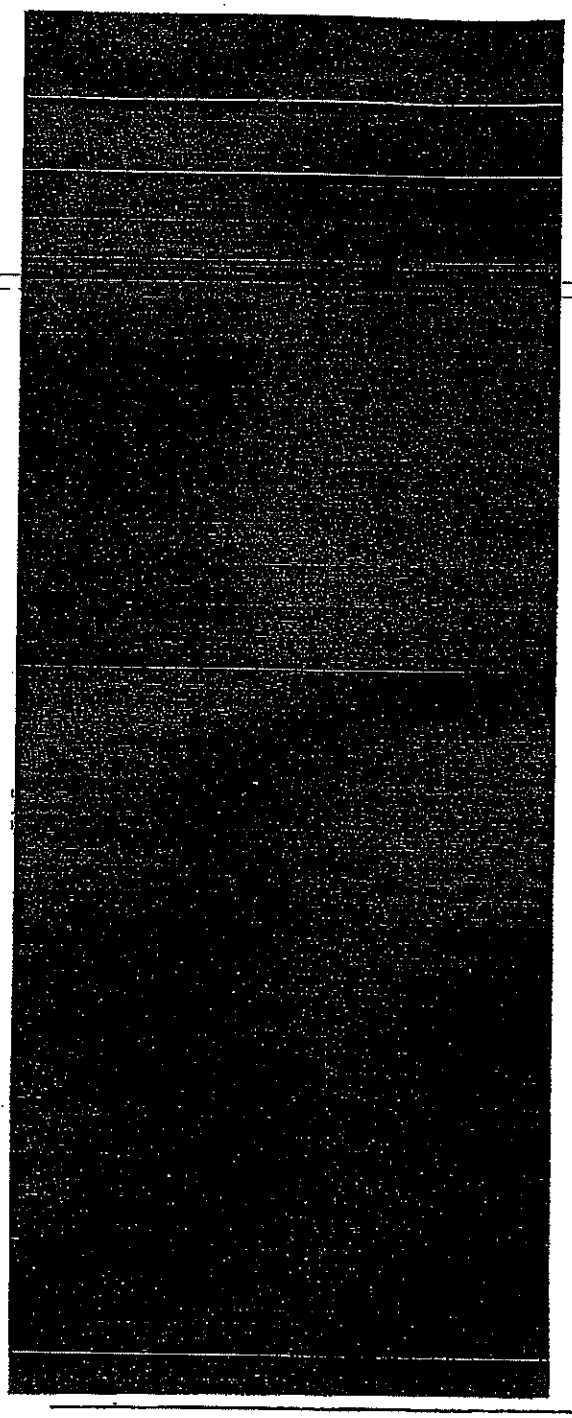


Exhibit K

Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

Emission Control Systems Warranty*

* For light duty trucks see "How to Determine the Applicable Emissions Control System Warranty" under *Emission Control Systems Warranty on page 10* for more information.

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty engines are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously.
  - Catalytic converters, engine control modules, and powertrain control modules are covered for the first 8 years or 80,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars, light duty, and medium duty engines are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with light duty or medium duty engines are covered for the first 7 years or 70,000 miles, whichever comes first.

New Vehicle Limited Warranty

Saturn will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

In the state of Hawaii, authorized Saturn service is available only on the island of Oahu.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Saturn retail facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the retail facility to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

Accessory Coverages

All Saturn accessories sold by Saturn and parts that are permanently installed on a Saturn vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty.

Produced by GM in Castillo, et al v. GM

Exhibit K

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered.

- Collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- Misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual.
- Alteration or modification to the vehicle including the body, chassis, or components after final assembly by Saturn.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, or Aftermarket Products

Damage caused by airborne fallout, chemicals, tree sap, etc., stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 6* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are at the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Produced by GM in Castillo, et al v. GM

Exhibit K

Exhibit L

There are no material differences in the standard warranty language.

Model Year	Model	Repairs Covered	Warranty	Bates Number
2002	Vue	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000527
2003	Vue	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000494
2003	Ion	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000494
2004	Vue	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001070
2004	Ion	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001070
2005	Vue	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001102

Exhibit M to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit N to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

EFiled: Aug 27 2009 1:56PM EDT
Transaction ID 26808058
Case No. 4840-VCP

EXHIBIT L
Part 3

Exhibit O to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit P to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit Q to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit R to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit S to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 1 of 4

Survey of UCC 2-719
Contractual Modification or Limitation of Remedy

There are no outcome-determinative conflicts of this uniform code section among the laws of the States below.

State	Code Section	Elements
UCC	Unif. Commercial Code § 2-719	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Alabama	Ala. Code 1975 § 7-2-719	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Alaska	Alaska Stat. § 45.02.302	If circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in the code.
Arizona	Ariz. Rev. Stat. Ann. § 47-2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Arkansas	Ark. Code Ann. § 4-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.
California	Cal. Civ. Code § 1670.5	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Colorado	Colo. Rev. Stat. Ann. § 4-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Delaware	Del. Code Ann. tit. 6, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
District of Columbia	D.C. Code § 28:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.
Florida	Fla. Stat. Ann. § 672.302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Georgia	Ga. Code Ann. § 11-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Hawaii	Haw. Rev. Stat. § 490:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Idaho	Idaho Code Ann. § 28-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 2 of 4

Illinois	810 Ill. Comp. Stat. Ann. 5/2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Indiana	Ind. Code Ann. § 26-1-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in IC 26-1
Iowa	Iowa Code Ann. § 554.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Kansas	Kan. Stat. Ann. § 84-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be ajd as provided in this act.
Kentucky	Ky. Rev. Stat. Ann. § 355.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Louisiana		
Maine	Me. Rev. Stat. Ann. tit. 11, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.
Maryland	Md. Code Ann., Com. Law § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in Titles 1 through 10 of this article.
Massachusetts	Mass. Gen. Laws Ann. ch. 106 §2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Michigan	Mich. Comp. Laws Ann. § 440.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
Minnesota	Minn. Stat. Ann. § 336.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Mississippi	Miss. Code Ann. § 75-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Code.
Missouri	Mo. Ann. Stat. § 400.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Montana	Mont. Code Ann. § 30-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Nebraska	Neb. Rev. Stat. § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as proved in the Uniform Commercial Code.
Nevada	Nev. Rev. Stat. § 104.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
New Hampshire	N.H. Rev. Stat. Ann. § 382-A:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 3 of 4

New Jersey	N.J. Stat. Ann. § 12A:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
New Mexico	N.M. Stat. Ann. § 55-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
New York	N.Y. U.C.C. Law §2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
North Carolina	N.C. Gen. Stat. Ann. § 25-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
North Dakota	N.D. Cent. Code § 41-02-19	If circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Ohio	Ohio Rev. Code Ann. § 1302.15	Where circumstances cause an exclusive of limited remedy to fail of its essential purpose, remedy may be had as provided in Chapters 1301., 1302., 1303., 01304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code.
Oklahoma	Okla. Stat. tit. 12A, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
Oregon	Or. Rev. Stat. § 72.3020	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in the Uniform Commercial Code.
Pennsylvania	13 Pa. Cons. Stat. Ann. § 2302	Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.
Rhode Island	R.I. Gen. Laws § 6A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in title 6A.
South Carolina	S.C. Code Ann. Regs. § 36-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
South Dakota	S.D. Codified Laws § 57A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Tennessee	Tenn. Code Ann. § 47-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in chapters 1-9 of this title.
Texas	Tex. Bus. & Com. Code Ann. § 2.302	Where circumstances cause an exclusive or limited remedy to tail of its essential purpose, remedy may be had as provided in this title.
Utah	Utah Code Ann. § 70A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act. [FN1]
Vermont	Vt. Stat. Ann. tit. 9A, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Virginia	Va. Code Ann. § 8.2-302	Where circumstances cause an exclusive or limited remedy to fail of its

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 4 of 4

		essential purpose, remedy may be had as provided in this act.
Washington	Wash. Rev. Code Ann. § 62A.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.
West Virginia	W. Va. Code, § 46-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this article.
Wisconsin	Wis. Stat. Ann. § 402.302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in chs. 401 to 411.
Wyoming	Wyo. Stat. Ann. § 34.1-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act [§§ 34.1-1-101 through 34.1-10-104].

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 1 of 19

Survey of UCC 2-302
Unconscionable Contract or Clause or Term

There are no outcome-determinative conflicts of this uniform code section among the laws of the States below.

State	Code Section	Elements
Alabama	Ala. Code 1975 § 7-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Alaska	Alaska Stat. § 45.02.302	(a) If the court as a matter of law finds the contract or a clause of the contract was unconscionable at the time it was made, the

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 2 of 19

		court may refuse to enforce the contract without the unconscionable clause, or so limit the application of an unconscionable clause as to avoid an unconscionable result. (b) If it is claimed or appears to the court that the contract or any clause may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Arizona	Ariz. Rev. Stat. Ann. § 47-2302	A. If the court as a matter of law finds the contract or any clause of the contract to have unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause as to avoid any unconscionable result. B. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Arkansas	Ark. Code Ann. § 4-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
California	Cal. Civ. Code § 1670.5	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may

		enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Colorado	Colo. Rev. Stat. Ann. § 4-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Survey of UCC 2-302
Unconscionable Contract or Clause or Term

Delaware	Del. Code Ann. tit. 6, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
District of Columbia	D.C. Code § 28:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Florida	Fla. Stat. Ann. § 672.302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Georgia	Ga. Code Ann. § 11-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Hawaii	Haw. Rev. Stat. § 490:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Idaho	Idaho Code Ann. § 28-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Illinois	810 Ill. Comp. Stat. Ann. 5/2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Indiana	Ind. Code Ann. § 26-1-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Iowa	Iowa Code Ann. § 554.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in

		making the determination.
Kansas	Kan. Stat. Ann. § 84-2-302	(3) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (4) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Kentucky	Ky. Rev. Stat. Ann. § 355.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Louisiana	La. Rev. Stat. Ann. § 9:3516	(36) "Unconscionable". A contract or clause is unconscionable when at the time the contract is entered into it is so onerous, oppressive or one-sided that a reasonable man would not have freely given his consent to the contract or clause thereof in question; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an arrangement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this

		state or the United States or any subdivision of either is not unconscionable.
Maine	Me. Rev. Stat. Ann. tit. 11, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Maryland	Md. Code Ann., Com. Law § 2-302	(5) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (6) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Massachusetts	Mass. Gen. Laws Ann. ch. 106 §2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose, and effect to aid the court in making the determination.
Michigan	Mich. Comp. Laws Ann. § 440.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Minnesota	Minn. Stat. Ann. § 336.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Mississippi	Miss. Code Ann. § 75-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose and effect to aid the court in making the determination.
Missouri	Mo. Ann. Stat. § 400.2-302	(7) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (8) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Montana	Mont. Code Ann. § 30-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Nebraska	Neb. Rev. Stat. § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose and effect to aid the court in making the determination.
Nevada	Nev. Rev. Stat. § 104.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Hampshire	N.H. Rev. Stat. Ann. § 382-A:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Jersey	N.J. Stat. Ann. § 12A:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 12 of 19

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Mexico	N.M. Stat. Ann. § 55-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New York	N.Y. U.C.C. Law §2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
North Carolina	N.C. Gen. Stat. Ann. § 25-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
North Dakota	N.D. Cent. Code § 41-02-19	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Ohio	Ohio Rev. Code Ann. § 1302.15	(A) If the court as a matter of law finds the contact or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (B) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Oklahoma	Okla. Stat. tit. 12A, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 14 of 19

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Oregon	Or. Rev. Stat. § 72.3020	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Pennsylvania	13 Pa. Cons. Stat. Ann. § 2302	(a) Finding and authority of court.—If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may: (1) refuse to enforce the contract; (2) enforce the remainder of the contract without the unconscionable clause; or (3) so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) Evidence by parties.—When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Rhode Island	R.I. Gen. Laws § 6A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 15 of 19

		unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
South Carolina	S.C. Code Ann. Regs. § 36-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
South Dakota	S.D. Codified Laws § 57A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Tennessee	Tenn. Code Ann. § 47-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Texas	Tex. Bus. & Com. Code Ann. § 2.302	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Utah	Utah Code Ann. § 70A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Vermont	Vt. Stat. Ann. tit. 9A, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Virginia	Va. Code Ann. § 8.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Washington	Wash. Rev. Code Ann. § 62A.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 18 of 19

West Virginia	W. Va. Code § 46-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Wisconsin	Wis. Stat. Ann. § 402.302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Wyoming	Wyo. Stat. Ann. § 34.1-2-302	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Survey of UCC 2-302
Unconscionable Contract or Clause or Term

Exhibit U

LAKINCHAPMAN LLC

LakinChapman LLC consists of sixteen (16) attorneys, two (2) Of Counsel, four (4) paralegals, five (5) investigators, and twenty six (26) support staff members. LakinChapman attorneys have built their reputation on their aggressive representation and successful track record in the courtroom—trying forty nine (49) cases to verdict since 2005.

LakinChapman attorneys are highly-experienced and draw from their varied professional backgrounds. For example, LakinChapman clients enjoy the benefits of having a team of attorneys consisting of a former Illinois appellate court judge, a current Illinois state representative, a former partner at a national firm, a former in-house attorney at a Fortune 500 company, a former appellate court clerk, and attorneys who have argued before the Supreme Court of the United States. The diversity of the attorneys allows LakinChapman to aggressively pursue the clients' best interests in an efficient and effective manner. In addition, LakinChapman has invested in technology and other substantial resources to equip its attorneys to pursue and achieve successful outcomes for clients in complex multi-party, multi-issue, multi-jurisdictional cases.

Complex Litigation

LakinChapman has established a complex litigation practice group within the firm to dedicate attorneys, paralegals, and staff members to handle class action and other complex litigation. LakinChapman attorneys have achieved remarkable success for clients against a broad spectrum of sophisticated defendants—recovering in excess of $450 million in benefits for class members:

Case Name	Jurisdiction	Final Approval Date	Minimum Class Benefit
Bemis v. AutoOwners Ins. Co.	Illinois	April 3, 2009	$4,500,000
Fischer v. Arrowood	Illinois	March 27, 2009	$1,416,000
Pederson v. Trilegiant Corp.	Illinois	July 18, 2008	$35,000,000
Kolker v. DIRECTV	Illinois	July 15, 2008	$2,360,000
Wratchford v. Accredited Home Lenders, Inc	Illinois	June 6, 2008	$1,009,920
Allied/Nationwide Consolidated Litigation			$33,029,601
Cashman	US Dist. Ct. Ariz.	March 17, 2008	
Garza	Texas	March 6, 2008	
Murphy v. BMG	Illinois	March 15, 2007	$8,000,000

Exhibit V

Knight v. Homecomings	Illinois	December 22, 2006	$10,408,464
McLaughlin v. Citibank	Illinois	December 22, 2006	$2,640,000
Metro Petroleum v. First Colony	Illinois	December 20, 2006	$1,300,000
Maulding v. Hilton Hotels Corp.	Illinois	November 21, 2006	$9,123,329
O'Leary, et. al. v. America Online, Inc.	Illinois	February 22, 2006	$56,176,000
Total Loss Consolidated Litigation	Illinois	December 20, 2005	$92,000,000
CGU			
Prudential Prop. and Casualty Ins. Co.			
Country Mutual Ins. Co.			
Progressive Premier Ins. Co. of IL			
Economy Preferred Ins. Co.			
Hartford Ins. Co. of IL			
National General Ins. Co.			
Travelers Prop. Casualty Ins. Co. of IL			
Atlanta Casualty Co., et. al.			
Colonial Penn Ins. Co.			
Allstate Ins. Co., et. al.			
Bemis v. USAA et. al.	Illinois	October 21, 2005	$35,000,000
Defrates v. Hollywood Entertainment Corp.	Illinois	June 24, 2005	$9,000,000
Aleman v. Horace Mann Ins. Co.	Texas	March 14, 2005	$3,000,000
Froeber v. Liberty Mutual Fire Ins. Co.	Oregon	March 1, 2005	$6,109,585
Morningstar v. AMEX	Illinois	February 19, 2004	$1,785,000
Caliper, et al v. Masco Corp. et. al.	Illinois	September 26, 2003	$100,000,000
Littleton v. Shelter Ins. Co.	Illinois	April 11, 2003	$6,000,000
Cox v. Country Mutual Ins. Co., et. al.	Illinois	February 14, 2003	$900,000
Ragan v. Travelers Property Casualty Co. et. al	Illinois	December 16, 2002	$11,000,000
Triad v. UPS	Illinois	December 5, 2001	$38,500,000

LakinChapman attorneys have also successfully certified the following cases:

Case Name	Jurisdiction	Certification Date
Coy, et al v. Travelers et al.	Illinois	October 14, 2008
Madison, et al v. Hartford Ins. Co.	Illinois	July 7, 2008
Kaltenbronn, et al v. Liberty Mutual Ins. Co.	Illinois	June 30, 2008
Zobrist v. Verizon	American Arb. Assoc.	March 10, 2008
Fischer v. Universal Ins. Co.	Illinois	November 26, 2007
Fischer v. General Casualty Ins. Co.	Illinois	November 13, 2007
Hall v. Sprint Spectrum et. al.	Illinois	May 20, 2005
Barrera v. Best Buy Co. Inc.	Texas	March 18, 2005
Wratchford v. CBSK Financial Group, Inc.	Illinois	January 28, 2005
Wratchford v. Accredited Home Lenders, Inc	Illinois	January 28, 2005
Singleton v. Government Employees Ins. et. al.	Illinois	November 12, 2004
Snyder v. Sprint Spectrum L.P.	Illinois	March 30, 2004
Pederson v. Trilegiant Corp.	Illinois	February 20, 2004
Phillips v. Ford Motor Co.	Illinois	September 15, 2003
Marshall, et al. v. H&R Block Tax Services	Illinois	August 27, 2003
Booher v. United Life Ins. Co.	Illinois	July 3, 2003
Maulding v. Hilton Hotels Corp.	Illinois	June 26, 2003
Bemis v. United Services Automobile Assoc.	Illinois	June 10, 2003
Defrates v. Hollywood Entertainment Corp.	Illinois	May 14, 2003

Exhibit V

Hernandez v. American Family Mutual, etc.	Illinois	October 21, 2002
Caliper, et al v. Masco Corp. et. al.	Illinois	September 24, 2002
Strasen v. Allstate Ins. Co.	Illinois	September 10, 2001
Triad v. UPS	Illinois	April 5, 2001
Littleton v. Shelter Ins. Co.	Illinois	September 11, 2000

In addition to recovering benefits for class members, LakinChapman attorneys have successfully changed the legal landscape for consumers on a variety of issues from class prohibitions in arbitration clauses, *Kinkel v. Cingular Wireless, LLC*, 857 N.E.2d 250 (Ill. 2006); *Wigginton v. Dell, Inc.*, 890 N.E.2d 541 (Ill. App. Ct. 2008), to the fraudulent use of appraisal clauses, Hanke v. American Int'l South Ins. Co., 782 N.E. 2d 328 (Ill. App. Ct. 2002) and to the voluntary payment doctrine and federal banking preemption, *Shaw v. US Bank, N.A.*, No. 5-06-0510 (Ill. App. Ct. 2008) (Rule 23 order).

LakinChapman attorneys and paralegals dedicated to the Complex Litigation practice group include:

Bradley M. Lakin. *Education:* University of Illinois (B.A. 1993); Northern Illinois University School of Law (J.D. 1997). *Experience:* Managing Partner, LakinChapman, LLC (2009 – present); President, The Lakin Law Firm, P.C. (1997 – 2008). *Honors & Activities:* 2008, 2009 Illinois Super Lawyers; 2006 40 Illinois Lawyers Under Forty to Watch; Crain's Chicago Business 2nd largest verdict in the State of Illinois (2005); Verdict Search's Top 100 List. (30th Nationwide); American Association for Justice (Leaders Forum and State Delegate); Illinois Trial Lawyers Association; Illinois State Bar Association;; Madison County Bar Association. *Admitted to Practice:* State of Illinois and the Southern District of Illinois.

Mr. Lakin is the Managing Attorney of LakinChapman, LLC. Mr. Lakin has exclusively represented plaintiffs in class action litigation since 1998. He has been appointed co-lead and/or lead counsel in numerous class actions and has argued class certification motions, decertification motions, notice plans and other substantive motions. He has deposed corporate representatives and witnesses regarding certification and merits issues. Mr. Lakin has also handled preliminary approval hearings, final approval hearings and objector evidentiary issues. Likewise, he has handled class settlement negotiations, class settlement mediations, preliminary approval hearings, final approval hearings, objector evidentiary hearings, and claims administrative issues. *Reported Decisions involving Class Actions:* Stock v. Integrated Health Plan, Inc., 241 F.R.D. 618 (S.D.

Ill. 2007); Hall v. Sprint Spectrum L.P., 376 Ill.App.3d 822 (Ill. App. Ct. 2007); Hall v. Sprint Spectrum L.P., 368 Ill.App.3d 820 (Ill. App. Ct. 2006); Kern v. DaimlerChrysler Corp., 364 Ill.App.3d 708 (Ill. App. Ct. 2006); Austin v. Illinois Farmers Ins. Co., 351 Ill.App.3d 931 (Ill. App. Ct. 2004); Peach v. CIM Ins. Co., 352 Ill.App.3d 691 (Ill. App. Ct. 2004); Boxdorfer v. DaimlerChrysler Corp., 339 Ill.App.3d 335 Ill. App. Ct. 2003); Reynolds v. GMAC Financial Services, Inc., 344 Ill.App.3d 843 (Ill. App. Ct. 2003); Hanke v. American Intern. South Ins. Co., 335 Ill.App.3d 1164 (Ill. App. Ct. 2002). Phillips v. Ford, 435 F.3d 785 (7th Cir. 2006). In addition to class action litigation, Mr. Lakin has extensive experience in the following practice areas: Federal Employers Liability Act, Nursing Home Abuse and Neglect and Product Liability. He has tried cases to verdict in Illinois, Missouri, Nebraska, Oklahoma, Arkansas and West Virginia.

Charles W. Chapman. *Education*: Southern Illinois University Edwardsville (B.A. Chemistry 1963); St. Louis University School of Law (J.D. 1967); University of Virginia School of Law (LLM 1992). *Experience:* LakinChapman LLC (2009 – present); Charles W. Chapman Chartered (2001 – 2009); of counsel to The Lakin Law Firm, P.C. (2001 – 2009); Appellate Court Justice, Fifth District (1988 – 2001); Circuit Judge Third Judicial Circuit (1979 – 1988); private practice with Morris P. Chapman (1968 – 1979); (partner 1970 – 1979); law clerk to Federal Judge Omer Poos Southern District of Illinois (1967 – 1968); research chemist John Cochran Veteran's Hospital (1963 – 1967). *Publications:* *Product Liability in Illinois*, co-author; *Illinois Objections at Trial*, co-author; *Jaws XVI: The exceptions that ate Rule 220*, 26 J. Marshall L. Rev. 189(1993); Charles W. Chapman, *An Appellate Judge Looks at Recent Rule 220 Cases*, 82 Ill. B.J. 478(1994). In addition to the above publications, Mr. Chapman is the author of several hundred judicial opinions during the course of his 13 years in the Appellate Court. *Honors & Activities:* Outstanding Trial Judge in the United States 1984; Illinois Super Lawyers 2009, 2008, 2007; American Association for Justice; Illinois Trial Lawyers; Illinois State Bar Association; Madison County Bar Association; Alton-Wood River Bar Association. *Admitted to Practice:* United States Supreme Court, United States Court of Appeals 7th Circuit; United States District Court Southern District of Illinois; State of Illinois.

Mr. Chapman has engaged in an active trial practice both before and after his judicial career. Since retiring the bench, Mr. Chapman has been engaged in the preparation and trial of serious personal injury cases. Mr. Brad Lakin and Mr. Chapman together tried a case against Ford Motor Company which resulted in the largest non-asbestos litigation verdict in Madison County, Illinois in 2005. Mr. Chapman also tried a wrongful death case in Randolph County, Illinois and received the highest jury verdict in that county in 2006.

Exhibit V

Robert W. Schmieder II. *Education:* Northwestern University (B.A. 1993); Southern Illinois University School of Law (J.D. 1996). *Experience:* LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2005-2008); Sonnenschein Nath & Rosenthal LLP (1998-2005; partner, 2003-2005); Gallop Johnson & Neuman LC (1996-1998). *Publications:* WARNING: SELLERS MAY NOW HAVE A POST-SALE DUTY TO WARN, 50 FICC Quarterly 533 (2000); STUCK ON THE TRACKS: THE FELA ENGINE VS. THE ETHICAL CABOOSE, 20 S. Ill. U.L.J. 331 (1996) (Best Comment Award); WORKERS' COMPENSATION AND CONTRIBUTION IN ILLINOIS: PUNCHING A HOLE IN THE KOTECKI CEILING, 20 S. Ill. U.L.J. 651 (1996). *Honors & Activities:* 2009 Illinois Super Lawyers; American Association for Justice; Illinois Trial Lawyers Association; Illinois State Bar Association; Missouri Bar Association; Madison County Bar Association; *Southern Illinois University Law Journal* Board of Editors; Order of Barristers; and the National Health Law Moot Court Team. *Admitted to Practice:* State of Illinois, State of Missouri, the United States Court of Appeals (Third Circuit, Seventh Circuit, and Eighth Circuit), and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Schmieder has litigated class action cases since 1997. From 1997 until 2005, he primarily represented defendants in class action litigation. Since 2005, Mr. Schmieder has exclusively represented plaintiffs (including certified classes) in class action litigation. He has argued appeals, motions before the United States Judicial Panel on Multidistrict Litigation (MDL Panel), class certification motions, decertification motions, and other substantive motions. Mr. Schmieder has regularly deposed corporate representatives, witnesses, and experts regarding certification and merits issues. Likewise, he has handled class settlement negotiations, class settlement mediations, preliminary approval hearings, final approval hearings, objector evidentiary hearings, and claims administrative issues. *Reported Decisions involving Class Actions:* Chandler v. Norwest Bank Minn., N.A., 137 F.3d 1053 (8th Cir. 1998); Reynolds v. Diamond Foods & Poultry, Inc., 79 S.W.3d 907 (Mo. en banc 2002); Nesby v. Country Mut. Ins. Co., 805 N.E.2d 241 (Ill. App. Ct. 2004); Boxdorfer v. DaimlerChrysler Corp., 396 F. Supp.2d 946 (C.D. Ill. 2005); Phillips v. Ford, 435 F.3d 785 (7th Cir. 2006). In addition to class action litigation, Mr. Schmieder has handled other complex litigation, including commercial, insurance coverage, insurance bad faith, construction, product liability, toxic tort, pharmaceutical, and personal injury litigation. He has tried cases to verdict in the Illinois counties of Cook, Madison and St. Clair and in St. Louis City and St. Louis County, Missouri. In addition, Mr. Schmieder has argued appeals, handled bench trials, handled class certification hearings, arbitrations, and handled evidentiary proceedings in a

Exhibit V

multitude of jurisdictions. *Other Reported Decisions:* Reliance Nat. Ins. Co. v. Great Lakes Aviation, Ltd., 12 F. Supp.2d 854 (C.D. Ill. 1998); Forty Bon, Inc. v. St. Louis Inv. Properties, Inc., 965 S.W.2d 471 (Mo. App. Ct. 1998); Raskas Foods, Inc. v. Southwest Whey, Inc., 978 S.W.2d 46 (Mo. App. Ct. 1998); Olean Assoc., Inc. v. Knights of Columbus, 5 S.W.3d 518 (Mo. App. Ct. 1999); Lancaster v. American & Foreign Ins. Co., 258 F.3d 780 (8th Cir. 2001) (Lancaster I); Lancaster v. American & Foreign Ins. Co., 272 F.3d 1059 (8th Cir. 2001) (Lancaster II); Moore v. Johnson County Farm Bureau, 798 N.E.2d 790 (Ill. App. Ct. Dist. 2003).

Mark L. Brown. *Education:* Bradley University (B.A., *Summa Cum Laude*, 1994); Washington University School of Law (J.D. 1997). *Experience:* LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2007-2008); Charter Communications Inc., Legal Department (2005-2006); Sonnenschein Nath & Rosenthal LLP (2002-2005); Thompson Coburn LLP (1997-2002). *Publications:* MISSOURI'S LONG-ARM STATUTE: WHO NEEDS IT?, Missouri Organization of Defense Lawyers (1999). *Honors & Activities:* American Bar Association; Illinois State Bar Association; Missouri Bar Association. *Admitted to Practice:* Illinois, Missouri, United States Court of Appeals (Eighth Circuit), and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Brown has actively litigated class action cases since January of 2007, exclusively representing plaintiffs (including certified classes). In addition, he was frequently consulted on class action matters while Director of Litigation and Senior Counsel for Charter Communications Inc. Mr. Brown has handled class settlement negotiations, class settlement mediations, dispositive motion hearings, and a variety of depositions in class action cases. In addition to class action litigation, Mr. Brown has handled a wide variety of complex litigation, including commercial, intellectual property, franchise, product liability, toxic tort, and personal injury litigation, the majority on behalf of Fortune 500 clientele. He has tried cases in St. Louis City and St. Louis County, Missouri, Scott County, Iowa, and the U.S. District Court for the Western District of Wisconsin, as well as in arbitration proceedings in Missouri, California, and Tennessee. Moreover, Mr. Brown has handled evidentiary proceedings in the Circuit Court of Madison County, Illinois and the U.S. District Court for the Eastern District of Missouri, and he has argued a variety of motions in a multitude of jurisdictions. He has deposed and defended the depositions of countless lay and expert witnesses. As Director of Litigation and Senior Counsel for Charter Communications Inc., a Fortune 500 Company, he was responsible for overseeing an extremely wide range of litigation, including substantial litigation involving consumer disputes. *Reported Decisions:* Medicine Shoppe International, Inc. v. S.B.S. Pill Dr., Inc., 336

F.3d 801 (8th Cir. 2003); Burds v. Union Pacific Corp., 223 F.3d 814 (8th Cir. 2000); Scanwell Freight Express STL, Inc. v. Chan, 162 S.W.3d 477 (Mo. 2005).

Jonathan B. Piper. *Education*: Princeton University (A.B. 1977); The Yale Law School (J.D. 1987). *Experience*: LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2007-2008); Freed & Weiss, LLC (2003-2007); The Office of the Illinois Appellate Defender (2002-2003); Sonnenschein Nath & Rosenthal LLP (1987-2002). *Publications*: Contributing Author, RACE FOR JUSTICE (1995). *Admitted to Practice*: State of Illinois, the United States Court of Appeals (Third Circuit, Seventh Circuit), and the United States District Court (Northern District of Illinois and Southern District of Illinois).

Mr. Piper has litigated class actions and other complex litigation cases throughout his career, both from the plaintiff and defense standpoints, including nationally prominent consumer and insurance matters. He has been appointed class counsel in significant national class cases including the Nationwide Insurance medical payments settlement, and led negotiations of the AOL unauthorized charges settlement. In addition, Mr. Piper has broad experience representing individuals in civil rights and constitutional cases, including devoting a year to working on criminal appeals for indigent defendants. *Other Reported Decisions:* Com. v. Abu-Jamal, 720 A.2d 79 (Pa. 1998); Wildey v Springs, 47 F.3d 1475 (7th Cir. 1995); Bennett & Kahnweiler, Inc. v. American Nat. Bank & Trust Co. of Chicago, 256 Ill.App.3d 1002 (Ill. App. 1993); Mitsui Taiyo Kobe Bank, Ltd. v. First Nat. Realty & Development Co., Inc., 788 F. Supp. 1007 (N.D. Ill. 1992); Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989).

Daniel Cohen. *Education*: Washington University School of Law (J.D. 1992); Washington University (B.A. 1989). Experience: LakinChapman LLC (2009-present); Lakin Law Firm, P.C. (2002-2008); Bauer & Baebler, P.C. (1998-2002); C. Marshall Friedman, P.C. (1995-1998); Jon Carlson & Associates (1992-1995). Admitted to Practice: Illinois, Missouri, United States Supreme Court, United States Circuit Court of Appeals (7th Circuit), United States Circuit Court of Appeals (5th Circuit), United States District Court (Eastern District of Missouri), United States District Court (Southern District of Illinois). Honors and Activities: American Association for Justice; Illinois Trial Lawyers Association; Missouri Association of Trial Attorneys; American Bar Association; Illinois State Bar Association; Missouri Bar Association.

Mr. Cohen concentrates his practice of law in the fields of class action and personal injury litigation. Since 2002, Mr. Cohen has devoted a substantial portion of his practice to the prosecution of consumer fraud class actions in state and federal courts. Mr. Cohen is currently handling numerous certified class

actions, prosecuting claims on behalf of millions of class members on a nationwide and/or multistate basis. Mr. Cohen also has prosecuted hundreds of personal injury cases, including Federal Employer's Liability Act and complex product liability claims, in the state courts of Missouri, Illinois, Kansas, Nebraska, Colorado, Montana and Texas, and in the federal courts of Missouri, Kansas, Texas, Arkansas and Oklahoma. He has tried cases to verdict in the state courts of Missouri, Illinois, Kansas, Nebraska and Texas, and in the federal courts of Missouri and Texas.

Paul A. Marks. *Education:* St. Louis University School of Law (J.D. 1999); Illinois State University (B.S. 1988). *Experience:* The Lakin Law Firm, P.C. (2003-Present); Chambers of Justice Thomas M. Welch, Illinois Appellate Court, Fifth District (1999-2003); background in trust and investment services. *Publications:* Editor and Member, *St. Louis University Law Journal* (1997-1999). *Admitted to Practice:* Illinois, Missouri, United States Court of Appeals (Seventh Circuit), and the United States District Court (Southern District of Illinois). *Honors & Activities:* American Association for Justice; Illinois Trial Lawyers Association; American Bar Association; Illinois State Bar Association; Missouri Bar Association; Seventh Circuit Bar Association; Bar Association of Metropolitan St. Louis; Madison County Bar Association (President 2008-2009); Tri-City Bar Association (President 2004); Alton-Wood River Bar Association; Vice President of District Operations, Trails West Council, Boy Scouts of America.

Mr. Marks concentrates his practice in complex litigation, with an emphasis in the insurance and financial-services sectors. His work includes motion practice, discovery, class certification, and class settlement. In addition, Paul Marks has prosecuted and defended personal injury cases. He has also handled probate matters, secured interlocutory relief, litigated professional-responsibility cases and defended clients accused of criminal misdemeanors.

Andrew W. Kuhlmann. *Education:* University of Northern Colorado (B.A. Music 1999); University of Minnesota Law School (J.D. 2002). *Honors & Activities:* Editor, *Law & Inequality: A Journal of Theory & Practice;* Dean's List; Illinois State Bar Association; The Missouri Bar. *Admitted to Practice:* State of Illinois, State of Missouri, United States Court of Appeals (Seventh Circuit) and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Kuhlmann concentrates his practice in complex litigation, focusing on class action litigation, *qui tam* litigation, and commercial disputes. Prior to joining LakinChapman, Mr. Kuhlmann had an active civil litigation practice, where he handled trials, administrative hearings, evidentiary hearings, all

aspects of discovery, several appeals, and an active motion practice. In his first year in practice, Mr. Kuhlmann was appointed lead class counsel on behalf of several hundred tenants of a large apartment complex. Similarly, he has handled complex real estate, construction, personal injury, employment, and disability-related education litigation. Before practicing law, Mr. Kuhlmann co-managed his family business in the St. Louis area and was a professional chef in St. Louis and Minneapolis.

Matthew R. Cheatham, Paralegal. *Education*: Maryville University St. Louis (B.A. in paralegal studies with a minor in sociology in 2004 *cum laude*). *Experience*: LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2005-2008); Sonnenschein Nath & Rosenthal LLP (2003-2005); The United States Navy (1997-2001). *Honors & Activities*: Inducted into *Lambda Epsilon Chi* (National Honor Society in Paralegal Studies). Mr. Cheatham has assisted attorneys in class action litigation since 2003. Under the direct supervision of the attorneys, Mr. Cheatham has assisted in class action cases by compiling and/or responding to discovery, researching legal issues, preparing pleadings including class certification motions, supervising other paralegals that analyze and summarize documents produced by opposing counsel, interviewing witnesses, investigating experts, and investigating defendants and theories of recovery before filing suit.

Crystal L. Duckett, Paralegal. *Education*: Webster University St. Louis (B.A. in Legal Studies in 2008 Departmental Honors). *Experience*: LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2006-2008). *Activities*: Under the direct supervision of the attorneys, Mrs. Duckett has assisted in class action cases by compiling and/or responding to discovery, researching legal issues, and preparing pleadings.

LakinChapman attorneys who are available to assist the Complex Litigation practice group include:

Charles W. Armbruster III. *Education*: Washington University School of Law (J.D. 1992); University of Michigan (B.S. 1989). *Admitted to Practice*: State of Illinois, State of Missouri, State of West Virginia, the United States District Court (Eastern District of Missouri, Southern District of Illinois, Central District of Illinois, Northern District of Illinois, Eastern District of Arkansas, Western District of Arkansas, Eastern District of Oklahoma, and Southern District of West

Exhibit V

EXHIBIT L
Part 2

TABLE OF EXHIBITS

A.	Declaration of Class Representative Barbara Allen
B.	Declaration of Class Representative Brenda Digiandomenico
C.	Declaration of Class Representative Stanley Ozarowski
D.	Declaration of Class Representative Donna Santi
E.	Declaration of Class Representative Valerie Evans
F.	Declaration of Class Representative Kelly Castillo
G.	Declaration of Class Representative Nichole Brown
H.	2002 Warranty & Owner Assistance Information (excerpts)
I.	2003 Warranty & Owner Assistance Information (excerpts)
J.	2004 Warranty & Owner Assistance Information (excerpts)
K.	2005 Warranty & Owner Assistance Information (excerpts)
L.	Warranty Language Analysis chart
M.	FILED UNDER SEAL—Deposition of John Ellison (excerpts)
N.	FILED UNDER SEAL—GM Engineering Standards GMN11275 (excerpt)
O.	FILED UNDER SEAL—GM Engineering Standards GMN9543 (excerpt)
P.	FILED UNDER SEAL—GM Engineering Standards GMN9807 (excerpt)
Q.	FILED UNDER SEAL—GM Engineering Standards GMW15016 (excerpt)
R.	FILED UNDER SEAL—GM Engineering Standards D-95 (excerpt)
S.	FILED UNDER SEAL—Deposition of Mark Gilmore (excerpts)
T.	Survey of UCC 2-719 Contractual Modifications or Limitation of Remedy
U.	Survey of UCC 2-302 Unconscionable Contract or Clause or Term
V.	LakinChapman LLC Firm Biography
W.	FILED UNDER SEAL—Ex. A. to Interrogatory Responses
X.	FILED UNDER SEAL—Field Performance Evaluation Report (5/18/2004) Castillo2969-2974
Y.	FILED UNDER SEAL—Excerpts from CVT Variator Drive System Failure Castillo2981-2999
Z.	FILED UNDER SEAL—CVT Review Joint PDS/PT Leadership May 16, 2003 Castillo3133, 3141
AA.	FILED UNDER SEAL—CVT Warranty Projections Castillo3163-3170
BB.	FILED UNDER SEAL—Letter from GM counsel regarding rebuilt transmissions
CC.	Extended Warranty Sample Agreement (Smart Protection Coverage)
DD.	Extended Warranty Sample Agreement (Basic Guard)
EE.	Extended Warranty Sample Agreement (Major Guard)
FF.	Extended Warranty Sample Agreement (Value Guard)
GG.	Extended Warranty Sample Agreement (Goodwrench Care Coverage)
HH.	Extended Warranty Sample Agreement (Smart Care Coverage)
II.	Declaration of R.L. Polk & Co.
JJ.	Declaration of Campbell-Ewald Regarding Notice

KK. FILED UNDER SEAL—Report of Mark Johnson
LL. Report of Mark Johnson (Redacted)
MM. Declaration of Ronald Sabraw
NN. Declaration of Robert W. Schmieder II
OO. FILED UNDER SEAL—Declaration of Mark L. Brown
PP. Declaration of Mark L. Brown (Redacted)
QQ. Declaration of C. Brooks Cutter
RR. Transcript of Preliminary Approval hearing
SS. Lists of Opt-Outs
TT. GM Web-Site Basic Guard
UU. FILED UNDER SEAL—Extended Warranty Pricing and Coverage
VV. FILED UNDER SEAL—Third-Party Extended Warranty Pricing and Coverage
WW. Declaration of Class Member Shannon Sinclair
XX. Declaration of Class Member Erin Sullivan
YY. Declaration of Class Member Bruce Willix
ZZ. Declaration of Class Member Bertha LoCurto
AAA. Declaration of Class Member Richard P. Courson
BBB. Declaration of Class Member Joy Broggi
CCC. Declaration of Class Member Joanna Law
DDD. Declaration of Class Member Melody Walthour
EEE. Declaration of Class Member Fernando Garcia
FFF. Declaration of Class Member Sharon Blackburn
GGG. Declaration of Class Member Tom Gernand
HHH. Declaration of Class Member Ray Richey
III. Declaration of Class Member Cory Deal
JJJ. Declaration of Class Member Christopher Lewis

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Barbara Allen

Pursuant to 28 U.S.C. § 1746, Barbara Allen hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in September of 2003 from a Saturn dealership in Jacksonville, Florida. During the warranty period the transmission failed twice. When the vehicle reached approximately 107,000, a Saturn dealership in Tulsa, Oklahoma diagnosed a transmission failure and quoted $5,500.00 to replace the transmission. I have yet to have the transmission replaced following the third transmission failure.

3. On April 15, 2008, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit A

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Barbara L. Allen
Barbara Allen

Dated: 11-30, 2008

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Brenda Alexis Digiandomenico

Pursuant to 28 U.S.C. § 1746, Brenda Alexis Digiandomenico hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2002 Saturn Vue new in July 2002 from a Saturn dealership in Fredericksburg, Virginia. I had problems with the transmission during the warranty period. When the vehicle reached approximately 116,000, the Saturn dealership in Fredericksburg, Virginia diagnosed transmission failure. I paid $1,900 to have the dealership replace the transmission. Since then I have had another transmission failure above 125,000 miles.

3. On October 15, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

4. Since that time, my husband (Carmen Digiandomenico) and I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the

Exhibit B

settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Brenda Alexis Digiandomenico

Dated: Nov 24, 2008

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Stanley Ozarowski

Pursuant to 28 U.S.C. § 1746, Stanley Ozarowski hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new (demo) on October 14, 2002 from a Saturn dealership in Schaumburg, Illinois. I had repeated problems with the transmission during the warranty period. When the vehicle reached approximately 83,665, the transmission failed and was towed to Saturn of Barrington and then Saturn of Dundee. Saturn of Dundee diagnosed a transmission failure. I paid $1,200.00 to have the dealership replace the transmission.

3. On November 13, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

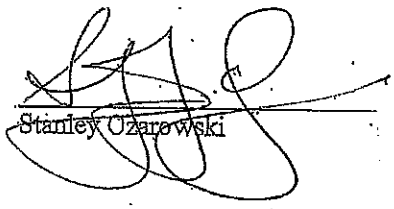
4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit C

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.



Stanley Ozarowski

Dated: Nov. 21, 2008

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Donna Santi

Pursuant to 28 U.S.C. § 1746, Donna Santi hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in November 2002 from a Saturn dealership in Ft. Myers, Florida. I had repeated problems with the transmission during the warranty period, and just outside the warranty period. When the vehicle reached approximately 102,459 miles a Saturn dealership in Sterling Heights, Michigan diagnosed a transmission failure. I paid $377.26 to have the dealership replace the transmission.

3. On August 31, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit D

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Donna Santi

Donna Santi

Dated: November 25, 2008

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Valerie Evans

Pursuant to 28 U.S.C. § 1746, Valerie Evans hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in September 2002 from a Saturn dealership in St. Louis, Missouri. When the vehicle reached approximately 83,232, the transmission failed and was towed to Saturn of North County. Saturn of North County diagnosed a transmission failure. I paid $323.79 for a rental car and tow as the Saturn dealership replaced the transmission.

3. On September 27, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit E

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Valerie E. Evans

Valerie Evans

Dated: December 10, 2008

Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Kelly Castillo

Pursuant to 28 U.S.C. § 1746, Kelly Castillo hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in January of 2003 from a Saturn dealership in Roseville, California. I had repeated problems with the transmission during the warranty period. When the vehicle reached approximately 80,000 miles in June of 2007, the Saturn dealership in Roseville diagnosed a transmission failure. I paid $4,200 to have the dealership replace the transmission.

3. On June 1, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

Exhibit F

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Kelly Castillo

Kelly Castillo

Dated: 12/12, 2008

Exhibit F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO et al., *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

Declaration of Nichole Brown

Pursuant to 28 U.S.C. § 1746, Nichole Brown hereby states:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue used in or about December of 2006, when it had slightly over 75,000 miles. When the vehicle reached approximately 78,000 miles in July of 2007, a Saturn dealership in Georgia quoted her a price of approximately $6,000 to replace the transmission. I paid $4,000 to have the transmission replaced by an independent mechanic.

3. On May 23, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

4. Since that time, I have had numerous communications with attorneys, a paralegal, and an investigator at The Lakin Law Firm, P.C. In addition to supplying Class Counsel with information and documents in my possession, I have received regular updates regarding their investigation, the strategy, the class action lawsuit, discovery, and settlement negotiations. Class Counsel has provided me with, and I have reviewed, various court documents before filing.

5. During the settlement process, I provided Class Counsel with my thoughts and agreed with the overall settlement strategy. As a class member, it is my opinion that the settlement provides excellent relief to compensate Saturn owners for past problems, provide peace-of-mind for future problems, and reimbursement in the event of a future problem.

12/22/2008 13:30 3087835541 CONESTOGA BOOKKEEPIN PAGE 02

Exhibit G

6. I have been very pleased with the work performed by Class Counsel. Class Counsel was available, responsive, and thorough throughout this lawsuit. To me, their hard work brought about this great settlement that provides quick relief. I fully support the payment of the amount of attorneys' fees and costs provided in the settlement. I particularly appreciate that Class Counsel negotiated that GM would pay those fees and costs in addition to the class relief.

I declare under penalty of perjury that the foregoing is true and correct.

Nichole Brown

Dated: Dec. 18th, 2008.

12/22/2008 13:30 3087835541 CONESTOGA BOOKKEEPIN PAGE 03

Exhibit G

SATURN

2002 Warranty & Owner Assistance INFORMATION

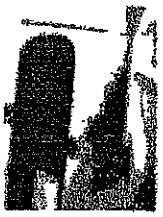


Exhibit H

Warranty Coverage at a Glance

The 2002 warranty coverages are summarized below. Please read pages 7 through 30 for complete details.

TIRE INFORMATION: Tires are warranted separately (refer to page 8 for additional information).

Defects in material and workmanship continue to be covered under the "Bumper to Bumper" Coverage in the New Car Limited Warranty.

2002 Saturn Corporation
New Car Limited Warranty

Saturn Corporation will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the following terms, conditions, and limitations.

WHAT IS COVERED

Warranty Applies

This warranty is for Saturn cars registered in the United States and normally operated in the Continental United States, Hawaii,* Alaska, or Canada, and is provided to the original and any subsequent owners of the car during the WARRANTY PERIOD.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.

* In the state of Hawaii, authorized Saturn Service is available only on the island of Oahu.

Needed repairs will be performed using new or remanufactured parts.

Warranty Period

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the COVERAGE period.

Bumper to Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" on pages 8 through 10.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Exhibit H

Damage Due to Accidents, Misuse, or Alteration

Damage caused as the result of any of the following, is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the vehicle;
- Misuse of the vehicle such as driving over curbs, overloading, racing or other competition. Proper vehicle use is discussed in the Owner's Handbook;
- Alteration or modification to the vehicle including the body, chassis or components, after final assembly by Saturn. In addition, coverages do not apply if the odometer has been disconnected or its reading has been altered, or the mileage cannot be determined.

Note: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.) stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See page 14 for details on Chemical Paint Spotting.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended Maintenance Schedule intervals and/or failure to use or maintain fluids, fuel, lubricants or refrigerants recommended in the Owner's Handbook is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the Owner's Handbook or Maintenance publications are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear or exposure are not covered.

Produced by GM in Castillo, et al v. GM

CASTILLO0000000529

Exhibit H

SATURN.

2003 Warranty & Owner Assistance INFORMATION

Warranty Coverage at a Glance

The 2003 warranty coverages are summarized below. Please read pages 7 through 30 for complete details.

New Car Limited Warranty		
Coverage	3 Years/ 36,000 Mi.	3 Years/ 50,000 Mi.
Bumper to Bumper		
Sheet Metal		
• Rust-Through		
• Corrosion		

Emission Control Systems Warranties				
Coverage	2 Years/ 24,000 Mi.	3 Years/ 36,000 Mi.	3 Years/ 50,000 Mi.	7 Years/ 70,000 Mi.
Federal				
Defect & Performance				
Catalytic Converter				
Engine Control Module & Powertrain Control Module				
California				
Defect & Performance				
Specified Components				

■ No Deductible

TIRE INFORMATION: Tires are warranted separately (refer to page 8 for additional information).

☐ Defects in material and workmanship continue to be covered under the "Bumper to Bumper" Coverage in the New Car Limited Warranty.

2003 Saturn Corporation New Car Limited Warranty

Saturn Corporation will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the following terms, conditions, and limitations.

WHAT IS COVERED

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the Continental United States, Hawaii,* Alaska, or Canada, and is provided to the original and any subsequent owners of the car during the WARRANTY PERIOD.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.

* In the state of Hawaii, authorized Saturn Service is available only on the island of Oahu.

Needed repairs will be performed using new or remanufactured parts.

Warranty Period

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the COVERAGE period.

Bumper to Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" on pages 8 through 10.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Exhibit I

Damage Due to Accidents, Misuse, or Alteration

Damage caused as the result of any of the following, is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the vehicle;
- Misuse of the vehicle such as driving over curbs, overloading, racing or other competition. Proper vehicle use is discussed in the Owner's Handbook;
- Alteration or modification to the vehicle including the body, chassis or components, after final assembly by Saturn. In addition, coverages do not apply if the odometer has been disconnected or its reading has been altered, or the mileage cannot be determined.

Note: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.) stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See page 12 for details on Chemical Paint Spotting.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended Maintenance Schedule intervals and/or failure to use or maintain fluids, fuel, lubricants or refrigerants recommended in the Owner's Handbook is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the Owner's Handbook are the owner's expense. Vehicle lubrication, cleaning, or polishing, as well as items requiring replacement or repair as a result of vehicle use, wear or exposure are not covered.

Produced by GM in Castillo, et al v. GM

Exhibit I

2004

WARRANTY AND OWNER ASSISTANCE INFORMATION

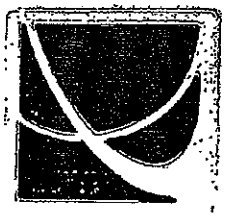


Exhibit J

Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

Emission Control Systems Warranty

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty engines are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously.
  - Catalytic converters, engine control modules, and powertrain control modules are covered for the first 8 years or 80,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars, light duty, and medium duty engines are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with either light duty or medium duty engines are covered for the first 7 years or 70,000 miles, whichever comes first.

Produced by GM in Castillo, et al v. GM

CASTILLO00001069

Exhibit J

New Vehicle Limited Warranty

Saturn will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

In the state of Hawaii, authorized Saturn service is available only on the island of Oahu.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Saturn retail facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the retail facility to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered.

- collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual
- alteration or modification to the vehicle including the body, chassis or components after final assembly by Saturn.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, or Aftermarket Products

Damage caused by airborne fallout (chemicals, tree sap, etc.), stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 7* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are at the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Exhibit J

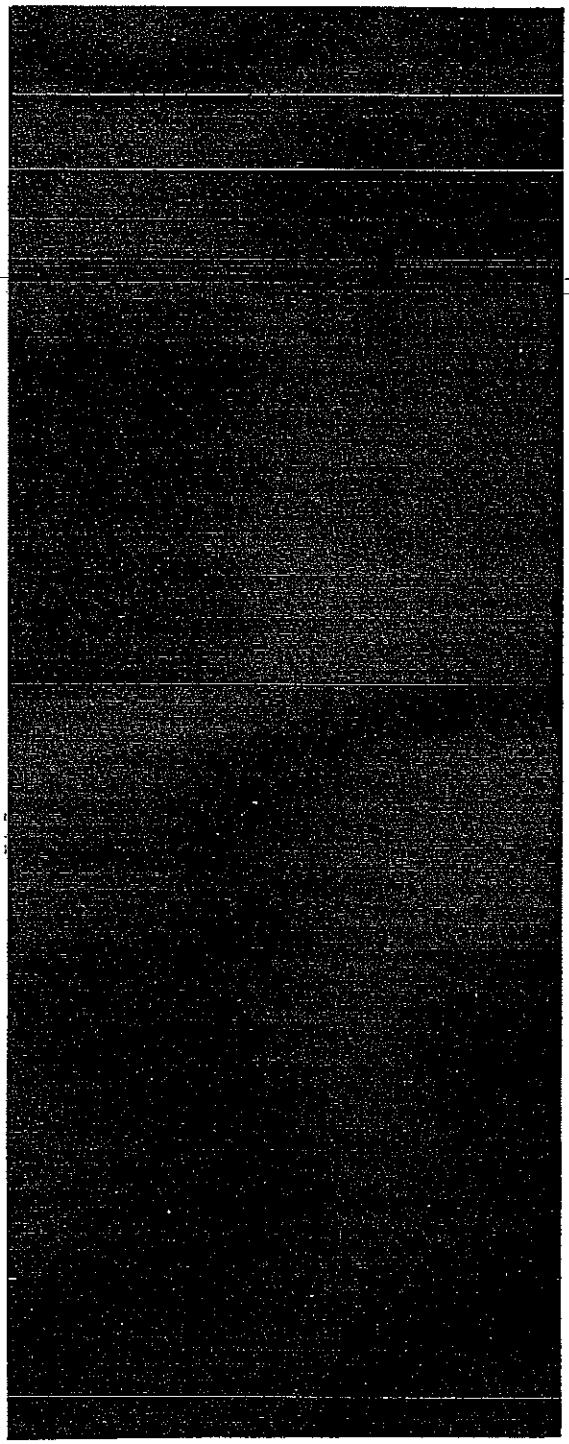


Exhibit K

Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

Emission Control Systems Warranty*

* For light duty trucks see "How to Determine the Applicable Emissions Control System Warranty" under *Emission Control Systems Warranty on page 10* for more information.

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty engines are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously.
  - Catalytic converters, engine control modules, and powertrain control modules are covered for the first 8 years or 80,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars, light duty, and medium duty engines are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with light duty or medium duty engines are covered for the first 7 years or 70,000 miles, whichever comes first.

1

Exhibit K

New Vehicle Limited Warranty

Saturn will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for Saturn vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

In the state of Hawaii, authorized Saturn service is available only on the island of Oahu.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Saturn retail facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the retail facility to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

Accessory Coverages

All Saturn accessories sold by Saturn and parts that are permanently installed on a Saturn vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered.

- Collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- Misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual.
- Alteration or modification to the vehicle including the body, chassis, or components after final assembly by Saturn.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, or Aftermarket Products

Damage caused by airborne fallout, chemicals, tree sap, etc., stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 6* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are at the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Exhibit K

There are no material differences in the standard warranty language.

Model Year	Model	Repairs Covered	Warranty	Bates Number
2002	Vue	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000527
2003	Vue	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000494
2003	Ion	This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the WARRANTY PERIOD.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000000494
2004	Vue	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001070
2004	Ion	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001070
2005	Vue	The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.	The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first.	CASTILLO000001102

Exhibit M to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit N to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

EXHIBIT L
Part 3

Exhibit O to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit P to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit Q to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit R to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit S to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 1 of 4

Survey of UCC 2-719
Contractual Modification or Limitation of Remedy

There are no outcome-determinative conflicts of this uniform code section among the laws of the States below.

State	Code Section	Elements
UCC	Unif. Commercial Code § 2-719	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Alabama	Ala. Code 1975 § 7-2-719	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Alaska	Alaska Stat. § 45.02.302	If circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in the code.
Arizona	Ariz. Rev. Stat. Ann. § 47-2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Arkansas	Ark. Code Ann. § 4-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.
California	Cal. Civ. Code § 1670.5	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Colorado	Colo. Rev. Stat. Ann. § 4-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Delaware	Del. Code Ann. tit. 6, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
District of Columbia	D.C. Code § 28:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this subtitle.
Florida	Fla. Stat. Ann. § 672.302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Georgia	Ga. Code Ann. § 11-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Hawaii	Haw. Rev. Stat. § 490:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Idaho	Idaho Code Ann. § 28-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

Illinois	810 Ill. Comp. Stat. Ann. 5/2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
Indiana	Ind. Code Ann. § 26-1-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in IC 26-1
Iowa	Iowa Code Ann. § 554.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Kansas	Kan. Stat. Ann. § 84-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be ajd as provided in this act.
Kentucky	Ky. Rev. Stat. Ann. § 355.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Louisiana		
Maine	Me. Rev. Stat. Ann. tit. 11, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.
Maryland	Md. Code Ann., Com. Law § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in Titles 1 through 10 of this article.
Massachusetts	Mass. Gen. Laws Ann. ch. 106 §2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Michigan	Mich. Comp. Laws Ann. § 440.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
Minnesota	Minn. Stat. Ann. § 336.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Mississippi	Miss. Code Ann. § 75-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Code.
Missouri	Mo. Ann. Stat. § 400.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
Montana	Mont. Code Ann. § 30-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.
Nebraska	Neb. Rev. Stat. § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as proved in the Uniform Commercial Code.
Nevada	Nev. Rev. Stat. § 104.2302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
New Hampshire	N.H. Rev. Stat. Ann. § 382-A:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 3 of 4

New Jersey	N.J. Stat. Ann. § 12A:2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
New Mexico	N.M. Stat. Ann. § 55-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
New York	N.Y. U.C.C. Law §2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.
North Carolina	N.C. Gen. Stat. Ann. § 25-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.
North Dakota	N.D. Cent. Code § 41-02-19	If circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Ohio	Ohio Rev. Code Ann. § 1302.15	Where circumstances cause an exclusive of limited remedy to fail of its essential purpose, remedy may be had as provided in Chapters 1301., 1302., 1303., 01304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code.
Oklahoma	Okla. Stat. tit. 12A, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
Oregon	Or. Rev. Stat. § 72.3020	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in the Uniform Commercial Code.
Pennsylvania	13 Pa. Cons. Stat. Ann. § 2302	Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.
Rhode Island	R.I. Gen. Laws § 6A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in title 6A.
South Carolina	S.C. Code Ann. Regs. § 36-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
South Dakota	S.D. Codified Laws § 57A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Tennessee	Tenn. Code Ann. § 47-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in chapters 1-9 of this title.
Texas	Tex. Bus. & Com. Code Ann. § 2.302	Where circumstances cause an exclusive or limited remedy to tail of its essential purpose, remedy may be had as provided in this title.
Utah	Utah Code Ann. § 70A-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act. [FN1]
Vermont	Vt. Stat. Ann. tit. 9A, § 2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.
Virginia	Va. Code Ann. § 8.2-302	Where circumstances cause an exclusive or limited remedy to fail of its

Exhibit T

Case 2:07-cv-02142-WBS-GGH Document 67-21 Filed 02/27/2009 Page 4 of 4

		essential purpose, remedy may be had as provided in this act.
Washington	Wash. Rev. Code Ann. § 62A.2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.
West Virginia	W. Va. Code, § 46-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this article.
Wisconsin	Wis. Stat. Ann. § 402.302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in chs. 401 to 411.
Wyoming	Wyo. Stat. Ann. § 34.1-2-302	Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act [§§ 34.1-1-101 through 34.1-10-104].

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 1 of 19

Survey of UCC 2-302
Unconscionable Contract or Clause or Term

There are no outcome-determinative conflicts of this uniform code section among the laws of the States below.

State	Code Section	Elements
UCC	Unif. Commercial Code § 2-302	(1) If the court as a matter of law finds the contract or any <<-clause->><<+term+>> of the contract to have been unconscionable at the time it was made<<+,+>> the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable <<-clause->><<+term+>>, or it may so limit the application of any unconscionable <<-clause->><<+term+>> as to void any unconscionable result. (2) <<-When->><<+If+>> it is claimed or appears to the court that the contract or any <<-clause->><<+term+>> thereof may be unconscionable<<+,+>> the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Alabama	Ala. Code 1975 § 7-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Alaska	Alaska Stat. § 45.02.302	(a) If the court as a matter of law finds the contract or a clause of the contract was unconscionable at the time it was made, the

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 2 of 19

		court may refuse to enforce the contract without the unconscionable clause, or so limit the application of an unconscionable clause as to avoid an unconscionable result. (b) If it is claimed or appears to the court that the contract or any clause may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Arizona	Ariz. Rev. Stat. Ann. § 47-2302	A. If the court as a matter of law finds the contract or any clause of the contract to have unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause as to avoid any unconscionable result. B. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Arkansas	Ark. Code Ann. § 4-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
California	Cal. Civ. Code § 1670.5	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may

		enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Colorado	Colo. Rev. Stat. Ann. § 4-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Delaware	Del. Code Ann. tit. 6, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
District of Columbia	D.C. Code § 28:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Florida	Fla. Stat. Ann. § 672.302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 5 of 19

Georgia	Ga. Code Ann. § 11-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Hawaii	Haw. Rev. Stat. § 490:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Idaho	Idaho Code Ann. § 28-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 6 of 19

Illinois	810 Ill. Comp. Stat. Ann. 5/2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Indiana	Ind. Code Ann. § 26-1-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Iowa	Iowa Code Ann. § 554.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in

		making the determination.
Kansas	Kan. Stat. Ann. § 84-2-302	(3) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (4) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Kentucky	Ky. Rev. Stat. Ann. § 355.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Louisiana	La. Rev. Stat. Ann. § 9:3516	(36) "Unconscionable". A contract or clause is unconscionable when at the time the contract is entered into it is so onerous, oppressive or one-sided that a reasonable man would not have freely given his consent to the contract or clause thereof in question; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an arrangement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 8 of 19

		state or the United States or any subdivision of either is not unconscionable.
Maine	Me. Rev. Stat. Ann. tit. 11, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Maryland	Md. Code Ann., Com. Law § 2-302	(5) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (6) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Massachusetts	Mass. Gen. Laws Ann. ch. 106 §2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose, and effect to aid the court in making the determination.
Michigan	Mich. Comp. Laws Ann. § 440.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Minnesota	Minn. Stat. Ann. § 336.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Mississippi	Miss. Code Ann. § 75-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose and effect to aid the court in making the determination.
Missouri	Mo. Ann. Stat. § 400.2-302	(7) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (8) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Montana	Mont. Code Ann. § 30-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Nebraska	Neb. Rev. Stat. § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its

		commercial setting, purpose and effect to aid the court in making the determination.
Nevada	Nev. Rev. Stat. § 104.2302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Hampshire	N.H. Rev. Stat. Ann. § 382-A:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Jersey	N.J. Stat. Ann. § 12A:2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 12 of 19

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New Mexico	N.M. Stat. Ann. § 55-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
New York	N.Y. U.C.C. Law §2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
North Carolina	N.C. Gen. Stat. Ann. § 25-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 13 of 19

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
North Dakota	N.D. Cent. Code § 41-02-19	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Ohio	Ohio Rev. Code Ann. § 1302.15	(A) If the court as a matter of law finds the contact or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (B) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
Oklahoma	Okla. Stat. tit. 12A, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 14 of 19

		afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Oregon	Or. Rev. Stat. § 72.3020	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Pennsylvania	13 Pa. Cons. Stat. Ann. § 2302	(a) Finding and authority of court.—If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may: (1) refuse to enforce the contract; (2) enforce the remainder of the contract without the unconscionable clause; or (3) so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) Evidence by parties.—When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Rhode Island	R.I. Gen. Laws § 6A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the

		unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
South Carolina	S.C. Code Ann. Regs. § 36-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
South Dakota	S.D. Codified Laws § 57A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Exhibit U

Case 2:07-cv-02142-WBS-GGH Document 67-22 Filed 02/27/2009 Page 16 of 19

Tennessee	Tenn. Code Ann. § 47-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Texas	Tex. Bus. & Com. Code Ann. § 2.302	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Utah	Utah Code Ann. § 70A-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Vermont	Vt. Stat. Ann. tit. 9A, § 2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Virginia	Va. Code Ann. § 8.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Washington	Wash. Rev. Code Ann. § 62A.2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

West Virginia	W. Va. Code § 46-2-302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Wisconsin	Wis. Stat. Ann. § 402.302	(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.
Wyoming	Wyo. Stat. Ann. § 34.1-2-302	(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (b) When it claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Survey of UCC 2-302
Unconscionable Contract or Clause or Term

Exhibit U

LAKINCHAPMAN LLC

LakinChapman LLC consists of sixteen (16) attorneys, two (2) Of Counsel, four (4) paralegals, five (5) investigators, and twenty six (26) support staff members. LakinChapman attorneys have built their reputation on their aggressive representation and successful track record in the courtroom—trying forty nine (49) cases to verdict since 2005.

LakinChapman attorneys are highly-experienced and draw from their varied professional backgrounds. For example, LakinChapman clients enjoy the benefits of having a team of attorneys consisting of a former Illinois appellate court judge, a current Illinois state representative, a former partner at a national firm, a former in-house attorney at a Fortune 500 company, a former appellate court clerk, and attorneys who have argued before the Supreme Court of the United States. The diversity of the attorneys allows LakinChapman to aggressively pursue the clients' best interests in an efficient and effective manner. In addition, LakinChapman has invested in technology and other substantial resources to equip its attorneys to pursue and achieve successful outcomes for clients in complex multi-party, multi-issue, multi-jurisdictional cases.

Complex Litigation

LakinChapman has established a complex litigation practice group within the firm to dedicate attorneys, paralegals, and staff members to handle class action and other complex litigation. LakinChapman attorneys have achieved remarkable success for clients against a broad spectrum of sophisticated defendants—recovering in excess of $450 million in benefits for class members:

Case Name	Jurisdiction	Final Approval Date	Minimum Class Benefit
Bemis v. AutoOwners Ins. Co.	Illinois	April 3, 2009	$4,500,000
Fischer v. Arrowood	Illinois	March 27, 2009	$1,416,000
Pederson v. Trilegiant Corp.	Illinois	July 18, 2008	$35,000,000
Kolker v. DIRECTV	Illinois	July 15, 2008	$2,360,000
Wratchford v. Accredited Home Lenders, Inc	Illinois	June 6, 2008	$1,009,920
Allied/Nationwide Consolidated Litigation			$33,029,601
Cashman	US Dist. Ct. Ariz.	March 17, 2008	
Garza	Texas	March 6, 2008	
Murphy v. BMG	Illinois	March 15, 2007	$8,000,000

Exhibit V

Knight v. Homecomings	Illinois	December 22, 2006	$10,408,464
McLaughlin v. Citibank	Illinois	December 22, 2006	$2,640,000
Metro Petroleum v. First Colony	Illinois	December 20, 2006	$1,300,000
Maulding v. Hilton Hotels Corp.	Illinois	November 21, 2006	$3,123,329
O'Leary, et. al. v. America Online, Inc.	Illinois	February 22, 2006	$56,176,000
Total Loss Consolidated Litigation	Illinois	December 20, 2005	$92,000,000
CGU			
Prudential Prop. and Casualty Ins. Co.			
Country Mutual Ins. Co.			
Progressive Premier Ins. Co. of IL			
Economy Preferred Ins. Co.			
Hartford Ins. Co. of IL			
National General Ins. Co.			
Travelers Prop. Casualty Ins. Co. of IL			
Atlanta Casualty Co., et. al.			
Colonial Penn Ins. Co.			
Allstate Ins. Co., et. al.			
Bemis v. USAA et. al.	Illinois	October 21, 2005	$35,000,000
Defrates v. Hollywood Entertainment Corp.	Illinois	June 24, 2005	$9,000,000
Aleman v. Horace Mann Ins. Co.	Texas	March 14, 2005	$3,000,000
Froeber v. Liberty Mutual Fire Ins. Co.	Oregon	March 1, 2005	$6,109,585
Morningstar v. AMEX	Illinois	February 19, 2004	$1,785,000
Caliper, et al v. Masco Corp. et. al.	Illinois	September 26, 2003	$100,000,000
Littleton v. Shelter Ins. Co.	Illinois	April 11, 2003	$6,000,000
Cox v. Country Mutual Ins. Co., et. al.	Illinois	February 14, 2003	$900,000
Ragan v. Travelers Property Casualty Co. et. al	Illinois	December 16, 2002	$11,000,000
Triad v. UPS	Illinois	December 5, 2001	$38,500,000

LakinChapman attorneys have also successfully certified the following cases:

Case Name	Jurisdiction	Certification Date
Coy, et al v. Travelers et al.	Illinois	October 14, 2008
Madison, et al v. Hartford Ins. Co.	Illinois	July 7, 2008
Kaltenbronn, et al v. Liberty Mutual Ins. Co.	Illinois	June 30, 2008
Zobrist v. Verizon	American Arb. Assoc.	March 10, 2008
Fischer v. Universal Ins. Co.	Illinois	November 26, 2007
Fischer v. General Casualty Ins. Co.	Illinois	November 13, 2007
Hall v. Sprint Spectrum et. al.	Illinois	May 20, 2005
Barrera v. Best Buy Co. Inc.	Texas	March 18, 2005
Wratchford v. CBSK Financial Group, Inc.	Illinois	January 28, 2005
Wratchford v. Accredited Home Lenders, Inc	Illinois	January 28, 2005
Singleton v. Government Employees Ins. et. al.	Illinois	November 12, 2004
Snyder v. Sprint Spectrum L.P.	Illinois	March 30, 2004
Pederson v. Trilegiant Corp.	Illinois	February 20, 2004
Phillips v. Ford Motor Co.	Illinois	September 15, 2003
Marshall, et al. v. H&R Block Tax Services	Illinois	August 27, 2003
Booher v. United Life Ins. Co.	Illinois	July 3, 2003
Maulding v. Hilton Hotels Corp.	Illinois	June 26, 2003
Bemis v. United Services Automobile Assoc.	Illinois	June 10, 2003
Defrates v. Hollywood Entertainment Corp.	Illinois	May 14, 2003

Exhibit V

Hernandez v. American Family Mutual, etc.	Illinois	October 21, 2002
Caliper, et al v. Masco Corp. et. al.	Illinois	September 24, 2002
Strasen v. Allstate Ins. Co.	Illinois	September 10, 2001
Triad v. UPS	Illinois	April 5, 2001
Littleton v. Shelter Ins. Co.	Illinois	September 11, 2000

In addition to recovering benefits for class members, LakinChapman attorneys have successfully changed the legal landscape for consumers on a variety of issues from class prohibitions in arbitration clauses, *Kinkel v. Cingular Wireless, LLC*, 857 N.E.2d 250 (Ill. 2006); *Wigginton v. Dell, Inc.*, 890 N.E.2d 541 (Ill. App. Ct. 2008), to the fraudulent use of appraisal clauses, Hanke v. American Int'l South Ins. Co., 782 N.E. 2d 328 (Ill. App. Ct. 2002) and to the voluntary payment doctrine and federal banking preemption, *Shaw v. US Bank, N.A.*, No. 5-06-0510 (Ill. App. Ct. 2008) (Rule 23 order).

LakinChapman attorneys and paralegals dedicated to the Complex Litigation practice group include:

Bradley M. Lakin. *Education:* University of Illinois (B.A. 1993); Northern Illinois University School of Law (J.D. 1997). *Experience:* Managing Partner, LakinChapman, LLC (2009 – present); President, The Lakin Law Firm, P.C. (1997 – 2008). *Honors & Activities:* 2008, 2009 Illinois Super Lawyers; 2006 40 Illinois Lawyers Under Forty to Watch; Crain's Chicago Business 2nd largest verdict in the State of Illinois (2005); Verdict Search's Top 100 List. (30th Nationwide); American Association for Justice (Leaders Forum and State Delegate); Illinois Trial Lawyers Association; Illinois State Bar Association;; Madison County Bar Association. *Admitted to Practice:* State of Illinois and the Southern District of Illinois.

Mr. Lakin is the Managing Attorney of LakinChapman, LLC. Mr. Lakin has exclusively represented plaintiffs in class action litigation since 1998. He has been appointed co-lead and/or lead counsel in numerous class actions and has argued class certification motions, decertification motions, notice plans and other substantive motions. He has deposed corporate representatives and witnesses regarding certification and merits issues. Mr. Lakin has also handled preliminary approval hearings, final approval hearings and objector evidentiary issues. Likewise, he has handled class settlement negotiations, class settlement mediations, preliminary approval hearings, final approval hearings, objector evidentiary hearings, and claims administrative issues. *Reported Decisions involving Class Actions:* Stock v. Integrated Health Plan, Inc., 241 F.R.D. 618 (S.D.

Exhibit V

Ill. 2007); Hall v. Sprint Spectrum L.P., 376 Ill.App.3d 822 (Ill. App. Ct. 2007); Hall v. Sprint Spectrum L.P., 368 Ill.App.3d 820 (Ill. App. Ct. 2006); Kern v. DaimlerChrysler Corp., 364 Ill.App.3d 708 (Ill. App. Ct. 2006); Austin v. Illinois Farmers Ins. Co., 351 Ill.App.3d 931 (Ill. App. Ct. 2004); Peach v. CIM Ins. Co., 352 Ill.App.3d 691 (Ill. App. Ct. 2004); Boxdorfer v. DaimlerChrysler Corp., 339 Ill.App.3d 335 Ill. App. Ct. 2003); Reynolds v. GMAC Financial Services, Inc., 344 Ill.App.3d 843 (Ill. App. Ct. 2003); Hanke v. American Intern. South Ins. Co., 335 Ill.App.3d 1164 (Ill. App. Ct. 2002). Phillips v. Ford, 435 F.3d 785 (7th Cir. 2006). In addition to class action litigation, Mr. Lakin has extensive experience in the following practice areas: Federal Employers Liability Act, Nursing Home Abuse and Neglect and Product Liability. He has tried cases to verdict in Illinois, Missouri, Nebraska, Oklahoma, Arkansas and West Virginia.

Charles W. Chapman. *Education*: Southern Illinois University Edwardsville (B.A. Chemistry 1963); St. Louis University School of Law (J.D. 1967); University of Virginia School of Law (LLM 1992). *Experience:* LakinChapman LLC (2009 – present); Charles W. Chapman Chartered (2001 – 2009); of counsel to The Lakin Law Firm, P.C. (2001 – 2009); Appellate Court Justice, Fifth District (1988 – 2001); Circuit Judge Third Judicial Circuit (1979 – 1988); private practice with Morris P. Chapman (1968 – 1979); (partner 1970 – 1979); law clerk to Federal Judge Omer Poos Southern District of Illinois (1967 – 1968); research chemist John Cochran Veteran's Hospital (1963 – 1967). *Publications:* *Product Liability in Illinois*, co-author; *Illinois Objections at Trial*, co-author; *Jaws XVI: The exceptions that ate Rule 220*, 26 J. Marshall L. Rev. 189(1993); Charles W. Chapman, *An Appellate Judge Looks at Recent Rule 220 Cases*, 82 Ill. B.J. 478(1994). In addition to the above publications, Mr. Chapman is the author of several hundred judicial opinions during the course of his 13 years in the Appellate Court. *Honors & Activities:* Outstanding Trial Judge in the United States 1984; Illinois Super Lawyers 2009, 2008, 2007; American Association for Justice; Illinois Trial Lawyers; Illinois State Bar Association; Madison County Bar Association; Alton-Wood River Bar Association. *Admitted to Practice:* United States Supreme Court, United States Court of Appeals 7th Circuit; United States District Court Southern District of Illinois; State of Illinois.

Mr. Chapman has engaged in an active trial practice both before and after his judicial career. Since retiring the bench, Mr. Chapman has been engaged in the preparation and trial of serious personal injury cases. Mr. Brad Lakin and Mr. Chapman together tried a case against Ford Motor Company which resulted in the largest non-asbestos litigation verdict in Madison County, Illinois in 2005. Mr. Chapman also tried a wrongful death case in Randolph County, Illinois and received the highest jury verdict in that county in 2006.

Exhibit V

Robert W. Schmieder II. *Education:* Northwestern University (B.A. 1993); Southern Illinois University School of Law (J.D. 1996). *Experience:* LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2005-2008); Sonnenschein Nath & Rosenthal LLP (1998-2005; partner, 2003-2005); Gallop Johnson & Neuman LC (1996-1998). *Publications:* WARNING: SELLERS MAY NOW HAVE A POST-SALE DUTY TO WARN, 50 FICC Quarterly 533 (2000); STUCK ON THE TRACKS: THE FELA ENGINE VS. THE ETHICAL CABOOSE, 20 S. Ill. U.L.J. 331 (1996) (Best Comment Award); WORKERS' COMPENSATION AND CONTRIBUTION IN ILLINOIS: PUNCHING A HOLE IN THE KOTECKI CEILING, 20 S. Ill. U.L.J. 651 (1996). *Honors & Activities:* 2009 Illinois Super Lawyers; American Association for Justice; Illinois Trial Lawyers Association; Illinois State Bar Association; Missouri Bar Association; Madison County Bar Association; *Southern Illinois University Law Journal* Board of Editors; Order of Barristers; and the National Health Law Moot Court Team. *Admitted to Practice:* State of Illinois, State of Missouri, the United States Court of Appeals (Third Circuit, Seventh Circuit, and Eighth Circuit), and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Schmieder has litigated class action cases since 1997. From 1997 until 2005, he primarily represented defendants in class action litigation. Since 2005, Mr. Schmieder has exclusively represented plaintiffs (including certified classes) in class action litigation. He has argued appeals, motions before the United States Judicial Panel on Multidistrict Litigation (MDL Panel), class certification motions, decertification motions, and other substantive motions. Mr. Schmieder has regularly deposed corporate representatives, witnesses, and experts regarding certification and merits issues. Likewise, he has handled class settlement negotiations, class settlement mediations, preliminary approval hearings, final approval hearings, objector evidentiary hearings, and claims administrative issues. *Reported Decisions involving Class Actions:* Chandler v. Norwest Bank Minn., N.A., 137 F.3d 1053 (8th Cir. 1998); Reynolds v. Diamond Foods & Poultry, Inc., 79 S.W.3d 907 (Mo. en banc 2002); Nesby v. Country Mut. Ins. Co., 805 N.E.2d 241 (Ill. App. Ct. 2004); Boxdorfer v. DaimlerChrysler Corp., 396 F. Supp.2d 946 (C.D. Ill. 2005); Phillips v. Ford, 435 F.3d 785 (7th Cir. 2006). In addition to class action litigation, Mr. Schmieder has handled other complex litigation, including commercial, insurance coverage, insurance bad faith, construction, product liability, toxic tort, pharmaceutical, and personal injury litigation. He has tried cases to verdict in the Illinois counties of Cook, Madison and St. Clair and in St. Louis City and St. Louis County, Missouri. In addition, Mr. Schmieder has argued appeals, handled bench trials, handled class certification hearings, arbitrations, and handled evidentiary proceedings in a

Exhibit V

multitude of jurisdictions. *Other Reported Decisions:* Reliance Nat. Ins. Co. v. Great Lakes Aviation, Ltd., 12 F. Supp.2d 854 (C.D. Ill. 1998); Forty Bon, Inc. v. St. Louis Inv. Properties, Inc., 965 S.W.2d 471 (Mo. App. Ct. 1998); Raskas Foods, Inc. v. Southwest Whey, Inc., 978 S.W.2d 46 (Mo. App. Ct. 1998); Olean Assoc., Inc. v. Knights of Columbus, 5 S.W.3d 518 (Mo. App. Ct. 1999); Lancaster v. American & Foreign Ins. Co., 258 F.3d 780 (8th Cir. 2001) (Lancaster I); Lancaster v. American & Foreign Ins. Co., 272 F.3d 1059 (8th Cir. 2001) (Lancaster II); Moore v. Johnson County Farm Bureau, 798 N.E.2d 790 (Ill. App. Ct. Dist. 2003).

Mark L. Brown. *Education:* Bradley University (B.A., *Summa Cum Laude*, 1994); Washington University School of Law (J.D. 1997). *Experience:* LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2007-2008); Charter Communications Inc., Legal Department (2005-2006); Sonnenschein Nath & Rosenthal LLP (2002-2005); Thompson Coburn LLP (1997-2002). *Publications:* MISSOURI'S LONG-ARM STATUTE: WHO NEEDS IT?, Missouri Organization of Defense Lawyers (1999). *Honors & Activities:* American Bar Association; Illinois State Bar Association; Missouri Bar Association. *Admitted to Practice:* Illinois, Missouri, United States Court of Appeals (Eighth Circuit), and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Brown has actively litigated class action cases since January of 2007, exclusively representing plaintiffs (including certified classes). In addition, he was frequently consulted on class action matters while Director of Litigation and Senior Counsel for Charter Communications Inc. Mr. Brown has handled class settlement negotiations, class settlement mediations, dispositive motion hearings, and a variety of depositions in class action cases. In addition to class action litigation, Mr. Brown has handled a wide variety of complex litigation, including commercial, intellectual property, franchise, product liability, toxic tort, and personal injury litigation, the majority on behalf of Fortune 500 clientele. He has tried cases in St. Louis City and St. Louis County, Missouri, Scott County, Iowa, and the U.S. District Court for the Western District of Wisconsin, as well as in arbitration proceedings in Missouri, California, and Tennessee. Moreover, Mr. Brown has handled evidentiary proceedings in the Circuit Court of Madison County, Illinois and the U.S. District Court for the Eastern District of Missouri, and he has argued a variety of motions in a multitude of jurisdictions. He has deposed and defended the depositions of countless lay and expert witnesses. As Director of Litigation and Senior Counsel for Charter Communications Inc., a Fortune 500 Company, he was responsible for overseeing an extremely wide range of litigation, including substantial litigation involving consumer disputes. *Reported Decisions:* Medicine Shoppe International, Inc. v. S.B.S. Pill Dr., Inc., 336

Exhibit V

F.3d 801 (8th Cir. 2003); Burds v. Union Pacific Corp., 223 F.3d 814 (8th Cir. 2000); Scanwell Freight Express STL, Inc. v. Chan, 162 S.W.3d 477 (Mo. 2005).

Jonathan B. Piper. *Education*: Princeton University (A.B. 1977); The Yale Law School (J.D. 1987). *Experience*: LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2007-2008); Freed & Weiss, LLC (2003-2007); The Office of the Illinois Appellate Defender (2002-2003); Sonnenschein Nath & Rosenthal LLP (1987-2002). *Publications*: Contributing Author, RACE FOR JUSTICE (1995). *Admitted to Practice*: State of Illinois, the United States Court of Appeals (Third Circuit, Seventh Circuit), and the United States District Court (Northern District of Illinois and Southern District of Illinois).

Mr. Piper has litigated class actions and other complex litigation cases throughout his career, both from the plaintiff and defense standpoints, including nationally prominent consumer and insurance matters. He has been appointed class counsel in significant national class cases including the Nationwide Insurance medical payments settlement, and led negotiations of the AOL unauthorized charges settlement. In addition, Mr. Piper has broad experience representing individuals in civil rights and constitutional cases, including devoting a year to working on criminal appeals for indigent defendants. *Other Reported Decisions:* Com. v. Abu-Jamal, 720 A.2d 79 (Pa. 1998); Wildey v Springs, 47 F.3d 1475 (7th Cir. 1995); Bennett & Kahnweiler, Inc. v. American Nat. Bank & Trust Co. of Chicago, 256 Ill.App.3d 1002 (Ill. App. 1993); Mitsui Taiyo Kobe Bank, Ltd. v. First Nat. Realty & Development Co., Inc., 788 F. Supp. 1007 (N.D. Ill. 1992); Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989).

Daniel Cohen. *Education*: Washington University School of Law (J.D. 1992); Washington University (B.A. 1989). Experience: LakinChapman LLC (2009-present); Lakin Law Firm, P.C. (2002-2008); Bauer & Baebler, P.C. (1998-2002); C. Marshall Friedman, P.C. (1995-1998); Jon Carlson & Associates (1992-1995). Admitted to Practice: Illinois, Missouri, United States Supreme Court, United States Circuit Court of Appeals (7th Circuit), United States Circuit Court of Appeals (5th Circuit), United States District Court (Eastern District of Missouri), United States District Court (Southern District of Illinois). Honors and Activities: American Association for Justice; Illinois Trial Lawyers Association; Missouri Association of Trial Attorneys; American Bar Association; Illinois State Bar Association; Missouri Bar Association.

Mr. Cohen concentrates his practice of law in the fields of class action and personal injury litigation. Since 2002, Mr. Cohen has devoted a substantial portion of his practice to the prosecution of consumer fraud class actions in state and federal courts. Mr. Cohen is currently handling numerous certified class

Exhibit V

actions, prosecuting claims on behalf of millions of class members on a nationwide and/or multistate basis. Mr. Cohen also has prosecuted hundreds of personal injury cases, including Federal Employer's Liability Act and complex product liability claims, in the state courts of Missouri, Illinois, Kansas, Nebraska, Colorado, Montana and Texas, and in the federal courts of Missouri, Kansas, Texas, Arkansas and Oklahoma. He has tried cases to verdict in the state courts of Missouri, Illinois, Kansas, Nebraska and Texas, and in the federal courts of Missouri and Texas.

Paul A. Marks. *Education:* St. Louis University School of Law (J.D. 1999); Illinois State University (B.S. 1988). *Experience:* The Lakin Law Firm, P.C. (2003-Present); Chambers of Justice Thomas M. Welch, Illinois Appellate Court, Fifth District (1999-2003); background in trust and investment services. *Publications:* Editor and Member, *St. Louis University Law Journal* (1997-1999). *Admitted to Practice:* Illinois, Missouri, United States Court of Appeals (Seventh Circuit), and the United States District Court (Southern District of Illinois). *Honors & Activities:* American Association for Justice; Illinois Trial Lawyers Association; American Bar Association; Illinois State Bar Association; Missouri Bar Association; Seventh Circuit Bar Association; Bar Association of Metropolitan St. Louis; Madison County Bar Association (President 2008-2009); Tri-City Bar Association (President 2004); Alton-Wood River Bar Association; Vice President of District Operations, Trails West Council, Boy Scouts of America.

Mr. Marks concentrates his practice in complex litigation, with an emphasis in the insurance and financial-services sectors. His work includes motion practice, discovery, class certification, and class settlement. In addition, Paul Marks has prosecuted and defended personal injury cases. He has also handled probate matters, secured interlocutory relief, litigated professional-responsibility cases and defended clients accused of criminal misdemeanors.

Andrew W. Kuhlmann. *Education:* University of Northern Colorado (B.A. Music 1999); University of Minnesota Law School (J.D. 2002). *Honors & Activities:* Editor, *Law & Inequality: A Journal of Theory & Practice;* Dean's List; Illinois State Bar Association; The Missouri Bar. *Admitted to Practice:* State of Illinois, State of Missouri, United States Court of Appeals (Seventh Circuit) and the United States District Court (Central District of Illinois, Southern District of Illinois, and Eastern District of Missouri).

Mr. Kuhlmann concentrates his practice in complex litigation, focusing on class action litigation, *qui tam* litigation, and commercial disputes. Prior to joining LakinChapman, Mr. Kuhlmann had an active civil litigation practice, where he handled trials, administrative hearings, evidentiary hearings, all

Exhibit V

aspects of discovery, several appeals, and an active motion practice. In his first year in practice, Mr. Kuhlmann was appointed lead class counsel on behalf of several hundred tenants of a large apartment complex. Similarly, he has handled complex real estate, construction, personal injury, employment, and disability-related education litigation. Before practicing law, Mr. Kuhlmann co-managed his family business in the St. Louis area and was a professional chef in St. Louis and Minneapolis.

Matthew R. Cheatham, Paralegal. *Education:* Maryville University St. Louis (B.A. in paralegal studies with a minor in sociology in 2004 *cum laude*). *Experience:* LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2005-2008); Sonnenschein Nath & Rosenthal LLP (2003-2005); The United States Navy (1997-2001). *Honors & Activities:* Inducted into *Lambda Epsilon Chi* (National Honor Society in Paralegal Studies). Mr. Cheatham has assisted attorneys in class action litigation since 2003. Under the direct supervision of the attorneys, Mr. Cheatham has assisted in class action cases by compiling and/or responding to discovery, researching legal issues, preparing pleadings including class certification motions, supervising other paralegals that analyze and summarize documents produced by opposing counsel, interviewing witnesses, investigating experts, and investigating defendants and theories of recovery before filing suit.

Crystal L. Duckett, Paralegal. *Education*: Webster University St. Louis (B.A. in Legal Studies in 2008 Departmental Honors). *Experience*: LakinChapman LLC (2009-present); The Lakin Law Firm, P.C. (2006-2008). *Activities*: Under the direct supervision of the attorneys, Mrs. Duckett has assisted in class action cases by compiling and/or responding to discovery, researching legal issues, and preparing pleadings.

LakinChapman attorneys who are available to assist the Complex Litigation practice group include:

Charles W. Armbruster III. *Education*: Washington University School of Law (J.D. 1992); University of Michigan (B.S. 1989). *Admitted to Practice*: State of Illinois, State of Missouri, State of West Virginia, the United States District Court (Eastern District of Missouri, Southern District of Illinois, Central District of Illinois, Northern District of Illinois, Eastern District of Arkansas, Western District of Arkansas, Eastern District of Oklahoma, and Southern District of West

Exhibit V

EXHIBIT L
Part 4

Virginia), the United States Bankruptcy Court Northern District of Oklahoma, and the United States Court of Appeals (Eighth Circuit and Tenth Circuit).

Michael T. Blotevogel. *Education*: Truman State University (B.A., B.S. 1995); University of Minnesota (M.P.A. 1997); Washington University School of Law (J.D. 2003). *Admitted to Practice*: State of Illinois, State of Missouri, the United States District Court (Southern District of Illinois, Eastern District of Missouri, Eastern District of Oklahoma, Northern District of Oklahoma, Western District of Arkansas, and Eastern District of Arkansas), and the United States Court of Appeals (Fifth Circuit, Seventh Circuit, and Tenth Circuit).

Rodney D. Caffey. *Education*: Illinois State University (B.S. 1992); Oklahoma City University School of Law (J.D. 2002). *Admitted to Practice*: State of Illinois, State of Missouri, and the United States District Court (Southern District of Illinois and Eastern District of Missouri).

Roy C. Dripps. *Education*: St. Louis University (B.A. 1978); St. Louis University Law School (J.D. 1981). *Admitted to Practice*: State of Illinois, State of Missouri, the United States Supreme Court, the United States Claims Court, the United States Court of Appeals (Seventh, Eighth and Tenth Circuits), and the United States District Court (Southern District of Illinois, Eastern District of Arkansas, Western District of Arkansas, and Western District of Nebraska).

Gail Gaus Renshaw. *Education*: University of Missouri (B.A. 1974); Georgetown University (J.D. 1978). *Admitted to Practice*: State of Illinois, State of Missouri, the United States Supreme Court, the United States Court of Appeals (Sixth, Seventh, Eighth and Tenth Circuits), and the United States District Court (Southern District of Illinois and Eastern District of Missouri).

Craig J. Jensen. *Education*: Loyola University (B.S. 1983); John Marshall Law School (J.D. 1987). *Admitted to Practice*: State of Illinois, State of Missouri, the United States District Court (Eastern District of Missouri, Southern District of Illinois, Central District of Illinois, and Eastern District of Arkansas).

Elizabeth A. Parker. *Education*: Western Michigan University (B.S. 1996); Arizona State University (J.D. 2000). *Admitted to Practice*: State of Illinois, State of Missouri, the United States Court of Appeals (Seventh Circuit); the United States District Court (Southern District of Illinois and Middle District of North Carolina).

Exhibit V

Marc W. Parker. *Education*: Southern Illinois University (B.S. 1987); St. Louis University School of Law (J.D. 1990). *Admitted to Practice*: State of Illinois, the United States Court of Appeals (Seventh Circuit); the United States District Court (Southern District of Illinois and Central District of Illinois.)

John E. Winterscheidt. *Education*: Augustana College (B.A. 1986); Washington University School of Law (J.D. 1990). *Admitted to Practice*: State of Illinois, State of Missouri, and State of Kansas.

Exhibit V

Exhibit W to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit X to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit Y to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit Z to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit AA to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit BB to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

SMART PROTECTION COVERAGE
XX Months or XXX,XXX Miles

AGREEMENT HOLDER:

SAMPLE CUSTOMER
123 MAIN STREET
ANYTOWN, MI 12345-6789

AGREEMENT REFERENCE NUMBER:

800123456

COVERED VEHICLE NUMBER:

XXXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Mileage:	Agreement Deductible:
99/99/9999	999,999	$0

(SN) SMART PROTECTION coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 999,999 miles, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, GMAC Service Agreement Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the usual and fair charges for parts and labor to repair or replace a covered part or perform a covered service.

"**DEDUCTIBLE**" as identified on page 1, is the amount **YOU** pay per repair visit for repairs covered by this Agreement. If the same covered part fails again, no **DEDUCTIBLE** will apply.

"**FAILURE**" refers to the inability of an original or like replacement part covered by this Agreement to function in normal service.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

SMART PROTECTION COVERAGE

WE will pay **YOU** or a licensed repairer the **COST, in excess of the DEDUCTIBLE,** to remedy any **FAILURE using new, used, or remanufactured parts,** except as explained in the items listed under the section "WHAT THIS AGREEMENT DOES NOT COVER".

RENTAL COVERAGE

WE will pay the charge to rent a replacement vehicle or pay for public transportation up to $35 per day and a maximum of $175 per repair visit if the VEHICLE is accepted for repairs or services covered by either YOUR New Vehicle Limited or Powertrain Warranty or this Agreement.

Exhibit CC

To be covered, the repair or service must require 2.0 or more manufacturer's labor time guide hours or cause the VEHICLE to be inoperable and kept in the repair facility overnight. The total dollar limit per repair visit will be increased to a maximum of $280 if the repairs are delayed because of a parts delay and WE are notified of the delay within the first five (5) days of the rental period.

Rental reimbursements will be made only for rental vehicles obtained through dealerships or licensed rental agencies. Bus or taxi transportation expenses will also be reimbursed. Original receipts must be provided.

If YOUR New Vehicle Limited or Powertrain Warranty is in effect, rental coverage will apply for only that amount in excess of the amount covered by that warranty or any courtesy transportation program.

TOWING AND ROAD SERVICE

WE will authorize towing or emergency road service for any disablement of the VEHICLE or reimburse YOU up to $75 for these services.

For Towing and Emergency Road Service Assistance
call 1-800-439-8318

If YOUR New Vehicle Limited or Powertrain Warranty is in effect, this protection will apply for only that amount in excess of the amount covered by that warranty.

WHAT THIS AGREEMENT DOES NOT COVER

Unless required in connection with the repair of a covered part, WE will not pay anything under this Agreement for engine tune-up, suspension alignment, wheel balancing, filters, lubricants, engine coolant, drive belts, radiator hoses, heater and vacuum hoses, windshield wiper blades, air conditioning recharging, fluids, spark/glow plugs and wires, brake pads and linings, brake shoes and rotors, manual clutch disc, or any maintenance service or part required to be performed or replaced as recommended by the VEHICLE manufacturer's Maintenance Schedule.

Additionally, neither rust damage nor any of the following parts as defined by the VEHICLE manufacturer's parts manual are covered under any circumstance: sheet metal, chassis frame, cross members, body rails, body panels or other body parts, bumpers, glass, carpet, weather-strips, lenses, sealed beams, light bulbs, tires, trim, convertible or vinyl tops, moldings, bright metal, upholstery, paint, exhaust system, catalytic converter, hinges, brake drums, shock absorbers, or batteries. In addition, the following are not covered: correction of air and water leaks, wind noise, odors, squeaks, or rattles.

This Agreement is not responsible for a FAILURE or CLAIM:

a) Caused by misuse, abuse, negligence, alterations, or modifications made to YOUR VEHICLE;
b) Caused by lack of maintenance required by the Maintenance Schedule for YOUR VEHICLE, as detailed in YOUR Owners Manual;
c) Caused by collision, fire, theft, freezing, vandalism, riot, explosion, lightning, earthquake, windstorm, hail, water, or animal;
d) Caused by racing or other competition;
e) Caused by a condition that existed prior to purchase of this Agreement, or if the odometer has stopped or been changed;
f) Caused by pulling a trailer or another vehicle, unless YOUR VEHICLE is equipped for this as recommended by the VEHICLE manufacturer;
g) Subject to any warranty, VEHICLE manufacturer recall or guarantee issued by the VEHICLE manufacturer or a repairer;
h) Occurring outside the fifty (50) United States of America, the District of Columbia, and Canada;
i) Relating to any part which is not original VEHICLE manufacturer equipment or a like replacement part, whether or not it meets VEHICLE manufacturer specifications. Examples may include, but are not limited to, garage door openers, cellular telephones, theft deterrent systems, and air conditioning components;
j) Relating to any communication, navigational, or entertainment devices that become unusable or unable to function as intended due to changes in content, technology, or wireless service;
k) Caused by contaminated fuel systems or other contaminated fluids.

Exhibit CC

Finally, no benefits are available hereunder:

l) **If a material misrepresentation was made on the Contract Registration, or if YOU are no longer using YOUR VEHICLE in accordance with the eligibility requirements stated on the Contract Registration;**
m) **For economic loss, including loss of time, inconvenience, lodging, food, storage or other incidental or consequential loss or damage that may result from a FAILURE;**
n) **For diminution in VEHICLE value.**

YOUR RESPONSIBILITIES

YOU must properly maintain the covered **VEHICLE** as recommended by the **VEHICLE** manufacturer. If requested, proof of required service, including receipts and work orders showing date and mileage of the **VEHICLE** at the time of service, must be presented to **US** in the event of a **FAILURE** or **CLAIM.**

CLAIM PROCEDURES

In the event of a **FAILURE YOU** must:
1) Use reasonable means to protect the covered **VEHICLE** from additional damage.
2) Contact the dealership from whom **YOU** purchased this Agreement.
3) Obtain prior authorization from **US** before any work is done on the covered **VEHICLE.**

If **YOU** need assistance in submitting a **CLAIM** or obtaining a service covered by this Agreement, contact **YOUR** selling dealership. If **YOU** cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

If necessary, **YOU** must allow **US** to inspect the **VEHICLE** and provide any information **WE** may reasonably require (including proof of required maintenance) prior to completion of any repair.

WE may reimburse **YOUR COST** to repair or replace a covered part, if **YOU** submit an original paid invoice from a licensed repair facility, or **WE** may authorize and pay for the repair, replacement, or service ourselves. In either event, **WE** strongly recommend that **YOU** return to **YOUR** selling dealer or a GM Goodwrench dealer for covered repairs and services. Covered repairs and services may be performed by the licensed repair facility of **YOUR** choice.

LIMIT OF LIABILITY

OUR limit of liability shall not exceed the actual cash value of the **VEHICLE**, less the **DEDUCTIBLE**, for any one repair visit.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to **US.** Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to **YOUR** satisfaction, the following steps should be taken:

STEP ONE - Discuss **YOUR** concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons **YOUR** concerns remain unresolved, contact **US** at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

APPRAISAL OF LOSS

If **YOU** do not agree with **US** on the amount of loss, either party may demand an appraisal of the loss. In this event, within sixty (60) days after the date a **CLAIM** is filed, each party will select a competent appraiser. The two appraisers will select an umpire and separately state the actual cash value and the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire. Each party will: a) pay their chosen appraiser; and b) bear the expenses of the umpire equally. An appraisal shall not act as a waiver of **OUR** rights or **YOUR** rights under this Agreement.

Exhibit CC

TRANSFER

To transfer this Agreement, contact the selling dealer for assistance, or YOU may contact US and WE will provide YOU with a transfer form which must be completed by YOU and the new owner of the VEHICLE and submitted to US along with a $50 check or money order to cover the transfer fee. In either event, WE must be notified within thirty (30) days of the date VEHICLE ownership is transferred or this Agreement will no longer be in force. In the event of YOUR death, coverage will be available to YOUR spouse or legal representative.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request and verify the mileage of the covered **VEHICLE**. If **YOU** need additional assistance call **US** at 1-800-631-5590.

If **YOU** cancel within sixty (60) days of the date this Agreement was purchased, the entire purchase price will be refunded unless **YOU** have made a **CLAIM**. If **YOU** have made a **CLAIM** or if **YOU** cancel more than sixty (60) days after the purchase date, **YOU** or a person authorized by **YOU** will receive a prorated refund of the purchase price, less a $50 administration fee. The proration will be based on the lesser of days or miles of coverage remaining. **WE** will not subtract the **COST** of a **CLAIM**, if any, from **YOUR** refund.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration. If **WE** cancel, **YOU** will not be charged an administration fee. If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any.

No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge. If canceled, coverage may not be repurchased by **YOU** or reinstated on the **VEHICLE**.

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

The obligations of the provider under this Agreement are covered by a policy of insurance issued by MIC Property and Casualty Insurance Corporation, Executive/Administrative Offices: 300 Galleria Officentre, Suite 200, Southfield, MI 48034. In the event the provider does not pay any CLAIM or make any refund or consideration due, including the return of any unearned provider fee, within thirty (30) days after proof of loss has been filed or the provider ceases to do business or goes bankrupt, YOU may apply directly to MIC Property and Casualty Insurance Corporation for the protection afforded by this Agreement.

Exhibit CC

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

BASIC GUARD COVERAGE
XX Months or XXX,XXX Miles

AGREEMENT HOLDER:

SAMPLE CUSTOMER
123 MAIN STREET
ANYTOWN, MI 12345-6789

AGREEMENT REFERENCE NUMBER:

800123456

COVERED VEHICLE NUMBER: XXXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Mileage:	Agreement Deductible:
99/99/9999	999,999	$0

(BG) BASIC GUARD coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 999,999 miles, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, GMAC Service Agreement Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the usual and fair charges for parts and labor to repair or replace a covered part or perform a covered service.

"**DEDUCTIBLE**" as identified on page 1, is the amount **YOU** pay per repair visit for repairs covered by this Agreement. If the same covered part fails again, no **DEDUCTIBLE** will apply.

"**FAILURE**" refers to the inability of an original or like replacement part covered by this Agreement to function in normal service.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

BASIC GUARD COVERAGE

WE will pay **YOU** or a licensed repairer the **COST, in excess of the DEDUCTIBLE,** to remedy the **FAILURE** of only the following parts, **using new, used, or remanufactured parts,** except as explained in the items listed under the section "WHAT THIS AGREEMENT DOES NOT COVER":

Gasoline Engine - Cylinder block, heads, and all lubricated internal engine parts; manifolds; timing gears, timing gear chain/belt and cover; flywheel; oil pump/oil pump housing; seals and gaskets; water pump; harmonic balancer; valve covers; oil pan; and engine mounts. Also covered are turbocharger/supercharger housings, internal parts, valves, seals and gaskets; crankshaft bearings; valve train; crankshaft seals - front and rear; camshaft bearings; connecting rods and bearings.

Exhibit DD

Diesel Engine - All of the above listed parts.

Fuel System –
Gasoline Engine - Fuel pump; EFI sensors/control units; injectors/throttle body assembly.
Diesel Engine - Diesel fuel injection pump; lines; nozzles; and vacuum pump.

Transmission/Transaxle - Case and all internal parts; torque converter; transfer case; vacuum modulator; transmission mounts; seals and gaskets; input/output shafts; forward and intermediate clutch; direct clutch; bands; governor; thrust bearings, washers; and electronic control unit.

Front-Wheel Drive - Final drive housing, all internal parts; axle shafts and axle shaft bearings; constant velocity joints; axle housing, all internal parts; wheel bearings; axle/supports; front hub bearings; seals and gaskets; differential, bearings and case.

Rear-Wheel Drive - Axle shafts and axle shaft bearings; axle housing, all internal parts; propeller shafts; "U" joints; wheel bearings; locking hubs; rear axle hub bearings; seals and gaskets; differential side, pinion gears; and disc or cone-limited slip.

TOWING

WE will authorize towing required as a result of any covered **FAILURE** of the **VEHICLE** or reimburse **YOU** up to $75 for these services.

If **YOUR** New Vehicle Limited or Powertrain Warranty is in effect, this protection will apply for only that amount in excess of the amount covered by that warranty.

WHAT THIS AGREEMENT DOES NOT COVER

Unless required in connection with the repair of a covered part, WE will not pay anything under this Agreement for engine tune-up, suspension alignment, wheel balancing, filters, lubricants, engine coolant, drive belts, radiator hoses, heater and vacuum hoses, windshield wiper blades, air conditioning recharging, fluids, spark/glow plugs and wires, brake pads and linings, brake shoes and rotors, manual clutch disc, or any maintenance service or part required to be performed or replaced as recommended by the VEHICLE manufacturer's Maintenance Schedule.

This Agreement is not responsible for a **FAILURE** or **CLAIM**:

a) Caused by misuse, abuse, negligence, alterations, or modifications made to YOUR VEHICLE;
b) Caused by lack of maintenance required by the Maintenance Schedule for YOUR VEHICLE, as detailed in YOUR Owners Manual;
c) Caused by collision, fire, theft, freezing, vandalism, riot, explosion, lightning, earthquake, windstorm, hail, water, or animal;
d) Caused by racing or other competition;
e) Caused by a condition that existed prior to purchase of this Agreement, or if the odometer has stopped or been changed;
f) Caused by pulling a trailer or another vehicle, unless YOUR VEHICLE is equipped for this as recommended by the VEHICLE manufacturer;
g) Subject to any warranty, VEHICLE manufacturer recall or guarantee issued by the VEHICLE manufacturer or a repairer;
h) Occurring outside the fifty (50) United States of America, the District of Columbia, and Canada;
i) Relating to any part which is not original VEHICLE manufacturer equipment or a like replacement part, whether or not it meets VEHICLE manufacturer specifications. Examples may include, but are not limited to, garage door openers, cellular telephones, theft deterrent systems, and air conditioning components;
j) Relating to any communication, navigational, or entertainment devices that become unusable or unable to function as intended due to changes in content, technology, or wireless service;
k) Caused by contaminated fuel systems or other contaminated fluids.

Finally, no benefits are available hereunder:

l) If a material misrepresentation was made on the Contract Registration, or if YOU are no longer using YOUR VEHICLE in accordance with the eligibility requirements stated on the Contract Registration;

Exhibit DD

m) For economic loss, including loss of time, inconvenience, lodging, food, storage or other incidental or consequential loss or damage that may result from a **FAILURE**;
n) For diminution in **VEHICLE** value.

YOUR RESPONSIBILITIES

YOU must properly maintain the covered **VEHICLE** as recommended by the **VEHICLE** manufacturer. If requested, proof of required service, including receipts and work orders showing date and mileage of the **VEHICLE** at the time of service, must be presented to **US** in the event of a **FAILURE** or **CLAIM**.

CLAIM PROCEDURES

In the event of a **FAILURE YOU** must:
1) Use reasonable means to protect the covered **VEHICLE** from additional damage.
2) Contact the dealership from whom **YOU** purchased this Agreement.
3) Obtain prior authorization from **US** before any work is done on the covered **VEHICLE**.

If **YOU** need assistance in submitting a **CLAIM** or obtaining a service covered by this Agreement, contact **YOUR** selling dealership. If **YOU** cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

If necessary, **YOU** must allow **US** to inspect the **VEHICLE** and provide any information **WE** may reasonably require (including proof of required maintenance) prior to completion of any repair.

WE may reimburse **YOUR COST** to repair or replace a covered part, if **YOU** submit an original paid invoice from a licensed repair facility, or **WE** may authorize and pay for the repair, replacement, or service ourselves. In either event, **WE** strongly recommend that **YOU** return to **YOUR** selling dealer or a GM Goodwrench dealer for covered repairs and services. Covered repairs and services may be performed by the licensed repair facility of **YOUR** choice.

LIMIT OF LIABILITY

OUR limit of liability shall not exceed the actual cash value of the **VEHICLE**, less the **DEDUCTIBLE**, for any one repair visit.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to **US**. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to **YOUR** satisfaction, the following steps should be taken:

STEP ONE - Discuss **YOUR** concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons **YOUR** concerns remain unresolved, contact **US** at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

APPRAISAL OF LOSS

If **YOU** do not agree with **US** on the amount of loss, either party may demand an appraisal of the loss. In this event, within sixty (60) days after the date a **CLAIM** is filed, each party will select a competent appraiser. The two appraisers will select an umpire and separately state the actual cash value and the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire. Each party will: a) pay their chosen appraiser; and b) bear the expenses of the umpire equally. An appraisal shall not act as a waiver of **OUR** rights or **YOUR** rights under this Agreement.

TRANSFER

To transfer this Agreement, contact the selling dealer for assistance, or YOU may contact US and WE will provide YOU with a transfer form which must be completed by YOU and the new owner of the VEHICLE and submitted to US along with a $50 check or money order to cover the transfer fee. In either event, WE must be notified within

Exhibit DD

thirty (30) days of the date VEHICLE ownership is transferred or this Agreement will no longer be in force. In the event of YOUR death, coverage will be available to YOUR spouse or legal representative.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request and verify the mileage of the covered **VEHICLE**. If **YOU** need additional assistance call **US** at 1-800-631-5590.

If **YOU** cancel within sixty (60) days of the date this Agreement was purchased, the entire purchase price will be refunded unless **YOU** have made a **CLAIM**. If **YOU** have made a **CLAIM** or if **YOU** cancel more than sixty (60) days after the purchase date, **YOU** or a person authorized by **YOU** will receive a prorated refund of the purchase price, less a $50 administration fee. The proration will be based on the lesser of days or miles of coverage remaining. **WE** will not subtract the **COST** of a **CLAIM**, if any, from **YOUR** refund.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration. If **WE** cancel, **YOU** will not be charged an administration fee. If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any.

No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge. If canceled, coverage may not be repurchased by **YOU** or reinstated on the **VEHICLE**.

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

The obligations of the provider under this Agreement are covered by a policy of insurance issued by MIC Property and Casualty Insurance Corporation, Executive/Administrative Offices: 300 Galleria Officentre, Suite 200, Southfield, MI 48034. In the event the provider does not pay any CLAIM or make any refund or consideration due, including the return of any unearned provider fee, within thirty (30) days after proof of loss has been filed or the provider ceases to do business or goes bankrupt, YOU may apply directly to MIC Property and Casualty Insurance Corporation for the protection afforded by this Agreement.

Exhibit DD

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

MAJOR GUARD COVERAGE
XX Months or XXX,XXX Miles

AGREEMENT HOLDER:

SAMPLE CUSTOMER
123 MAIN STREET
ANYTOWN, MI 12345-6789

AGREEMENT REFERENCE NUMBER:

800123456

COVERED VEHICLE NUMBER: XXXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Mileage:	Agreement Deductible:
99/99/9999	999,999	$0

(MG) MAJOR GUARD coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 999,999 miles, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, GMAC Service Agreement Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the usual and fair charges for parts and labor to repair or replace a covered part or perform a covered service.

"**DEDUCTIBLE**" as identified on page 1, is the amount **YOU** pay per repair visit for repairs covered by this Agreement. If the same covered part fails again, no **DEDUCTIBLE** will apply.

"**FAILURE**" refers to the inability of an original or like replacement part covered by this Agreement to function in normal service.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

MAJOR GUARD COVERAGE

WE will pay **YOU** or a licensed repairer the **COST, in excess of the DEDUCTIBLE,** to remedy any **FAILURE using new, used, or remanufactured parts,** except as explained in the items listed under the section "WHAT THIS AGREEMENT DOES NOT COVER".

RENTAL COVERAGE

WE will pay the charge to rent a replacement vehicle or pay for public transportation up to $35 per day and a maximum of $175 per repair visit if the VEHICLE is accepted for repairs or services covered by either YOUR New Vehicle Limited or Powertrain Warranty or this Agreement.

Exhibit EE

To be covered, the repair or service must require 2.0 or more manufacturer's labor time guide hours or cause the VEHICLE to be inoperable and kept in the repair facility overnight. The total dollar limit per repair visit will be increased to a maximum of $280 if the repairs are delayed because of a parts delay and WE are notified of the delay within the first five (5) days of the rental period.

Rental reimbursements will be made only for rental vehicles obtained through dealerships or licensed rental agencies. Bus or taxi transportation expenses will also be reimbursed. Original receipts must be provided.

If YOUR New Vehicle Limited or Powertrain Warranty is in effect, rental coverage will apply for only that amount in excess of the amount covered by that warranty or any courtesy transportation program.

TOWING AND ROAD SERVICE

WE will authorize towing or emergency road service for any disablement of the VEHICLE or reimburse YOU up to $75 for these services.

For Towing and Emergency Road Service Assistance
call 1-800-439-8318

If YOUR New Vehicle Limited or Powertrain Warranty is in effect, this protection will apply for only that amount in excess of the amount covered by that warranty.

WHAT THIS AGREEMENT DOES NOT COVER

Unless required in connection with the repair of a covered part, WE will not pay anything under this Agreement for engine tune-up, suspension alignment, wheel balancing, filters, lubricants, engine coolant, drive belts, radiator hoses, heater and vacuum hoses, windshield wiper blades, air conditioning recharging, fluids, spark/glow plugs and wires, brake pads and linings, brake shoes and rotors, manual clutch disc, or any maintenance service or part required to be performed or replaced as recommended by the VEHICLE manufacturer's Maintenance Schedule.

Additionally, neither rust damage nor any of the following parts as defined by the VEHICLE manufacturer's parts manual are covered under any circumstance: sheet metal, chassis frame, cross members, body rails, body panels or other body parts, bumpers, glass, carpet, weather-strips, lenses, sealed beams, light bulbs, tires, trim, convertible or vinyl tops, moldings, bright metal, upholstery, paint, exhaust system, catalytic converter, hinges, brake drums, shock absorbers, or batteries. In addition, the following are not covered: correction of air and water leaks, wind noise, odors, squeaks, or rattles.

This Agreement is not responsible for a FAILURE or CLAIM:

a) Caused by misuse, abuse, negligence, alterations, or modifications made to YOUR VEHICLE;
b) Caused by lack of maintenance required by the Maintenance Schedule for YOUR VEHICLE, as detailed in YOUR Owners Manual;
c) Caused by collision, fire, theft, freezing, vandalism, riot, explosion, lightning, earthquake, windstorm, hail, water, or animal;
d) Caused by racing or other competition;
e) Caused by a condition that existed prior to purchase of this Agreement, or if the odometer has stopped or been changed;
f) Caused by pulling a trailer or another vehicle, unless YOUR VEHICLE is equipped for this as recommended by the VEHICLE manufacturer;
g) Subject to any warranty, VEHICLE manufacturer recall or guarantee issued by the VEHICLE manufacturer or a repairer;
h) Occurring outside the fifty (50) United States of America, the District of Columbia, and Canada;
i) Relating to any part which is not original VEHICLE manufacturer equipment or a like replacement part, whether or not it meets VEHICLE manufacturer specifications. Examples may include, but are not limited to, garage door openers, cellular telephones, theft deterrent systems, and air conditioning components;
j) Relating to any communication, navigational, or entertainment devices that become unusable or unable to function as intended due to changes in content, technology, or wireless service;
k) Caused by contaminated fuel systems or other contaminated fluids.

Finally, no benefits are available hereunder:

Exhibit EE

l) If a material misrepresentation was made on the Contract Registration, or if YOU are no longer using YOUR VEHICLE in accordance with the eligibility requirements stated on the Contract Registration;
m) For economic loss, including loss of time, inconvenience, lodging, food, storage or other incidental or consequential loss or damage that may result from a FAILURE;
n) For diminution in VEHICLE value.

YOUR RESPONSIBILITIES

YOU must properly maintain the covered VEHICLE as recommended by the VEHICLE manufacturer. If requested, proof of required service, including receipts and work orders showing date and mileage of the VEHICLE at the time of service, must be presented to US in the event of a FAILURE or CLAIM.

CLAIM PROCEDURES

In the event of a FAILURE YOU must:
1) Use reasonable means to protect the covered VEHICLE from additional damage.
2) Contact the dealership from whom YOU purchased this Agreement.
3) Obtain prior authorization from US before any work is done on the covered VEHICLE.

If YOU need assistance in submitting a CLAIM or obtaining a service covered by this Agreement, contact YOUR selling dealership. If YOU cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

If necessary, YOU must allow US to inspect the VEHICLE and provide any information WE may reasonably require (including proof of required maintenance) prior to completion of any repair.

WE may reimburse YOUR COST to repair or replace a covered part, if YOU submit an original paid invoice from a licensed repair facility, or WE may authorize and pay for the repair, replacement, or service ourselves. In either event, WE strongly recommend that YOU return to YOUR selling dealer or a GM Goodwrench dealer for covered repairs and services. Covered repairs and services may be performed by the licensed repair facility of YOUR choice.

LIMIT OF LIABILITY

OUR limit of liability shall not exceed the actual cash value of the VEHICLE, less the DEDUCTIBLE, for any one repair visit.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to US. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to YOUR satisfaction, the following steps should be taken:

STEP ONE - Discuss YOUR concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons YOUR concerns remain unresolved, contact US at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

APPRAISAL OF LOSS

If YOU do not agree with US on the amount of loss, either party may demand an appraisal of the loss. In this event, within sixty (60) days after the date a CLAIM is filed, each party will select a competent appraiser. The two appraisers will select an umpire and separately state the actual cash value and the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire. Each party will: a) pay their chosen appraiser; and b) bear the expenses of the umpire equally. An appraisal shall not act as a waiver of OUR rights or YOUR rights under this Agreement.

Exhibit EE

TRANSFER

To transfer this Agreement, contact the selling dealer for assistance, or YOU may contact US and WE will provide YOU with a transfer form which must be completed by YOU and the new owner of the VEHICLE and submitted to US along with a $50 check or money order to cover the transfer fee. In either event, WE must be notified within thirty (30) days of the date VEHICLE ownership is transferred or this Agreement will no longer be in force. In the event of YOUR death, coverage will be available to YOUR spouse or legal representative.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request and verify the mileage of the covered **VEHICLE**. If **YOU** need additional assistance call **US** at 1-800-631-5590.

If **YOU** cancel within sixty (60) days of the date this Agreement was purchased, the entire purchase price will be refunded unless **YOU** have made a **CLAIM**. If **YOU** have made a **CLAIM** or if **YOU** cancel more than sixty (60) days after the purchase date, **YOU** or a person authorized by **YOU** will receive a prorated refund of the purchase price, less a $50 administration fee. The proration will be based on the lesser of days or miles of coverage remaining. **WE** will not subtract the **COST** of a **CLAIM**, if any, from **YOUR** refund.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration. If **WE** cancel, **YOU** will not be charged an administration fee. If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any.

No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge. If canceled, coverage may not be repurchased by **YOU** or reinstated on the **VEHICLE**.

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

The obligations of the provider under this Agreement are covered by a policy of insurance issued by MIC Property and Casualty Insurance Corporation, Executive/Administrative Offices: 300 Galleria Officentre, Suite 200, Southfield, MI 48034. In the event the provider does not pay any CLAIM or make any refund or consideration due, including the return of any unearned provider fee, within thirty (30) days after proof of loss has been filed or the provider ceases to do business or goes bankrupt, YOU may apply directly to MIC Property and Casualty Insurance Corporation for the protection afforded by this Agreement.

Exhibit EE

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

VALUE GUARD COVERAGE
XX Months or XXX,XXX Miles

AGREEMENT HOLDER:	AGREEMENT REFERENCE NUMBER:
SAMPLE CUSTOMER 123 MAIN STREET ANYTOWN, MI 12345-6789	800123456
COVERED VEHICLE NUMBER:	XXXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Mileage:	Agreement Deductible:
99/99/9999	999,999	$0

(VG) VALUE GUARD coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 999,999 miles, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, GMAC Service Agreement Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the usual and fair charges for parts and labor to repair or replace a covered part or perform a covered service.

"**DEDUCTIBLE**" as identified on page 1, is the amount **YOU** pay per repair visit for repairs covered by this Agreement. If the same covered part fails again, no **DEDUCTIBLE** will apply.

"**FAILURE**" refers to the inability of an original or like replacement part covered by this Agreement to function in normal service.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

VALUE GUARD COVERAGE

WE will pay **YOU** or a licensed repairer the **COST, in excess of the DEDUCTIBLE,** to remedy the **FAILURE** of only the following parts, **using new, used, or remanufactured parts,** except as explained in the items listed under the section "WHAT THIS AGREEMENT DOES NOT COVER":

Gasoline Engine - Cylinder block, heads, and all lubricated internal engine parts; manifolds; timing gears, timing gear chain/belt and cover; flywheel; oil pump/oil pump housing; seals and gaskets; water pump; harmonic balancer; valve covers; oil pan; and engine mounts. Also covered are turbocharger/supercharger housings, internal parts, valves, seals and gaskets; crankshaft bearings; valve train; crankshaft seals - front and rear; camshaft bearings; connecting rods and bearings.

Exhibit FF

Diesel Engine - All of the above listed parts.

Fuel System –
Gasoline Engine - Fuel pump; EFI sensors/control units; injectors/throttle body assembly.
Diesel Engine - Diesel fuel injection pump; lines; nozzles; and vacuum pump.

Transmission/Transaxle - Case and all internal parts; torque converter; transfer case; vacuum modulator; transmission mounts; seals and gaskets; input/output shafts; forward and intermediate clutch; direct clutch; bands; governor; thrust bearings, washers; and electronic control unit.

Front-Wheel Drive - Final drive housing, all internal parts; axle shafts and axle shaft bearings; constant velocity joints; axle housing, all internal parts; wheel bearings; axle/supports; front hub bearings; seals and gaskets; differential, bearings and case.

Rear-Wheel Drive - Axle shafts and axle shaft bearings; axle housing, all internal parts; propeller shafts; "U" joints; wheel bearings; locking hubs; rear axle hub bearings; seals and gaskets; differential side, pinion gears; and disc or cone-limited slip.

Steering - Gear housing and all internal parts; rack and pinion; power steering pump; steering shaft couplings; seals and gaskets.

Front Suspension - Upper mount and bearing; upper and lower control arms; control arm shafts and bushings; upper and lower ball joints; steering knuckles; seals; stabilizer shaft; stabilizer bushings; and wheel bearings.

Brakes - Master cylinder; assist boosters; wheel cylinders; combination valve; hydraulic lines and fittings; disc calipers; seals and gaskets; pressure modulator valve/dump valve; ABS electronic brake control module (including pump motor and accumulator).

Electrical - Starter motor and solenoid; alternator/generator; voltage regulator, wiring harnesses, manually operated switches, wiper motors, ignition switch (lock cylinder); distributor module; electronic level control compressor, sensor, and control; electronic spark control detonation sensor and control; distributor; electronic instrument cluster, and diagnostic displays.

VEHICLE Manufacturer Installed Air Conditioner - Compressor; clutch and clutch bearing; pulley; condenser; evaporator; accumulator; high/low pressure compressor cut-off switch; pressure cycling switch; seals and gaskets; and temperature control programmer.

RENTAL COVERAGE

WE will pay the charge to rent a replacement vehicle or pay for public transportation up to $35 per day and a maximum of $175 per repair visit if the VEHICLE is accepted for repairs or services covered by either YOUR New Vehicle Limited or Powertrain Warranty or this Agreement.

To be covered, the repair or service must require 2.0 or more manufacturer's labor time guide hours or cause the VEHICLE to be inoperable and kept in the repair facility overnight. The total dollar limit per repair visit will be increased to a maximum of $280 if the repairs are delayed because of a parts delay and WE are notified of the delay within the first five (5) days of the rental period.

Rental reimbursements will be made only for rental vehicles obtained through dealerships or licensed rental agencies. Bus or taxi transportation expenses will also be reimbursed. Original receipts must be provided.

If **YOUR** New Vehicle Limited or Powertrain Warranty is in effect, rental coverage will apply for only that amount in excess of the amount covered by that warranty or any courtesy transportation program.

TOWING

WE will authorize towing required as a result of any covered **FAILURE** of the **VEHICLE** or reimburse **YOU** up to $75 for these services.

Exhibit FF

If YOUR New Vehicle Limited or Powertrain Warranty is in effect, this protection will apply for only that amount in excess of the amount covered by that warranty.

WHAT THIS AGREEMENT DOES NOT COVER

Unless required in connection with the repair of a covered part, WE will not pay anything under this Agreement for engine tune-up, suspension alignment, wheel balancing, filters, lubricants, engine coolant, drive belts, radiator hoses, heater and vacuum hoses, windshield wiper blades, air conditioning recharging, fluids, spark/glow plugs and wires, brake pads and linings, brake shoes and rotors, manual clutch disc, or any maintenance service or part required to be performed or replaced as recommended by the VEHICLE manufacturer's Maintenance Schedule.

This Agreement is not responsible for a FAILURE or CLAIM:

a) Caused by misuse, abuse, negligence, alterations, or modifications made to YOUR VEHICLE;
b) Caused by lack of maintenance required by the Maintenance Schedule for YOUR VEHICLE, as detailed in YOUR Owners Manual;
c) Caused by collision, fire, theft, freezing, vandalism, riot, explosion, lightning, earthquake, windstorm, hail, water, or animal;
d) Caused by racing or other competition;
e) Caused by a condition that existed prior to purchase of this Agreement, or if the odometer has stopped or been changed;
f) Caused by pulling a trailer or another vehicle, unless YOUR VEHICLE is equipped for this as recommended by the VEHICLE manufacturer;
g) Subject to any warranty, VEHICLE manufacturer recall or guarantee issued by the VEHICLE manufacturer or a repairer;
h) Occurring outside the fifty (50) United States of America, the District of Columbia, and Canada;
i) Relating to any part which is not original VEHICLE manufacturer equipment or a like replacement part, whether or not it meets VEHICLE manufacturer specifications. Examples may include, but are not limited to, garage door openers, cellular telephones, theft deterrent systems, and air conditioning components;
j) Relating to any communication, navigational, or entertainment devices that become unusable or unable to function as intended due to changes in content, technology, or wireless service;
k) Caused by contaminated fuel systems or other contaminated fluids.

Finally, no benefits are available hereunder:

l) If a material misrepresentation was made on the Contract Registration, or if YOU are no longer using YOUR VEHICLE in accordance with the eligibility requirements stated on the Contract Registration;
m) For economic loss, including loss of time, inconvenience, lodging, food, storage or other incidental or consequential loss or damage that may result from a FAILURE;
n) For diminution in VEHICLE value.

YOUR RESPONSIBILITIES

YOU must properly maintain the covered VEHICLE as recommended by the VEHICLE manufacturer. If requested, proof of required service, including receipts and work orders showing date and mileage of the VEHICLE at the time of service, must be presented to US in the event of a FAILURE or CLAIM.

CLAIM PROCEDURES

In the event of a FAILURE YOU must:

1) Use reasonable means to protect the covered VEHICLE from additional damage.
2) Contact the dealership from whom YOU purchased this Agreement.
3) Obtain prior authorization from US before any work is done on the covered VEHICLE.

If YOU need assistance in submitting a CLAIM or obtaining a service covered by this Agreement, contact YOUR selling dealership. If YOU cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

If necessary, YOU must allow US to inspect the VEHICLE and provide any information WE may reasonably require (including proof of required maintenance) prior to completion of any repair.

Exhibit FF

WE may reimburse **YOUR COST** to repair or replace a covered part, if **YOU** submit an original paid invoice from a licensed repair facility, or **WE** may authorize and pay for the repair, replacement, or service ourselves. In either event, **WE** strongly recommend that **YOU** return to **YOUR** selling dealer or a GM Goodwrench dealer for covered repairs and services. Covered repairs and services may be performed by the licensed repair facility of **YOUR** choice.

LIMIT OF LIABILITY

OUR limit of liability shall not exceed the actual cash value of the **VEHICLE**, less the **DEDUCTIBLE**, for any one repair visit.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to **US**. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to **YOUR** satisfaction, the following steps should be taken:

STEP ONE - Discuss **YOUR** concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons **YOUR** concerns remain unresolved, contact **US** at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

APPRAISAL OF LOSS

If **YOU** do not agree with **US** on the amount of loss, either party may demand an appraisal of the loss. In this event, within sixty (60) days after the date a **CLAIM** is filed, each party will select a competent appraiser. The two appraisers will select an umpire and separately state the actual cash value and the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire. Each party will: a) pay their chosen appraiser; and b) bear the expenses of the umpire equally. An appraisal shall not act as a waiver of **OUR** rights or **YOUR** rights under this Agreement.

TRANSFER

To transfer this Agreement, contact the selling dealer for assistance, or YOU may contact US and WE will provide YOU with a transfer form which must be completed by YOU and the new owner of the VEHICLE and submitted to US along with a $50 check or money order to cover the transfer fee. In either event, WE must be notified within thirty (30) days of the date VEHICLE ownership is transferred or this Agreement will no longer be in force. In the event of YOUR death, coverage will be available to YOUR spouse or legal representative.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request and verify the mileage of the covered **VEHICLE**. If **YOU** need additional assistance call **US** at 1-800-631-5590.

If **YOU** cancel within sixty (60) days of the date this Agreement was purchased, the entire purchase price will be refunded unless **YOU** have made a **CLAIM**. If **YOU** have made a **CLAIM** or if **YOU** cancel more than sixty (60) days after the purchase date, **YOU** or a person authorized by **YOU** will receive a prorated refund of the purchase price, less a $50 administration fee. The proration will be based on the lesser of days or miles of coverage remaining. **WE** will not subtract the **COST** of a **CLAIM**, if any, from **YOUR** refund.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration. If **WE** cancel, **YOU** will not be charged an administration fee. If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any.

No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge. If canceled, coverage may not be repurchased by **YOU** or reinstated on the **VEHICLE**.

Exhibit FF

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

The obligations of the provider under this Agreement are covered by a policy of insurance issued by MIC Property and Casualty Insurance Corporation, Executive/Administrative Offices: 300 Galleria Officentre, Suite 200, Southfield, MI 48034. In the event the provider does not pay any CLAIM or make any refund or consideration due, including the return of any unearned provider fee, within thirty (30) days after proof of loss has been filed or the provider ceases to do business or goes bankrupt, YOU may apply directly to MIC Property and Casualty Insurance Corporation for the protection afforded by this Agreement.

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

GOODWRENCH CARE COVERAGE
XX Services within XX Months

AGREEMENT HOLDER:

SAMPLE CUSTOMER
123 MAIN STREET
ANYTOWN, MI 12345-6789

AGREEMENT REFERENCE NUMBER:

800123456

COVERED VEHICLE NUMBER:

XXXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Services:	Agreement Deductible:
99/99/9999	999,999	$0

GOODWRENCH CARE coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 99 services, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, General Motors Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the agreed upon reimbursement rate for parts and labor to perform a covered service under the stipulations and limitations of this program.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

WE will pay to perform up to the specified number of oil changes and oil filter replacements.

To have services performed under this contract, **YOU** must return to the dealership from which **YOU** purchased this coverage or to another GM dealership that offers this coverage. Non-participating dealers may elect not to honor this Agreement.

WHAT THIS AGREEMENT DOES NOT COVER

WE will not pay anything under this Agreement other than the oil changes and oil filter replacements as described above.

WE recommend you follow all maintenance intervals as stated in your vehicle owner's manual.

CLAIM PROCEDURES

Claims will only be paid if **YOU** have services performed by a GM Dealership that agrees to honor this Agreement. The GM Dealership performing the service will be reimbursed directly for the covered services.

Exhibit GG

If **YOU** need assistance in obtaining a service covered by this Agreement contact **YOUR** selling dealership. If **YOU** cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to **US**. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to **YOUR** satisfaction, the following steps should be taken:

STEP ONE - Discuss **YOUR** concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons **YOUR** concerns remain unresolved, contact **US** at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

TRANSFER

This plan is not transferable to any subsequent owner of the vehicle or to any other party.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request. If **YOU** need additional assistance call **US** at 1-800-631-5590.

YOU may only cancel within the first sixty (60) days of the date this Agreement was purchased and only if **YOU** have not made a **CLAIM.** The entire purchase price will be refunded.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration.

If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any. No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge.

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

Exhibit GG

GENERAL MOTORS PROTECTION PLAN

P.O. Box 6855
Chicago, Illinois 60680-6855
(800) 631-5590

SMART CARE COVERAGE
XX Months or XXX,XXX Miles

AGREEMENT HOLDER:

SAMPLE CUSTOMER
123 MAIN STREET
ANYTOWN, MI 12345-6789

AGREEMENT REFERENCE NUMBER:

800123456

COVERED VEHICLE NUMBER:

XXXXXXXXXXXXXXXX

Agreement Expiration Date:	Agreement Expiration Mileage:	Agreement Deductible:
99/99/9999	999,999	$0

(SB) SMART CARE coverage starts on the date and at the mileage you purchase this Agreement and ends on 99/99/9999 or at 999,999 miles, whichever occurs first.

This Agreement is between the Agreement Holder identified above ("**YOU**" or "**YOUR**") and the Provider, General Motors Corporation ("**WE**", "**US**", or "**OUR**"), and includes the terms of **YOUR** Contract Registration.

DEFINITIONS

When the following terms appear in all capital letters and bold print, they have these meanings:

"**CLAIM**" refers to any **COST** for which **YOU** seek payment or reimbursement from **US** under this Agreement.

"**COST**" refers to the usual and fair charges for parts and labor to perform a covered service.

"**VEHICLE**" refers to the covered **VEHICLE** as identified on page 1.

WHAT THIS AGREEMENT COVERS

WE will pay **YOU** or a licensed repairer the **COST** to perform scheduled chassis lubrication, oil change, oil filter replacement, and tire rotation services recommended in the maintenance schedule detailed in **YOUR** Owner's Manual. Services must be performed at a licensed commercial service facility at the time/mileage intervals stated in the maintenance schedule.

WHAT THIS AGREEMENT DOES NOT COVER

WE will not pay anything under this Agreement other than recommended scheduled maintenance as described above. If YOU have another service contract on YOUR VEHICLE that provides the same benefits, WE will pay only the COST excess of the amount paid by the other service contract.

CLAIM PROCEDURES

WE may reimburse **YOUR COST** to perform a covered service if **YOU** submit an original paid invoice from a licensed repair facility, or **WE** may authorize and pay for the service ourselves. In either event, **WE** strongly recommend that **YOU** return to **YOUR** selling dealer or a GM Goodwrench dealer for covered repairs and services. Covered repairs and services may be performed by the licensed repair facility of **YOUR** choice.

510SAMPLE8

Exhibit HH

If **YOU** need assistance in obtaining a service covered by this Agreement contact **YOUR** selling dealership. If **YOU** cannot contact the selling dealer for assistance, call 1-800-631-5590 in the United States or 1-800-268-7676 in Canada, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

CUSTOMER SATISFACTION PROCEDURE

YOUR satisfaction and goodwill are important to **US**. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If a matter has not been resolved to **YOUR** satisfaction, the following steps should be taken:

STEP ONE - Discuss **YOUR** concerns with a member of the dealership management staff or owner of the facility. Normally, concerns can be quickly resolved at that level.

STEP TWO - If after contacting such persons **YOUR** concerns remain unresolved, contact **US** at 1-800-631-5590, Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

TRANSFER

To transfer this Agreement, contact the selling dealer for assistance, or YOU may contact US and WE will provide YOU with a transfer form which must be completed by YOU and the new owner of the VEHICLE and submitted to US along with a $50 check or money order to cover the transfer fee. In either event, WE must be notified within thirty (30) days of the date VEHICLE ownership is transferred or this Agreement will no longer be in force. In the event of YOUR death, coverage will be available to YOUR spouse or legal representative.

AGREEMENT CANCELLATION AND REFUNDS

To cancel this Agreement, contact the selling dealer. The dealer will assist with **YOUR** cancellation request and verify the mileage of the covered **VEHICLE**. If **YOU** need additional assistance call **US** at 1-800-631-5590.

If **YOU** cancel within sixty (60) days of the date this Agreement was purchased, the entire purchase price will be refunded unless **YOU** have made a **CLAIM**. If **YOU** have made a **CLAIM** or if **YOU** cancel more than sixty (60) days after the purchase date, **YOU** or a person authorized by **YOU** will receive a prorated refund of the purchase price, less a $50 administration fee. The proration will be based on the lesser of days or miles of coverage remaining. **WE** will not subtract the **COST** of a **CLAIM**, if any, from **YOUR** refund.

WE may cancel this Agreement in the event the charge for **YOUR** Agreement has not been paid, the odometer has been disconnected or altered, the New Vehicle Limited or Powertrain Warranty has been canceled or voided, or if there is a material misrepresentation on the Contract Registration. If **WE** cancel, **YOU** will not be charged an administration fee. If **YOUR VEHICLE** is a total loss or repossessed, **YOUR** cancellation rights under this Agreement will transfer to the Lienholder, if any.

No refund will be paid if this Agreement was provided with the **VEHICLE** at no additional charge.

If any portion of this Agreement, or any form attached to it, conflicts with the statutes in the state where this Agreement was issued, such portions shall be amended to conform to such statutes.

Exhibit HH

GREGORY R. OXFORD (S.B. #62333)
goxford@icclawfirm.com
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, DOES 1 through 50, inclusive,

Defendants.

Case No. 2:07-CV-02142 WBS-GGH

DECLARATION OF CONRAD BARRETT

Hearing Date: March 30, 2009
Time: 2:00 p.m.
Courtroom 5
Hon. William B. Shubb

CONRAD BARRETT declares:

1. I am the Vice President of Production for R. L. Polk & Co. ("Polk").

2. Polk in the ordinary course of its business compiles and maintains a proprietary database of motor vehicle registrations, which includes registration transfers and renewals throughout the United States ("Polk Database").

3. Original Automotive Equipment Manufacturers ("OEMs") request information from the Polk Database to compile consumer mailing lists for product recalls.

4. In this action, *Castillo v General Motors, et al.*, case number 2:07-CV-02142 WBS GGH, pursuant to a court order, Polk provided information from the Polk Database to the attorneys for GM for potential class member notifications.

Exhibit II

5. General Motors provided Polk with a customer file that contained 83,718 Vehicle Identification Numbers ("VINs") for 2002-2005 model years ("Customer File") which I understand correspond to 2002 through 2005 Saturn VUEs and 2003-2004 Saturn IONs. GM asked Polk to use these VINs to provide the most current mailing information for all past and current owners of these vehicles. Polk used the VINs in the Customer File as input data that was matched against the Polk Database to create the class mailing list.

6. Polk returned to General Motors three files containing the following information: a) mailable names and addresses for records with matching VINs in the Polk Database to those provided in the Customer File; b) non-mailable records, due to missing information or invalid address, that contained matching VINs in the Polk Database to those provided in the Customer File; and c) records that did not contain a match for the VINs in the Polk Database to those from the Customer File.

7. The initial match in this case was for current or last known owner data for all 50 states, Military APO's, Puerto Rico and District of Columbia. In compliance with required procedures in certain states, Polk sent VINs to the states which appended current owner names and addresses.

8. Polk also matched the VINs to its historical Polk Database to obtain transactional records for original and previous owners of the vehicles included in the Customer File, removing any duplicate records from the current or last known owner list.

9. Polk used a process to reduce the number of records sent to leasing company addresses and processed the file through the United States Postal Service's NCOA (National Change of Address) database to update owner addresses for movers.

10. The final mail count of names and addresses for the notice was 149,541.

If called as a witness I could and would competently testify under oath to the above facts which are known to me after consultation with other Polk employees and review of Polk files.

I declare under penalty of perjury under the laws of the United States of America

that the foregoing is true and correct and that this declaration was executed at Southfield Michigan on February 26, 2009.

Conrad Barrett
Vice President of Production
R. L. Polk & Co.

Exhibit II

GREGORY R. OXFORD (S.B. #62333)
ISAACS CLOUSE CROSE & OXFORD LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

Attorneys for Defendant
General Motors Corporation

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO , NICHOLE BROWN, and BARBARA GLISSON, *Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.

Case No. 2:07-CV-02142 WBS-GGH

DECLARATION OF BRUCE LEFEVRE

Hearing Date: March 30, 2009
Time: 2:00 p.m.

I, Bruce LeFevre, declare and state:

1. I am employed by Campbell-Ewald in Detroit, Michigan as VP, Senior Account Supervisor. I have personal knowledge of the matters stated herein and could and would competently testify thereto under oath.

2. Among my duties and responsibilities is the coordination of customer mailings for Campbell-Ewald client General Motors Corporation ("GM"), including the mailing of the Notice of Proposed Class Action Settlement ("Notice") in this matter.

3. On or about October 28, 2008, I received from GM's counsel a copy of the Notice which I then arranged to be formatted and printed for mailing to potential class members.

Exhibit JJ

4. On or about December 16, 2008, I received from The Polk Company an electronic mailing list it had generated based on Vehicle Identification Numbers ("VINs") obtained from GM for model year 2002, 2003, 2004 and 2005 Saturn VUEs and model year 2003 and 2004 Saturn IONs with continuously variable VTi transmissions. Once I received the mailing list, Campbell-Ewald employees working under my direction and supervision in accordance with Campbell-Ewald's normal procedures for GM customer mailings inserted the printed notices in envelopes bearing the addresses from the mailing list and deposited these items in the United States mail from January 12 -13, 2009. A true and correct copy of the Notice is attached hereto as Exhibit A. The mailing included 149,541 pieces. True and correct copies of the mailing receipts are attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed this 25th day of February, 2009.

Bruce LeFevre

Exhibit JJ

UNITED STATES POSTAL SERVICE

Restricted Information

Today's Date: 01/13/2009

Transactions > Postage Statement Processing
First-Class Mail - Permit Imprint > Receipt

Final

3600	POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE	TRANS # 20090131622243OM0 CAPS TRANS NO: N/A
Postage Statement: 64175463	Mailer's Job#: Castillo	
GENERAL MOTORS C/O CAMPBELL- EWALD 30400 VAN DYKE AVE WARREN MI 48093-2368		FINANCE NUMBER: 252490
STATION OR UNIT:	DETROIT MI (0509C)	PERMIT NO: 46
DATE OF MAILING 01/13/2009	CLASS First-Class	PROC CAT Letter
WEIGHT OF SINGLE PIECE (LBS) 0.0524	TOTAL PIECES 66409	TOTAL POUNDS 3,457.0000
MAILED BY: PERMIT NO. 80470 NAME: RENKIM CORPORATION		
CONTAINERS 299	AMOUNT FROM TRUST: $23,345.08	
VERIFICATION SUMMARY: MERLIN ERRORS: POSTNET Barcode: 96% Presort Error: 0% Short Paid: 0%		
SIGNATURE OF WEIGHER	KDP DATA PROCESSED BY	RECEIVED FOR PROCESSING BY
COMMENTS: 294 trays--5 Plts.		BEGINNING BALANCE: $34,952.96 ENDING BALANCE: $11,607.88

mailing has been inspected concerning:
(1) eligibility for postage prices claimed;
(2) proper preparation *(and presort where required)*;
(3) proper completion of postage statement; and
(4) payment of annual fee *(if required)*.

Copyright © 1999-2009 USPS. All Rights Reserved.
Terms of Use

UNITED STATES POSTAL SERVICE.

Restricted Information

Transactions > Postage Statement Processing

First-Class Mail - Permit Imprint > Receipt

Today's Date: 01/12/2009

Final

3600	POSTAL SERVICE STATEMENT OF MAILING/3607 WEIGHING AND DISPATCH CERTIFICATE		TRANS # 200901220173068M0 CAPS TRANS NO: N/A
Postage Statement: 64134698	Mailer's Job#:		
GENERAL MOTORS C/O CAMPBELL- EWALD 30400 VAN DYKE AVE WARREN MI 48093-2368			FINANCE NUMBER: 252490
STATION OR UNIT:	DETROIT MI (0509C)		PERMIT NO: 46
DATE OF MAILING 01/12/2009	CLASS First-Class	PROC CAT Letter	TYPE PI
WEIGHT OF SINGLE PIECE (LBS) 0.0528	TOTAL PIECES 83132	TOTAL POUNDS 4,388.2000	Customer Reference ID CAPS Acct No:
MAILED BY: PERMIT NO. 80470 NAME: RENKIM CORPORATION			
CONTAINERS 380	AMOUNT FROM TRUST: $28,709.57		
VERIFICATION SUMMARY: MERLIN ERRORS: POSTNET Barcode: 100% Presort Error: 0% Short Paid: 0%			
SIGNATURE OF WEIGHER	KDP DATA PROCESSED BY	RECEIVED FOR PROCESSING BY	
COMMENTS: 374 trays--6 Plts.		BEGINNING BALANCE: $63,662.53 ENDING BALANCE: $34,952.96	

mailing has been inspected concerning:
(1) eligibility for postage prices claimed;
(2) proper preparation *(and presort where required)*;
(3) proper completion of postage statement; and
(4) payment of annual fee *(if required)*.

Copyright © 1999-2009 USPS. All Rights Reserved.
Terms of Use

Exhibit JJ

Exhibit KK to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

REDACTED

Actuarial Report by Mark Johnson
Estimate related to Castillo, et al, v. General Motors Corporation,

Table of contents

Section1. My name is Mark Johnson. I have been a member of the American Academy of Actuaries since 1985. My experience includes pricing and underwriting automobile extended warranty programs as an employee of Universal Underwriters Insurance Group and American International Group. As an actuarial consultant, I have evaluated warranty portfolios for investment banks and insurance companies. I estimated values for warranties provided to Class Members in O'Keefe v. Mercedes-Benz USA, LLC, 214 F.R.D. 266 (E.D.Pa. 2003).

In 2004, General Motors ("GM") recognized that the performance of its continuously variable transmission ("CVT") in certain Saturn vehicles was unacceptable to its customers. In an effort to address customer dissatisfaction, GM extended its original 36 month/36,000 mile warranty to 60 months/75,000 miles for certain repairs or breakdown related to the CVT transmission.

GM, and LakinChapman LLC ("Class Counsel") representing Class Members in Castillo, et al, v. General Motors Corporation, .negotiated class relief per the Settlement Agreement. Essentially, the Settlement Agreement provides extended warranty coverage to each Class Member. The coverage is retroactive in some cases.

Section 2. Class Counsel asked that I provide a reasonable estimate for the value of the relief to the Class Members.

The phrase "value of the relief to the Class Members" admits a variety of interpretations. The relief resembles a collection of transferable extended warranties placed on each of 83,718 vehicles. These extended warranties provide coverage to up to 149,541 Class Members who are current or former owners of the Settlement vehicles.

In the retail marketplace, each extended warranty is offered by a seller to a potential buyer: Typically, the offer is made in conjunction with a vehicle purchase. Less often the extended warranty is offered via a telemarketing or direct mail effort, after the vehicle sale. Naturally, the salesperson, and others in supporting roles, must receive compensation associated with such a retail sale. That compensation must be built into the retail price the customer pays for the extended warranty.

The way in which the warranty is sold also has a bearing on the expected repair costs built into the warranty price. This is simply because a buyer who expects high repair costs is more likely to purchase

Exhibit LL

an extended warranty than one who expects low costs. This leads to a higher average repair cost component than if both the low expected cost and high expected cost prospects had the same propensity to accept the extended warranty offer.

I have chosen to estimate the amount which a financially sound, profit-seeking third party (a "Company") would demand in cash on March 31, 2009, to accept the transfer of all liability, responsibility and expense for the Settlement Agreement, based on the data provided.

By making this hypothetical transfer the basis for my estimate, I avoid including in my estimate any amount for sales and marketing expenses, and the increased repair costs associated with rational buying decisions, that must be included in the typical extended warranty price.

In order to set a cash price on this transfer, the Company will consider various elements of expense, competition, capacity, risk and profit associated with the transaction. This transfer will result in a new operation (Operation) within the Company which will begin on March 31, 2009 continue through about March 1, 2012.

Here is a list of the elements that will contribute to the setting of that cash price. I indicate a likely range for the amount the Company would include in its bid:.

a. Bid preparation. $40,000-$75,000

b. Management effort to integrate the Operation, and subsequently to monitor and maintain it. $100,000-$200,000

c. Information systems efforts necessary to administer the class relief. The Company must maintain a record for each vehicle, a record for each Class Member associated with a vehicle, a record for each claim, etc. To determine whether a claim is covered the Company must verify the VIN. In order to pay a valid claim correctly, the Company must determine whether the claimant is the original owner. An interface to GM's payment data is required to verify that claims falling in the Past Loss Tier have not already been paid. A database must be designed, populated and maintained; interfaces for user interaction, accounting and management information must be created. $300,000-$500,000

d. Fulfillment: Class Members must be provided documents explaining their coverage, claim procedures, customer service telephone numbers, etc. (149,500 Class Members at $3-$6 per Class Member; $448,500-$897,000)

e. Claim administration tasks include verifying coverage, answering queries from repair facilities, reviewing and approving proposed parts and labor charges, determining (in some cases) whether the part to be replaced is covered by the SPO replacement parts warranty, generating and mailing checks, interfacing payment records to the corporate accounting system, etc. (15,000 claims at $25-$35 per claim; $375,000-$535,000

f. Training: Personnel must become knowledgeable concerning coverage, claims procedures, etc. $5,000-$15,000

g. Indirect expense ("overhead"): Typically, Company must allocate all expenses which are not directly

Exhibit LL

related to a revenue stream to its revenue producing operations. These expenses include its building and utilities, its accounting, personnel and legal departments, etc.$200,000-$400,000

h. Estimated repair payments for covered repairs, *subject to due diligence regarding the claims spreadsheet, as described in Section 6.*. $47,527,000 (Section 5 describes this estimate in detail.)

i. The repair payment estimate is a best estimate, based on incomplete data and a number of assumptions. Such estimates made in similar circumstances will be underestimates about half the time. Generally, the Company will add an amount to the bid to address the risk of underestimating of repair payments. Notice that for each 1% that the estimate falls short of actual future repairs, the cost of the Operation increases by about $500,000. Depending on the confidence the Company places in the repair estimate it may consider adding a margin to protect against this risk. $2,500,000-$5,000,000

j. Finally, an amount must be added for Company profit. The approaches to determining profit, in fact the very definition of profit, vary widely among companies. Profit targets may be expressed as a return on capital, or a return on investment, or a fraction of revenue and so forth. Generally, the risk element discussed in g. has a bearing on setting the profit objective. Also, the competitive environment of the bidding environment influences the profit objective. $3,000,000-$5,000,000

Summing the above figures, produces a range of $54,495,500 to $60,139,000, and I estimate the midpoint, $57,317,250, as the cash price of the transfer.

In computing this estimate, I have not included the investment income earned by the Company on unpaid future repair costs (which it will receive at the time of transfer, and pay out through March 1, 2012). This is because the repair estimate already discounts future repair payments to March 31, 2009, using a rate of return approximating that of US Treasury instruments of the corresponding maturity.

Section 3: During my work related to this matter, I have considered the following:

- Settlement Term Sheet dated May 21, 2008;
- Stipulation of Settlement dated July 17, 2008 filed as Document 48-2 (the "Settlement");
- Stipulation and Protective Order filed as Document 44;
- First Amended Complaint filed as Document 27;
- GM Field Performance Evaluation Report dated 5/18/2004 (Castillo 2969-74);
- CVT Variator Drive System Failure (Castillo 2981-99);
- CVT Review dated May 16, 2003 (Castillo 3133, 3141);
- CVT Warranty Projections (Castillo 3163-70);
- CVT Status & BAS Options dated March 29, 2004 (Castillo 3180, 3224);
- Exhibit A to GM's interrogatory answers;
- Letter dated October 15, 2008 from GM's counsel regarding, among other things, rebuilt transmissions;
- Addendum filed under seal on August 26, 2008;
- Declaration of Conrad Barrett (R.L.Polk Company);
- Special Policy 04020 dated March 2004 (Castillo 2667-72);
- Special Policy 04020A dated January 2005 (Castillo 2673-78);

In addition to these documents, I have reviewed an Excel spreadsheet prepared by GM involving

transmission-related repairs for which GM paid some portion of the cost.

Section 4: On 10/29/2008, Class Counsel forwarded me a spreadsheet prepared by GM. I reviewed this data and requested clarifications and additional data in an email to Class Counsel dated 11/3/2008 .

On 2/9/2009, Class Counsel forwarded me a revised spreadsheet ("spreadsheet"). See Section 6 for a discussion of the clarification of which labor codes are included. The revisions were simply the addition of two text fields, SVC_PROB_CAUSE_CD and SVC_PROB_CAUSE_DESC. Otherwise, the revised spreadsheet contained the same data as the earlier spreadsheet: The spreadsheet contains [redacted] records with net a net dollar amount of $[redacted]. There are [redacted] distinct vehicles with records. The most recent date on any record is 10/9/2008.

The spreadsheet has been represented as containing extracts of all US and Canadian claim records in the GM warranty database for all 2002 through 2005 Saturn Vues and 2003through 2004 Saturn IONs having CVTs (the class vehicles). The most recent claim on the spreadsheet is dated 10/9/2008.

The revised spreadsheet has thirteen columns. The following table shows the column labels, a description of the data, and a shorter name by which I will refer to the column:

label	interpretation
MODL_YR_NBR	vehicle model year: 2002, 2003, 2004 or 2005
MAKE	"Saturn"
MODEL	"Vue" or "ION"
VEH_IDENT_NBR	vehicle identification number (VIN)
OPTN_FAMLY_TRANSMISSION	"M16" or "M75"
VEH_INUSE_DT	in service date
JOB_CARD_DT	claim date
SVC_LABR_OPRTN_CD	"K7000"
SVC_PROB_CAUSE_CD	a GM warranty code
SVC_PROB_CAUSE_DESC	brief claim description
VEH_ODMTR_MILEAG	odometer reading on claim_date (odometer)
CLAIM_TOT_GLOBL_AMT	dollar total for this record (amount)
VIN_MODL_DESGTR	submodel label: ZLL26, ZLM26, ZAB37, ZAC37, ZAN37, ZAW37

Examining the range of values contained in each column, it is apparent that:

a. The column MAKE provides no information: its value is always "Saturn";

b. The column SVC_LABR_OPRTN_CD provides no information: its value is always "K7000";

c. The column SVC_PROB_CAUSE_CD provides no readily usable information: its value is sometimes NULL and otherwise is one of 185 distinct codes (eg, "3023" or "1D") for which no data dictionary was provided;

d. The column SVC_PROB_CAUSE_ DESC provides no readily usable information: its value is sometimes NULL and otherwise is one of 161 distinct phrases (eg, "BROKEN" or " Interface (Gasket; Seal; Hose; Weld..)-Broken");

e. Given a record's VEH_IDENT_NBR (VIN), the MODL_YR_NBR, MAKE, MODEL,

OPTN_FAMLY_TRANSMISSION and VIN_MODL_DESGTR columns are redundant.

The validity of the claim date, the in service date and the odometer is critical to projection of future claim payments. The odometer and time since the in service date determine whether or not a claim is covered under a warranty. The frequency and amounts of payments as a function of the age of the vehicle are fundamental. This age is computed as the difference in months between the claim date and the in service date.

There are 338 records invalid records in the spreadsheet, related to odometer discrepancy, NULL in service dates (175 records) or in service date later than claim date (147 records). The claim information on these records cannot be used unless the record is "repaired" in some fashion. It is obvious that these records represent actual claims: to ignore them would result in underestimates.
In addition, it is important to note that there is no "claim number" on each record to facilitate association of multiple records as a single claim. I therefore associated together, as a single claim, all records for a given VIN having the same claim date.

I repaired NULL or inconsistent data as follows:

a. If a record has a NULL in service date, assign it the median in service date for VINs on the spreadsheet having the same model and model year.

b. If a record has an in service date after its claim date, assign it the claim date as its in service date. Ie, this record of claim is assigned to the date the vehicle was purchased.

c. If multiple records for a given VIN on a given claim date have different odometer readings, assign all the lowest of these odometer readings to all the records.

Using this repaired data, the data may be consolidated into [redacted] claim records on [redacted] VINs with net payments of $[redacted]

Section 5: Repair cost estimates
For convenience I will use this nomenclature:

warranty term	name
through 36months/36,000 miles whichever comes first	"original warranty"
beyond original warranty through 60 months/75,000 miles	"GM extension"
beyond GM extension under terms of the Settlement	"Settlement extension"

a. Description of estimate requirements
The Settlement provides payment to Class Members for covered CVT claims. The amount of payment is either 100%, 75% or 30% of the total repair cost, as indicated in Chart B of the Settlement. Thus, in order to estimate repair costs under the Settlement, I must estimate the ownership status distribution and odometer mileage distribution by vehicle age. Additionally, Class Counsel requested that I estimate the Settlement extension repair payments in Past and Future Loss Tiers, ie, Settlement payments made for claims incurred before or after the March 31, 2009 (projected final approval date for the Settlement).

Exhibit LL

EXHIBIT L
Part 5

b. In order to estimate the necessary values, I examined claims aggregated in various available combinations (by model, model year, submodel, transmission type, etc). I found that the model, ie, Vue or ION, accounted for most variation in average claim amount and frequency. Moreover, there was little variation in average claim by age of vehicle on the claim date. Because I needed model year to determine the warranty expiry, I aggregated the data into the six model, model year groups.

It is important to understand what claims are on the GM warranty database. Are all the claims there? If the claims are not all there, how are the missing claims best estimated? How have claims under the GM extension, and extracontractual ("goodwill") been placed and identified on the GM warranty database?

For typical GM models, only original warranty claims are entered on the GM warranty database, along with perhaps a few extracontractual payments. GM extended warranty claims are tracked separately. Occasionally, as in the present case, GM instructs its dealers to use the GM warranty database for special claims. When GM decided to extend its original warranty on the class vehicles to cover the CVT through 60 months/75000 miles, it instructed its dealers (v, Charts A and B, Special Bulletins dated 3/2004 and 1/2005) to enter those repairs into the warranty system with special "Case Type" codes. That code was not provided in the spreadsheet.

However, examination of the repaired claims file shows that [redacted] of the [redacted] claim records ([redacted]) are extracontractual, ie, either the vehicle was older than 60 months, or its odometer exceeded 75,000 miles, or both. Moreover, it appears that substantial numbers of contractual claims are missing.

Generally, the frequency of claim for a mechanical component does not decrease with age. There is nothing in GM's engineering reports to suggest that CVT claim frequencies would behave differently. A review of those frequencies calculated from the spreadsheet show [redacted]. For example, the average number of claims per month for 2003 Vue's within the 60month/75,000 mile period [redacted] from the third year of age to the fourth year. I asked Class Counsel to examine their records on claims information communicated by Class Members: Class Counsel reported to me that 247 class member inquiry files were randomly selected. Within these were 42 covered under the GM extension, for which there was no record on the spreadsheet.

There are many circumstances which result in claims missing from the original warranty database, or which result in claims showing only partial payment of the total repair. These circumstances include claims paid:
-by the customer, and never reimbursed by GM,
-by GM, but not entered in the warranty database,
-under a customer purchased GM extended warranty,
-under a customer purchased 3rd party extended warranty,
-partly by the customer, after negotiation with the dealer or GM.

My judgment was that the most reliable set of records are those during the first 36 months of age, and that the records for claims past 36 months were likely so incomplete as to render them unusable. It was necessary, however, to make an adjustment for underreporting claims over 36,000 miles. In the estimate, I assumed that 20% of such claims had not been reported on the original warranty database.

I used this subset of the claims to extrapolate claim frequencies, separately for Vue and ION models, through 96 months of age.

Exhibit LL

c. I used Exhibit A to GM's interrogatory answers for exposures (numbers of US and Canadian 2002-2005 Vues and 2003-2004 IONs) corresponding to the spreadsheet claims. The total of such vehicles is [redacted]

d. I used a distribution of vehicles by annual mileage to interpolate the fraction of vehicles remaining under warranty by month of age, for both 60 month/75,000 mile and 96 month/125,000 warranties. This facilitates calculation of two required estimates: the over/under 100,000 categories, and the over-mileage (still under 60 months of age) claims not covered by the GM extension warranty. The distribution of vehicles by annual mileage was taken from the 2001 National Household Travel Survey (http://nhts.ornl.gov/index.shtml).

e. I used a distribution of original new vehicle owners by years of ownership to interpolate the fraction of original owners by month of vehicle age. The distribution was taken from Belden Associates Continuing Market Study, 2003 as quoted in http://www.nacorp.com/NAC2/pdf/Vehicles.pdf

Using the above, I projected numbers of claims by age of vehicle for 60 month/75000 mile and 96 month/125000 mile warranties, for 2002-2005 Vues and 2003-2004 IONs separately, and separated each month's claims into over/under 100,000 miles and original/non-original owner.

f. I used the average Vue ([redacted]) and ION ([redacted]) claim amounts for claims in the first 36 months of vehicle age to project the claim payments by month of age for each model. The average claim computed from the repaired file decreases slightly with vehicle age. I was unable to explain this decrease based on the available information. I therefore assumed the repair cost inflation rate is 0%.

g. I used data from the claims file to determine the actual term in months for the Settlement:

model year	model	median valid date	range of valid dates	term (mos)
2002	Vue	7/9/2002	2/2002-2/2004	90
2003	Vue	1/19/2003	6/2002-7/2005	96
2004	Vue	3/15/2004	9/2003-11/2006	94
2005	Vue	3/19/2005	9/2004-12/2005	82
2003	ION	7/8/2003	4/2003-7/2004	90
2004	ION	1/23/2004	8/2003-1/2006	96

For example, because the median in service date for 2002 Vues is 7/9/2002, and per the Settlement the 2002 Vue warranty expires on 1/1/2010, I compute the 90 months as the median time expiration for 2002 Vues. As I was provided no actual distribution of vehicles by in service date, I make the assumption that all warranties for 2002 Vues have a term of 90 months/125,000 miles.

Using the above, I separated the projected claim payments into Future and Past Loss Tiers.

h. After examining rates from recent US Treasury auctions:
(http://www.treasurydirect.gov/RT/RTGateway?page=institAuctFund)
I chose a rateof 0.7% for discounting Future Loss Tier payments to 3/1/2009.

i. Finally, I used the Declaration of Conrad Barrett for the number of class vehicles, 83,718, to adjust for the presence of both Canadian and class vehicles (90,305) in these projections.

Exhibit LL

67,466 Vues	2002	2003	2004	2005	Totals
Past Loss Tier	$1,277,869.37	$15,059,585.68	$1,303,410.62	$68,700.13	$17,709,565.80
Future Loss Tier	$469,631.20	$17,165,842.23	$11,826,944.12	$1,006,308.57	$30,468,726.11
					$48,178,291.91

Class Vues Only	2002	2003	2004	2005	Totals
Past Loss Tier	$1,184,659.41	$13,961,113.94	$1,208,337.64	$63,689.02	**$16,417,800.01**
Future Loss Tier	$435,375.50	$15,913,736.55	$10,964,266.74	$932,906.71	**$28,246,285.50**
Totals	$1,620,034.91	$29,874,850.49	$12,172,604.38	$996,595.73	$44,664,085.51
per unit	$631.09	$738.40	$698.72	$475.04	

22,839 IONs	2003	2004	Totals
Past Loss Tier	$406,821.89	$327,690.36	$734,512.25
Future Loss Tier	$669,335.05	$1,705,587.52	$2,374,922.57
			$3,109,434.82

Class IONs Only	2003	2004	Totals
Past Loss Tier	$377,123.90	$303,768.96	**$680,892.86**
Future Loss Tier	$620,473.59	$1,581,079.63	**$2,201,553.22**
Totals	$997,597.49	$1,884,848.59	$2,882,446.08
per unit	$124.05	$143.55	

The estimated Past Loss Tier total repair cost is $17,098,692.87; the present value of the estimated Future Loss Tier repair cost is $30,447,838.72; the total is $47,546,531.59.

j. The repair cost estimate are based on a problematic dataset: there are unreported claims (Section 4), there are inconsistent and null values (Section 4), and there remains a concern that a subset of transmission claims were omitted (v, Sections 6 regarding labor operation codes).

I made an adjustment in order to compensate for the unreported claims. Based on sparse information, I assumed that claims outside the original warranty due to mileage only, were underreported by 20%. If the assumption is reduced to 10% underreported, the repair cost estimate decreases about 13%; if the assumption is increased to 30% underreported, the repair cost estimate increases about 17%.

I repaired the inconsistent and null values. While these problems are indicative of sloppy record keeping, I suspect they have little effect on the accuracy of the estimates.

The questions concerning an omitted subset of transmission claims would need to be answered in the due diligence stage of this transaction. I have assumed that the answer would be satisfactory, ie, that no subset of claims was omitted by definition.

Section 6: Comparison with GM documents

For convenience, I refer to:

Field Performance Evaluation Report	as	"FPER"
CVT Variator Drive System Failure (Draft)	as	"VDSF"
CVT Warranty Projections	as	"PROJ"

The parenthetical number following these abbreviations refers to the last four digits of document

Exhibit LL

numbers, eg, the first page of the FPER is Castillo000002969 which I will call FPER(2969).

The GM documents support my assertion that there should be no sudden decrease in claim frequencies. For example, see the graphs of claims over time in FPER(2973); also, see the table "Determination of Condition Frequency" on VDSF(2986) which shows [redacted], and the charts and tables on PROJ(3164)-PROJ(3166).

The GM documents cite [redacted] estimates for "Incidents per thousand vehicles" (IPTV), "Cost per vehicle" (CPV) and total costs: FPER(2969) says that warranty projections "[redacted]. FPER(2971) project costs, apparently for 21,913 IONs, totaling $[redacted]. VDSF(2993) and VDSF(2994) project a cost over $[redacted], apparently for [redacted] Vues.

My model predicts much lower IPTV, approximately 17,000 claims through the GM extension, which is about 190 claims per thousand vehicles.

What can account for these large discrepancies? My concern is that many of the labor codes, for transmission problems covered under the Settlement, may have been omitted from the claim spreadsheet.

Notice that the GM documents refer to a multiple of labor codes which apply to repairs on CVT transmissions:

FPER(2971)	K7000 and K7104
FPER(2973)	K5000-K9999 excl. K5173, K5175, K5180, K6721, K6722, K6723, K6732
PROJ(3166)	K7000, Reflash, Other

On this last document, the CPV for the non-K7000 repairs is significant, accounting for $[redacted] of $[redacted] estimated CPV. These figures suggest that repairs under the K7000 code account for only [redacted] of the total repair costs.

As I pointed out in Section 4, all the spreadsheet records showed the single SVC_LABR_OPRTN_CD (labor code) "K7000". I asked for clarification of the question, ie, why do all the records have code K7000, and what became of records with other labor codes? In reply Class Counsel gave me to understand that GM's Counsel reported that the claims file was indeed complete, but all claims had been summarized in such a way that each record was assigned the K7000 code. This strikes me as implausible. If it were the case that non-K7000 codes were actually omitted, the last paragraph suggests that the repair cost portion of my estimate might increase 70%.

Therefore, my estimate of repair costs stipulates that a "due diligence" investigation of the claims data will have confirmed that no applicable transmission labor code records were omitted from the claim spreadsheet.

Mark Johnson

2/26/09

Mark Johnson

February 26, 2009

Exhibit LL

DECLARATION OF RONALD M. SABRAW

Declarant, Ronald M. Sabraw, pursuant to 28 U.S.C. § 1746, attests as follows:

1. I am a mediator and arbitrator affiliated with the San Francisco, California office of JAMS. I have served as a JAMS mediator and arbitrator since March of 2007. During that time I have served as the mediator in more than 120 mediation sessions.

2. Prior to my affiliation with JAMS, I was a Superior Court Judge in Alameda County, California from 1989 through 2007, including service as the Presiding Judge from 1996 through 1997. Prior to that, I was a Municipal Judge for Alameda County from 1987 until 1989. Beginning in 2000, I helped launch the first complex litigation department for the Alameda County Superior Court. I served as the sole complex litigation judge for Alameda County through 2004. In 2005, a second complex litigation department was established. I remained as one of the complex litigation judges until my retirement in 2007. In 2005, I was named the "Trial Judge of the Year" by the Alameda / Contra Costa Trial Lawyers Association. I conducted hundreds of mandatory settlement conferences in all categories of civil litigation over twenty years as a judge, and I estimate that I presided over approximately 50 class actions.

3. On May 21, 2008, I served as the mediator in the class action case of *Kelly Castillo*, et al., *v. General Motors Corp.*, No. 2:07-CV-02142 WBS-GGH.

4. I received mediation briefs from the parties prior to the mediation session. The quality of the briefing, as well as my pre-mediation telephone conversations with counsel, confirmed that counsel on both sides possessed a thorough understanding of the factual and legal issues in the case and had performed extensive due diligence prior to the mediation. The information provided in the briefs was detailed and helpful in fostering my understanding of the case and in facilitating a productive mediation session.

Exhibit MM

5. The mediation was attended by Gregory Oxford as outside counsel and L. Joseph Lines as in-house counsel for General Motors, and by Brad Lakin, Rob Schmieder, Mark Brown, and Brooks Cutter as counsel for Plaintiffs and the proposed Class.

6. The mediation session involved arms-length negotiations that began at approximately 9:00 a.m. and concluded at approximately 10:30 p.m., with no break for lunch or dinner.

7. Beginning at approximately 9:00 a.m., the parties began negotiating the relief to the Class. This issue consumed the majority of the mediation session and concluded at approximately 5:00 p.m. with the signing of a formal "term sheet." The term sheet described the relief to which the Class would be entitled. It also provided that GM would pay representative plaintiff incentive awards and attorneys' fees as awarded by the Court "in addition to all other relief provided herein," that these payments would "not diminish any relief provided to Class members," and that negotiations regarding these amounts would commence "[u]pon execution of this agreement."

8. During this roughly eight-hour period of negotiations regarding class relief, Class Counsel supported their bargaining positions by referring to specific documents they had uncovered during discovery and during their pre-suit investigation, to information from their consulting expert, and to case law. Throughout the negotiations, it was clear that Class Counsel had a significant understanding of merits issues, certification issues, and feedback from the class plaintiffs and other class members. The impression was that they negotiated skillfully based on salient knowledge of both the applicable law and pertinent facts.

9. At no time during the mediation did I sense that Class Counsel were compromising on important points or that they were willing to sacrifice valuable benefits to the

Exhibit MM

Class merely to attain a settlement. They demonstrated that they had consulted with the representative plaintiffs and with other class members prior to the mediation, and that they had a good grasp of what was important to the Class. I believe that their expertise, professionalism, and preparedness were important factors in reaching a resolution that I believe provides very substantial relief to the Class.

10. I was satisfied during the mediation that the parties had properly analyzed the strengths and weaknesses of their respective positions, and that they appropriately took into account the risks of proceeding with the litigation.

11. The attorneys for both sides impressed me as highly professional, skilled, prepared, and reasonable. The agreement reached by the parties resulted from hard fought, arms-length negotiations over a more than 12-hour period. Although the lawyers involved were courteous and respectful, the mediation process was nevertheless adversarial, and there was no evidence of collusion between the parties. Indeed, considering that class relief was to be – and later was – negotiated separately from the representative plaintiff incentive awards and attorneys' fees, and considering that the latter do not diminish the former, I do not believe that collusion between the parties would even have been possible under these circumstances.

12. After the parties negotiated the relief to the Class and signed the term sheet, they then negotiated the incentive awards to be paid to the representative plaintiffs. Upon reaching agreement regarding the representative plaintiff incentive awards, the term sheet was then amended to reflect this additional point of agreement.

13. After agreement was reached regarding both the class relief and the representative plaintiff incentive awards, negotiations then commenced regarding attorneys' fees and costs. These negotiations continued until approximately 10:30 p.m. on May 21, 2008, but did not result

Exhibit MM

in agreement regarding attorneys' fees on that day. I encouraged the parties, and they agreed, to continue negotiations over the phone in the subsequent days as their schedules permitted.

14. I continued to communicate with counsel following the mediation and learned that the parties reached an agreement approximately two weeks later.

15. If the Court has any questions regarding the arms-length nature of the mediation, I would be happy to answer those questions.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on February 26, 2009

Hon. Ronald M. Sabraw (Retired)

Exhibit MM

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN LLC
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Class Representatives and Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

DECLARATION OF ROBERT W. SCHMIEDER II

I, Robert W. Schmieder II, do state that:

1. I am an attorney with LakinChapman LLC ("Class Counsel"), lead class counsel in this class action, and I have personal knowledge of the facts set forth herein. I previously submitted a declaration dated July 22, 2008 in this matter. *See Doc. 48-3*.

Pre-Lawsuit Investigation

2. We commenced work on this case in the Spring of 2007 when an unhappy Saturn owner contacted us about problems with the Saturn VTi transmission. As we began our legal and factual investigation, many other Saturn owners began contacting us about the same issue—

Exhibit NN

problems with the VTi transmission. Due to the number of Saturn owners contacting us, we assigned an investigator and paralegal to handle those communications. For each Saturn owner who contacted us, we gathered information and often documents including owner's manuals, warranty documents, warranty extension letters from GM, repair histories, repair invoices, repair quotes, and extended warranty information and pricing. For some Saturn owners, we took recorded statements. Before filing the original complaint, sixty-six (66) potential class members had contacted us about their VTi transmissions.

3. While we responded to the potential class members' inquiries, we gathered as much information about continuously variable transmissions (CVTs) and specifically the VTi transmission as we found to be publicly available. We assigned a paralegal and legal assistant to search publications, GM websites, and generally available information on the internet. In addition to searching GM websites and press releases, we purchased thirteen (13) technical service bulletins (02-T-09, 02-T-32, 02-T-89, 03-07-30-010, 03-07-30-023, 03-07-30-023B, 03-07-30-041, 03-07-30-048, 03-07-30-051, 04-07-30-013A, 04-07-30-024E, 05-07-30-003, and 05-07-30-004). We also gathered general background literature and publications including, but not limited to: *Continuously Variable Transmission (CVT) PT-125* (Society of Automotive Engineers, Inc., John Maten and Bruce Anderson eds., 2006), Loose VTi Transaxle Coverter Housing Bolts #03C05 (www.alldata.com), Extended Transmission Warranty Coverage for Variable Transmission with Intelligence (VTi) Transmission #040420 and Letter (www.alldata.com), *Steps Toward Sustainability, Vision & Strategy, Fuel Efficient Technologies*, (www.gm.com/corporate/responsibility/reports/00/vision/environment/product3.html), *GM's VTi Transmission: Building on a Heritage of Automatic Transmission Leadership* (www.gm.com), www.gmprotectionplan.com, *NHTSA Probes Saturn Timing Chain Failures* (January 31, 2006) at www.consumeraffairs.com/news04/2006/01/nhtsa_saturn_timing_chain.html, *VUE Blends Thoughtful Features, Customer-Friendly Innovations in 2003* (July 7, 2002), and *VUE Gives Saturn a Boost* (December 16, 2002).

4. We also interviewed mechanics, service technicians, and several potential expert witnesses. During our search for an expert witness, we retained a consulting expert who

Exhibit NN

provided information about the life expectancy of a transmission, assisted us in the search for consumer expectations regarding the life of a transmission, explained technical information regarding CVTs and the VTi specifically, and conducted investigations into the VTi problems through the expert's industry network.

5. In addition to our factual investigation, we researched potential legal theories of recovery, along with class certification issues. Due to the volume and geographical dispersion of potential class members who had contacted us already, we also started to research nationwide class issues and/or the possibility and propriety of filing multiple lawsuits subject to coordination and consolidation under the Judicial Panel on Multidistrict Litigation. As we developed our strategy, we began to conduct fifty (50) state surveys regarding the various legal theories.

6. During our investigation, certain class members volunteered to serve as class representatives. For each named plaintiff (potential class representative), we gathered additional information that we anticipated GM would request in discovery, explained the responsibilities of a class representative, and regularly updated that person regarding our investigation, expert search, and legal strategy.

7. After we gathered the additional information from the proposed class representatives, we drafted the complaint. We then circulated the complaint to them for comments and verification of their information. We also began to draft written discovery and continued to work on class certification issues.

8. On October 10, 2007, we filed the original complaint on behalf of Plaintiffs Kelly Castillo, Nichole Brown, Barbara Glisson, and the proposed Class, alleging four causes of action (Statutory Consumer Fraud, Breach of Express Warranties, Breach of Implied Warranty of Merchantability, and Unjust Enrichment).

Lawsuit

9. After filing this action, new potential class members continued to contact us on a regular basis about their VTi transmissions. We finished drafting discovery, and continued searching for expert witnesses and researching class certification issues.

10. On December 20, 2007, this Court entered the Pretrial Scheduling Order. *Doc. 17.* The Order limited discovery to class certification issues prior to the submission of the final class certification briefs. We immediately served GM with discovery on that same date, and began working on our Rule 26 initial disclosures.

11. This Court also ordered class certification briefs to be filed by July 18, 2008. Due to the expediency of the class certification briefing, we increased our efforts regarding class certification research and briefing. We assigned several attorneys and a paralegal to complete the conflict of law analysis along with the 50-state surveys for all the causes of action and other legal theories.

12. On January 4, 2008, GM filed its motion to dismiss. We filed the First Amended Complaint on January 14, 2008 adding Brenda Alexis Digiandomenico, Valerie Evans, Stanley Ozarowski, and Donna Santi as potential class representatives and adding one (1) state in the class definition. GM filed its motion to dismiss the First Amended Complaint, we filed an opposition to the motion to dismiss, and GM filed its reply.

13. On February 5, 2008, GM served its objections and preliminary responses to written discovery. GM also served its initial disclosures on February 28, 2008. We subpoenaed two (2) former GM employees who had worked on the VTi project. Neither GM's interrogatory answers nor its Rule 26 Initial Disclosures contained the names of the two individuals we subpoenaed. Our investigation had identified these individuals as key witnesses.

14. GM began its document production in late February and continued to produce documents through the end of April. GM supplemented its written discovery responses on March 7 and 11.

15. We engaged in numerous discussions with GM's counsel regarding discovery and scheduled an in-person meeting to discuss the case and discovery. On March 10, 2008, we served GM with a draft 30(b)(6) Notice of Deposition including deposition topics to coordinate deposition dates. On March 13, 2008, we met GM counsel in Chicago to discuss discovery matters and explore the possibility of settlement. It was a productive meeting. The parties

Exhibit NN

prioritized certain discovery, explored settlement concepts, and agreed to conduct further discovery while simultaneously working to coordinate the formal mediation of this matter.

16. On March 20, 2008, we subpoenaed Robert Bosch LLC ("Bosch") and Southwest Research Institute ("SWRI"), two (2) GM suppliers and/or vendors identified during our investigation. Neither GM's interrogatory answers nor its Rule 26 Initial Disclosures contained the names of the two suppliers and/or vendors that we subpoenaed. On April 18, 2008, SWRI produced thousands of pages of documents in response to the subpoena. We had repeated communications with Bosch regarding the subpoena and, ultimately, Bosch delayed production until after the parties submitted the proposed class action settlement and sought court protection in Michigan to avoid any production whatsoever.

17. We employ a team of paralegals, legal clerks, and legal assistants (collectively the "Review Team") to review, analyze, code, and summarize documents. The Review Team consists of persons with a four-year degree in paralegal studies, persons with a two-year paralegal certificate, and part-time paralegal students. The Review Team reviewed, analyzed, and summarized the documents produced by GM and SWRI, along with the documents gathered during our investigation. As more and more potential class members contacted us, we assigned members of the Review Team to handle those inquiries.

18. On April 2, 2008, this Court referred this case to mediation. In preparation for the mediation, we continued to discuss the case with the class representatives and obtained specific input from them regarding the best types of available relief. As we continued to receive inquiries from potential class members, we also gathered their opinions to help formulate the best settlement strategy possible.

19. On May 7-8, 2008, we deposed two GM employees identified in GM's interrogatory answers and its Rule 26 Initial Disclosures. After deposing those witnesses, we prepared and submitted a mediation statement to JAMS.

20. On May 21, 2008, the parties participated in a formal mediation before the Honorable Ronald Sabraw, former complex litigation judge of Alameda County, California, from approximately 9:00 a.m. until approximately 10:30 p.m. The mediation, an arm's-length

negotiation with significant back-and-forth assistance from Judge Sabraw, resulted late in the day in agreement regarding the relief to the Class, and the signing of a term sheet memorializing the basic terms of that agreement. The term sheet provided, among other things, that incentive awards to the Representative Plaintiffs, attorneys' fees and costs would be paid by GM in addition to (i.e., without diminishing) the relief to the Class. The parties then negotiated the amount of the incentive awards for Representative Plaintiffs. Finally, the parties began negotiations regarding the issue of attorneys' fees and costs.

21. During the negotiations regarding attorneys' fees, GM had the opportunity to submit the issue of attorneys' fees to this Court for resolution without any cap on the award. GM, however, continued to negotiate with the assistance of Judge Sabraw. Unable to resolve this issue by 10:30 p.m. on the day of the mediation, the parties continued telephonic negotiations for the next several days until ultimately reaching final agreement regarding attorneys' fees on June 5, 2008. During that time, I had conversations with Judge Sabraw regarding the on-going negotiations. Judge Sabraw had been communicating with GM as well, and was encouraging both parties to resolve the attorneys' fees and even offered to give a mediator's number.

22. During this time, we continued to engage in communications with Bosch regarding the subpoena, investigate expert witnesses, and prepare for class certification briefing.

23. On June 5, 2008, we filed a Joint Memorandum Regarding Results of Mediation that informed the Court that "[t]he parties were in the process of drafting a formal written settlement agreement." *Doc. 46.* The parties submitted drafts back-and-forth, discussed the details of the notice plan, and completed other details of the settlement documents. We drafted a motion to preliminarily approve the proposed settlement and an accompanying memorandum of law in support.

24. On July 22, 2008, we filed a Motion for Order: Preliminarily Approving Class Action Settlement, Provisionally Certifying Settlement Class, Approving Class Notice, and Setting a Hearing for Final Approval of the Settlement. We also submitted an Addendum under

seal that outlined our findings regarding the VTi transmission as they relate to the class relief that we negotiated. *Doc. 52.*

Settlement Administration

25. On September 8, 2008, this Court preliminary approved the settlement and granted Class Counsel leave to amend the complaint. *Doc. 54.* On September 12, 2008, Class Counsel filed the Second Amended Complaint. *Doc. 55.*

26. We purchased a separate phone number to exclusively handle calls from class members, established a dedicated email address for class members to communicate with us, and created a special page on our website to provide information to class members. On our website, we have provided details of the Settlement, posted copies of pleadings and the notice, and created frequently-asked questions (FAQs) regarding the Settlement based upon the class member inquiries that we have received. We also hired additional personnel to respond to the calls and emails from class members.

27. For each significant development in this case, we retained an email service in order to update class members with the relevant information. For class members who did not provide an email address, we sent them a letter. We also have regularly updated our website.

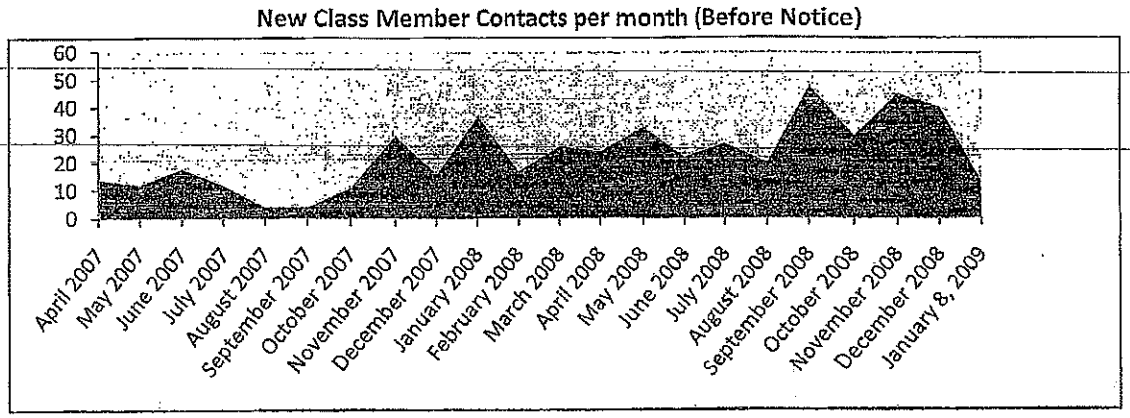
28. We converted our research and draft certification briefs into a memorandum in support of final approval, and conducted additional research to support the Settlement.

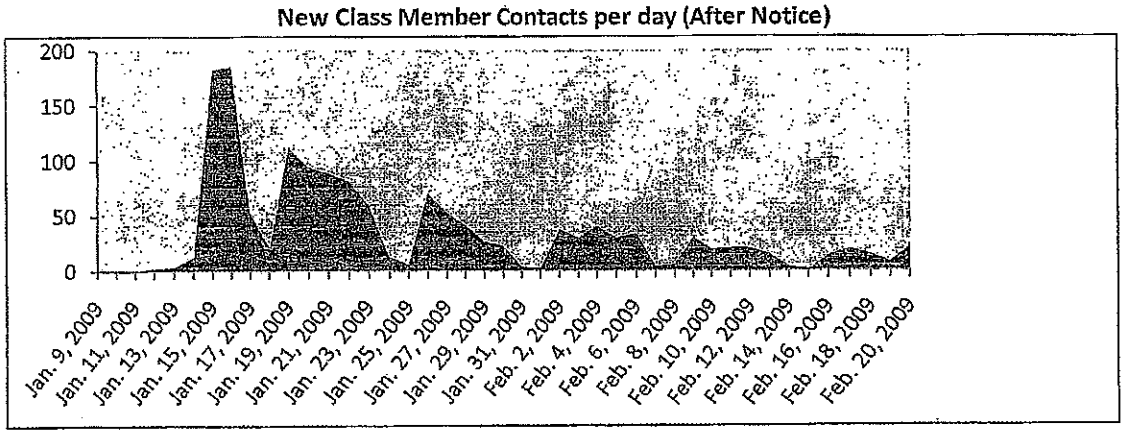
29. We also continued to engage in informal discovery with GM, monitor the notice process, address issues relating to class members with current VTi transmission failures, work with GM regarding information provided by its customer assistance center to class members, and resolve other issues and tasks as they arose.

30. On January 9, 2009, GM's vendor mailed notice to the Class as confirmed by GM.

31. Between the Spring of 2007 and January 9, 2009 (the date notice was mailed), 504 class members contacted us about their Saturn VTi transmission-related issues. From January 9, 2009 through February 20, 2009, at least 1,518 class members contacted us about their Saturn VTi transmission-related problems and the Settlement. These figures only account

for class members who contacted us for the first time, and do not include class members who contacted us more than once.





Before notice was mailed, an average of twenty two (22.2) class members ***per month*** contacted us. After notice was mailed, an average of thirty six (36.14) class members ***per day*** have contacted us. Through February 20, 2009, more than 2,022 class members have contacted us.

32. Throughout this case, we have devoted a substantial team of paralegals (at times up to 7 paralegals), investigators (at times up to 4 investigators), Review Team members, legal assistants (at times up to 3 legal assistants), and hired the assistance of an answering service to respond to class member inquiries. We have attempted to respond (and in most—if not all—cases did respond) to all class member inquiries within two (2) business days.

Exhibit NN

Attorneys' Fees and Expenses

33. I was first admitted to practice law in 1996, and I am admitted to practice in Illinois, Missouri, and various federal courts. Until joining The Lakin Law Firm, P.C. in late March of 2005, I was a partner at Sonnenschein Nath & Rosenthal LLP, primarily representing defendants in product liability, insurance coverage, commercial, and complex civil litigation, including class actions. My standard hourly billing rate that was charged to clients on a monthly, non-contingent basis at Sonnenschein in 2005 was $350 per hour and up to $395 per hour for complex litigation including class actions. My hourly rate at Sonnenschein did not reflect the risk of handling a case—in other words, clients paid that hourly rate regardless of the outcome of the case.

34. Over the years, we have periodically updated our hourly rates. To revise our hourly rates for 2007, we conducted a thorough market-based review of our standard hourly rates for attorneys, paralegals, and investigators/legal assistants. During that review, we gathered information from: the *Laffey* Matrix (United States Attorney's Office), business journal publications regarding attorneys' fee rates in jurisdictions in which we practice, published surveys regarding attorneys' fees, and actual awards of attorneys' fees by courts. The process included the opinions of several attorneys including a former judge, two former defense attorneys, and a former in-house attorney at a Fortune 500 Company based upon their knowledge and experience regarding hourly rates charged by attorneys for similar work. Based upon that comprehensive review, we set our hourly rates for the year 2007. At the end of each calendar year, we review the hourly rates and market conditions to determine whether and, if appropriate, how much our hourly rates will be increased.

35. Class Counsel undertook this matter on a contingent fee basis and has not been reimbursed for any out-of-pocket expenses, nor has it received any attorneys' fees in this case to date. Due to the contingency, Class Counsel undertook this matter with the expectation that it will receive a percentage of the class recovery or, at a minimum, a substantial risk enhancement if the class prevailed. Class Counsel's hourly rates do not reflect the risk of the contingency of this particular case or any other class action case. Class Counsel was committed to prosecuting

this case through the conclusion of litigation by trial and/or appeal if that would have been in the best interests of the Class.

36. To the best of its ability, Class Counsel staffed this case and assigned work among attorneys, paralegals, investigators, and Review Team members to accomplish tasks in the most efficient, effective, and cost-conscious manner possible under the circumstances. For example, the manner in which Class Counsel handled the significant volume of class member inquiries confirms this approach. Class Counsel provided detailed information on its website, including frequently asked questions, regarding the Settlement in an attempt to answer class members' inquiries and reduce the number of phone calls, emails, and/or letters. Class Counsel then trained its investigators and Review Team members to respond to class member inquiries and, where necessary, escalate the inquiry to the paralegal on the case, who would then, only where necessary, escalate the inquiry to the attorneys.

37. Due to the substantial resources dedicated to the investigation, prosecution, settlement, and supervision of this case, and the continued supervision of this case, Class Counsel did not pursue some other opportunities and hired additional personnel to work on this case.

38. According to the contemporaneous daily time records maintained by Class Counsel in its regular course of business, Class Counsel devoted 3,937 hours of time to the investigation, prosecution, and settlement of this case through approximately February 25, 2009. The total value of Class Counsel's time through February 25, 2009 is $833,609.10. This time does not include any time relating to the preparation of Class Counsel's motion for incentive awards, attorneys' fees and expenses. To prepare that motion, Class Counsel spent another 116.5 hours at a value of $24,035.10. A summary of Class Counsel's time is attached hereto as Exhibit 1.

39. Class Counsel has incurred reasonable and necessary costs and expenses in connection with the investigation, prosecution, and settlement of this case. Class Counsel has paid for expert fees, filing fees, travel expenses, deposition fees and transcript costs, witness fees, costs relating to subpoenas, phone charges, postage, copy costs, website updates, etc. A

summary of our reasonable and necessary expenses incurred in this case through February 25, 2009 is attached hereto as Exhibit 2. Based upon Class Counsels' experience with this case and other class action settlements, Class Counsel reasonably estimates expending additional expenses on this case.

40. The Settlement provides relief to class members through January 1, 2012 with the last claim deadline on March 1, 2012. Class Counsel anticipates spending a considerable amount of time: monitoring the administration of the settlement (*e.g.*, issuing the second notice, reviewing the dealer notice and materials, monitoring accuracy of payments, confirming the timeliness of payments, *etc.*); responding to questions from class members; assisting class members with claims; investigating claim denials; responding and/or challenging claim denials where appropriate; and otherwise representing class members regarding their rights under the Settlement and related judgment. In addition, Class Counsel will incur additional costs and expenses relating to this continued representation. Based upon Class Counsels' experience with this case and other class action settlements, Class Counsel reasonably estimates expending at least another $200,000 worth of its time on this case.

41. A true and correct copy of our Complex Litigation biography, which includes some attorney biographies and descriptions of our experience, is attached hereto as Exhibit V. Class Counsel has substantial experience in class action litigation.

42. As an attorney who has practiced law for more than 12 years, I am familiar with the legal fees and billing rates charged by law firms for similar work. Based upon my knowledge and experience, the fees and costs incurred by Class Counsel regarding the representation of Plaintiffs and the Class are fair, reasonable, and necessary. Based upon my experience and the particular work in this case, including the arms-length negotiations regarding attorneys' fees, the amount of $4,425,000 is fair and reasonable as fees and costs in this matter.

43. Since 1997, I have represented defendants, plaintiffs, and certified classes in class action litigation. Based on my experience and my particular work in this case, the Settlement is fair, reasonable and adequate, and in the best interests of the Class.

I declare under the penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 26, 2009.

Robert W. Schmieder II

Exhibit NN

Exhibit OO to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN LLC
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Plaintiffs

REDACTED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

Case No.: 2:07-CV-02142 WBS-GGH

DECLARATION OF MARK L. BROWN

Mark L. Brown, pursuant to 28 U.S.C. § 1746, attests as follows:

1. I am an attorney with LakinChapman LLC ("Class Counsel"), lead class counsel in this class action, and I have personal knowledge of the facts stated herein. This Declaration addresses Class Counsel's effort to calculate a reasonable estimate of the value of the Class Relief under the proposed Settlement, as well as the Fees and Expenses of Class Counsel.

Exhibit PP

Estimate of the Value of Class Relief

2. In an effort to calculate a reasonable estimate of the value of the relief provided to the Class under the "future reimbursable expenses" portion of the proposed Settlement in this case, Class Counsel have searched for comparable extended warranties available for purchase, either through GM or through third parties. Class Counsel's search revealed no available warranty offering precisely the relief provided to the Class under the "future reimbursable expenses" portion of the proposed Settlement. *Doc. 48-2.*

3. In other words, it is believed that the proposed Settlement provides relief that the Class would not be able to obtain through any other mechanism.

4. However, there are available certain GM and third-party drive-train extended warranties offering coverage that overlaps with certain portions of the extended warranty protection under the Settlement, providing a point of reference for reasonably estimating the value of the "future reimbursable expenses" portion of the Settlement.

5. One such warranty is the GM Basic Guard Protection Plan that was obtained during Class Counsel's investigation. *Exs. TT-UU.* Another is a third-party extended warranty plan, also uncovered during Class Counsel's investigation. *Ex. VV.* The various GM extended warranties described in *Exs. TT-UU* and the third-party warranty described in *Ex. VV* are the only extended warranty plans for which we were able to obtain pricing information.

6. The most economical optional extended warranty available through GM is the GM Basic Guard Protection Plan (the "GM Plan") described above. The GM Plan provides coverage for repairs involving the engine, fuel system, transmission/transaxle, and front or rear-wheel drive system, with the option of either a $50, $100, or $200 deductible. (Lower deductibles correspond to higher premiums and vice-versa.) *Exs. TT and UU.* The GM Plan will

Exhibit PP

pay only up to $75 for towing expenses. *Ex. DD.* It does not provide any coverage for vehicle rental. *Id.* The GM Plan requires that the vehicle owner contact the dealership in the event of a failure and obtain GM authorization before any work is done. *Id.* No optional extended warranty plan offered by GM is available for purchase for a vehicle with mileage exceeding 75,000 miles. *Ex. TT.* I understand that the GM Plan is only available contemporaneously with the purchase of the vehicle.

7. As of October 1, 2007 (the most recent date for which Class Counsel were able to obtain pricing data), the cost of the GM Plan for a Saturn Vue with between 60,001 and 75,000 miles on the odometer, for coverage lasting 24 months/24,000 miles and with a $50 deductible, was $[redacted] *Ex. UU.* Coverage for 48 months / 32,000 miles was $[redacted] *Id.* These same prices were available for certain other vehicles as well, suggesting that the risk factored into this pricing was spread across multiple vehicles lines. *Id.*

8. According to the testimony of GM employee John Ellison, the historical information in GM's warranty claims database is made available to the personnel responsible for establishing the retail price of GM's optional extended warranties. *Ex. M at pp. 93:17-94:6.*

9. In 2003 GM calculated that the warranty repair cost to GM per vehicle sold was $[redacted] for VTi transmissions, [redacted] *Ex. Z* at *Castillo3141*. In other words, the warranty cost to GM for repairing within warranty those vehicles containing VTi transmissions was [redacted]. This was prior to the time that GM issued its special policy adjustment in 2004, extending the warranty coverage to 5 years / 75,000 miles, which logically would further increase the VTi multiplier.

Exhibit PP

10. GM estimated that as many as [redacted] of all VTi customers would experience transmission failure within 100,000 miles as a result of a single problem with the VTi transmission, a problem known as [redacted] *Ex. Y at Castillo2986.* Logically, an even higher failure rate would be expected when the myriad other VTi problems are taken into account, and further when coverage to 125,000 miles is considered.

11. If a warranty company were to establish an extended warranty for the VTi transmission providing the same relief as the "future reimbursable expense" coverage under the proposed Settlement, it would be logical for the warranty company to take into account GM's [redacted] warranty cost experience with the VTi transmission. *Doc. 48-2.*

12. Under the October 1, 2007 pricing, the owner of a Saturn Vue with 75,000 miles could purchase the 32,000 mile GM Plan for $[redacted] *Ex. UU.* This would provide coverage only through 107,000 miles, and no GM extended warranty is available beyond this point, so in order to obtain coverage up to 125,000, the customer would have to purchase subsequent third-party warranties and 'daisy-chain' them together. *Ex. TT.* For example, he could then purchase the third-party powertrain 1-year/12,000 mile warranty for $[redacted] covering the vehicle through 119,000 miles. *Ex. VV.* He could then purchase a final 1-year/12,000-mile third-party powertrain warranty for $[redacted] (the cost to obtain the warranty for Vues with odometer readings between 110,000 and 125,000 miles). *Id.* The total cost for this coverage would be $6,337. *Id.*

13. The owner of a Saturn Vue with 75,001 miles would no longer have the option of purchasing the GM Plan. However, to get to 125,000 miles of coverage, he could purchase a first third-party 2-year/24,000 mile powertrain warranty for $[redacted] (taking the coverage to 99,001 miles), a second such warranty for another $[redacted] (taking the coverage to 123,001 miles), and a final 1-year/12,000 mile warranty for $[redacted] for a total cost of $5,593. *Id.*

Exhibit PP

14. Granted, these optional powertrain warranties cover more than just the transmission. The GM Plan provides coverage for repairs involving the engine, fuel system, transmission/transaxle, and front or rear-wheel drive system, so something less than 100% of the cost of these warranties is attributable to the transmission. *Ex. TT.* Of these four items, the engine and the transmission are by far the two most costly items to replace, and of those two, the VTi transmission is far more likely to need replacement. Since the pricing described above takes into account risk spread across multiple vehicle lines, it is logical to expect that the costs would be even higher if priced only for vehicles containing VTi transmissions, in light of their extraordinary failure rate.

15. In addition, the "future reimbursable expense" portion of the Settlement contains coverage and conditions more favorable to class members than does the GM Plan or the other third-party warranties described above. *Doc. 48-2.*

16. For example, the Settlement covers all towing expenses (subject to the applicable reimbursement rate), whereas the GM Plan will pay only up to $75 for towing expenses. *Doc. 48-2* and *Ex. DD.* The Settlement provides coverage for vehicle rental; the GM Plan provides none. *Id.* The GM Plan requires that the vehicle owner contact the dealership in the event of a failure and obtain GM authorization before any work is done; the Settlement does not. *Id.* The GM Plan is only available contemporaneously with the purchase of the vehicle; the Settlement coverage is available upon the Court's final approval of the Settlement. *Id.* In addition, under the Settlement class members receive a complete warranty (100% cost paid by GM) for 12 months/12,000 miles, whichever comes first, for each transmission-related repair, even if the subsequent failure otherwise falls outside the coverage period. *Doc. 48-2.* The GM Plan and the other warranties described above have at least a $50 deductible; there is no deductible under the

Exhibit PP

Settlement (subject to the reimbursement rates in Chart B of the Settlement Agreement). *Doc. 48-2 and Exs. TT and UU.* The GM Plan limits the maximum coverage to the value of the vehicle; the Settlement has no such limitation. *Id.* The warranties described above have a variety of additional exclusions (*e.g.*, for misuse, abuse, negligence, alterations, modifications, and lack of maintenance); the Settlement has no such limitations. *Id.*

17. The average cost of the two drivetrain warranty scenarios described in paragraphs 11 and 12 above is $5,965. *Exs. UU and VV.* Assuming that this cost is distributed evenly among the four items covered by the GM Plan and that, therefore, the value of the extended warranty under the Settlement would be only one-fourth this amount (a very conservative assumption considering the higher risk of VTi failure, the higher than normal cost of VTi replacements, and the deductibles and other limitations in the other warranties that do not apply to the Settlement coverage), the cost for a class member in the 100%-reimbursement-rate category to purchase the hypothetical equivalent warranty would be $1,491 (*i.e.*, $5,965 / 4).

18. Class members who submit claims for future expenses under the Settlement will be reimbursed at either 100%, 75%, 30%, or 0% depending on their vehicle mileage at the time of transmission failure and their ownership status (*i.e.*, new or used). *Doc. 48-2.* Since less than 100% of claims will be paid at the 100% reimbursement rate, a downward adjustment needs to be made to the warranty value estimate. Assuming an equal distribution of these four reimbursement rates, the average reimbursement rate would be 51% (*i.e.*, 100 + 75 + 30 + 0 / 4). Multiplying $1,491 by 51% would result in an average warranty cost of $760 per Class Member currently possessing a class vehicle. In other words, under these conservative assumptions, the average Class Member could hypothetically purchase the future coverage under the Settlement

Exhibit PP

for only 12.7% of the $5,965 average cost it would cost to purchase the actually available warranties under the two scenarios described above.

19. Multiplying this average equivalent warranty purchase cost by the number of class vehicles sold (and for which, therefore, future expense reimbursement coverage is available under the Settlement) would result in a total value of $63,625,680 for the future expense reimbursement portion of the Settlement (*i.e.*, $760 X 83,718 vehicles). This represents a reasonable estimate of the cost for class members to purchase the VTi extended warranty coverage made available through the Settlement, but it does not include the additional value of class relief involving reimbursement for past expenses or trade-in losses.

20. Even if this very conservative estimate were overstated by as much as fifteen percent and the actual value of the extended warranty coverage under the Settlement were only $660 per class vehicle sold, the value of this portion of the settlement relief alone still would be $55,253,880 (*i.e.*, 83,718 vehicles times $660). This falls within the range estimated by actuarial expert Mark Johnson. *Exs. KK and LL.*

Attorneys' Fees and Expenses

21. I was first admitted to practice law in 1997, and I am admitted to practice in Missouri, Illinois, and various federal courts. Prior to joining The Lakin Law Firm, P.C. in January of 2007, I was employed in-house in the Legal Department of Charter Communications ("Charter") as Director of Litigation. Charter was a Fortune 500 company with over $5 billion in annual revenues and operations in more than thirty (30) states. As Director of Litigation, I was responsible for supervising and overseeing hundreds of active litigation cases pending throughout the United States, and I was consulted for my advice on a wide variety of legal issues, including pending class action cases. I also was responsible for reviewing and approving

Exhibit PP

or rejecting the legal bills of outside counsel located throughout the country, including outside counsel at both large and small firms in the State of California. As a result of this experience, I have familiarity with attorney billing rates that are common in a variety of geographic areas.

22. Prior to becoming Director of Litigation at Charter Communications in 2005, I was employed as an attorney at Sonnenschein Nath & Rosenthal LLP, primarily representing corporate defendants in product liability, commercial, and complex civil litigation. My standard hourly billing rate that was charged to clients on a monthly, non-contingent basis at Sonnenschein in 2005 was either $[redacted] or $[redacted]. My hourly rate at Sonnenschein did not reflect the risk of handling a case—in other words, clients paid that hourly rate regardless of the outcome of the case. It also did not reflect the experience later acquired as an in-house attorney and as a plaintiffs' attorney focusing on class action matters.

23. Prior to joining Sonnenschein in 2002, I was employed as an attorney at Thompson Coburn LLP, the largest law firm in St. Louis, Missouri, where my practice likewise was devoted primarily to representing large corporate defendants in product liability, commercial, and complex civil litigation.

24. Based on my experience in private practice and as an in-house attorney responsible for reviewing the bills of other lawyers, I believe that the hourly rates, the time expended, and the fees and costs incurred by Class Counsel in connection with the representation of Plaintiffs and the Class are fair and reasonable, and $4.425 million is fair and reasonable as fees and costs on this matter.

25. I also believe, based on my experience, that the relief provided under the Settlement is fair, reasonable, and adequate and is in the best interests of the Class.

Exhibit PP

I declare under the penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 27, 2009.

Mark L. Brown

Exhibit PP

C. Brooks Cutter, SBN, 121407
KERSHAW CUTTER & RATINOFF LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Robert W. Schmieder II (admitted *pro hac vice*)
Mark L. Brown (admitted *pro hac vice*)
LAKINCHAPMAN LLC
300 Evans Avenue
P.O. Box 229
Wood River, Illinois 62095
Telephone: (618) 254-1127
Facsimile: (618) 254-0193

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVANS, BARBARA GLISSON, STANLEY OZAROWSKI, and DONNA SANTI, *Individually and on behalf of all others similarly situated,* Plaintiffs, v. GENERAL MOTORS CORPORATION, Defendants.	Case No.: 2:07-CV-02142 WBS-GGH DECLARATION OF C. BROOKS CUTTER IN SUPPORT OF APPLICATION OF CLASS COUNSEL FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

I, C. Brooks Cutter, declare:

1. I am a partner in the firm of Kershaw, Cutter & Ratinoff, LLP. I am submitting this Declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in this action. In brief, I graduated from Stanford Law School in 1985, then clerked for James R. Browning, the Chief Judge of the U.S. Court of Appeals for the Ninth Circuit. For over 20 years, I have been practicing in the area of complex litigation. Attached hereto as Exhibit A is my C.V.

Exhibit QQ

2. This firm is co-class counsel in this litigation against General Motors Corporation. During the course of the litigation, the firm incurred costs of $2,964. My firm made its usual and customary charges for expenses it paid or incurred in this litigation and added no surcharge to any expense.

3. My firm and I have participated in all phases of this litigation. This work included drafting and review of pleadings, motions and discovery, participating in related conferences with co-counsel and opposing counsel, participating in the mediation of this case, the preliminary approval hearing, and preparing and reviewing settlement documents. Virtually all of the work performed by my firm was done by me personally, or by Marilyn Thompson, a Senior Paralegal with over 30 years experience, including having been personally appointed as a claims administrator in class action cases.

4. All time and expenses were recorded contemporaneously in the records of the firm.

5. Set forth below is a chart summarizing the time expended and hourly rates for my firm. While virtually all of this firm's work is performed on a contingent basis, the rates set forth here have been approved and utilized as a lodestar basis for other courts considering the firm's fee applications. Moreover, the hourly rates are consistent with what similarly skilled and experienced counsel command in Northern California. The lodestar incurred by my office for this case is $73,537.50.

Name	Hourly Rate	Hours	Total
C. Brooks Cutter	$ 600	121.25	$ 72,750.00
Marilyn Thompson	$ 175	4.50	$ 787.50
		Total	**$ 73,537.50**

6. Assuming final approval is granted, this firm will continue to participate in work on behalf of the class, including assisting with the claims, notice, and distribution program and responding to inquiries from the class without further compensation beyond the award sought at the Final Approval Hearing.

Exhibit QQ

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 26, 2009.

C. BROOKS CUTTER

Exhibit QQ

EXHIBIT A

Exhibit QQ

Contact Information:
bcutter@kcrlegal.com
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

401 Watt Avenue
Sacramento, CA 95864

www.kcrlegal.com

KERSHAW | CUTTER & RATINOFF | LLP

C. BROOKS CUTTER

Mr. Cutter is a partner dedicated to representing plaintiffs in personal injury, consumer, products liability and class action matters.

PRIOR PROFESSIONAL EXPERIENCE

- *Law Clerk, Chief Judge James R. Browning, U.S. Court of Appeals for the Ninth Circuit (1985-1986)*
- *Latham & Watkins (1986 – 1990)*
- *Friedman, Collard, Cutter & Panneton* (1990 – 2002)

Representative Cases

Mass tort and class action matters include:

- In re: Medtronic Sprint Fidelis Leads Litigation – Member of the Plaintiffs' Steering Committee appointed by Judge Kyle, in MDL pending in St. Paul, Minnesota.
- In re: Guidant Corp. Implantable Defibrillators Products Liability Litigation – Member of the Plaintiffs' Steering Committee and designated co-trial counsel for bellwether trials. Settlement reached shortly before trial pending before Judge Frank.
- Vanderpool v. Allstate – Co-lead counsel in statewide class action in Sacramento Superior Court relating to overcharges to auto policyholders. Case resolved by Allstate agreeing to pay full refund plus interest to affected policyholders.
- Stickles, et al. v. Ford Motor Credit Corporation – Lead Counsel in nationwide class action against Ford Motor Credit Corporation regarding late fees. Resolved on eve of trial with FMCC agreeing to return up to $80 million to lessees.
- Cornn v. UPS – Filed and assisted with prosecution of wage and hour class action against UPS, which resolved by UPS agreeing to pay over $87 million to settle the action.
- In re: Vicryl Sutures – Co-Counsel in nationwide case against Johnson & Johnson for contaminated sutures. Tried to a final conclusion in confidential proceeding.
- Ette – Pro Bono representation of family of Sadie Ette before U.S. Victim's Compensation Fund arising from Ms. Ette's death at the World Trade Center on September 11, 2001.
- In re: Telectronics - Special Counsel to the Plaintiffs' Steering Committee – Assisted in prosecution and settlement of a nationwide class settlement on behalf of people implanted with defective Telectronics pacemakers.

Exhibit QQ

- Tyler v. Wickland – Lead counsel in shareholder suit for breach of fiduciary duty against the President and Directors of a local bank.
- In re: Vierra - Co-Class Counsel in matter brought and resolved on behalf of thousands of families affected by mishandling of cremated remains.
- In re: Sulzer – Member of the Plaintiff's Steering Committee and Co-Chair of the Hip Committee in nationwide class action and settlement in federal court in Ohio on behalf of people implanted with defective Sulzer hip components.
- America Online "SOSA" Litigation: (CD Cal.) Co-lead Counsel in nationally coordinated consumer class actions involving double billing of AOL customers through "spin off sub-accounts" in U.S. D.C. Central District of California. Case resolved through nationwide settlement in conjunction with Illinois state court proceeding.
- Multiple individual settlements and verdicts on behalf of injured people. Examples include $3 million on behalf of farm worker injured by contact with a power line; $1.2 million for a person with serious back injuries following a low speed collision; $1.4 million for survivors of a woman who died as a result of a seizure while in the hospital.

Academic Background

B.A. U.C. Berkeley 1980
M. Phil. Cambridge University 1982
J.D. Stanford Law School 1985

Professional Activities, Affiliations, & Accomplishments

- Judge Pro Tem, Sacramento County Superior Court; El Dorado County Superior Court
- Past President of Sacramento Consumer Attorneys and past member of Board of Governors Consumer Attorneys of California
- Trial Lawyers College – Faculty Member – 1999 to present
- Stanford Trial Advocacy Program – Faculty 2002 to present
- Rotary Club of Sacramento; past Chairman Orthopedically Challenged Children's Committee; Community Service Committee
- 2007 Advocate of the Year, Capitol City Trial Lawyers Association
- Finalist, 2005 Consumer Attorney of the Year, Consumer Attorneys of California
- Presidential Award of Merit, 2005, Consumer Attorneys of California
- Northern California Super Lawyer, 2005 to present
- Martindale-Hubbell AV rated

Personal

Married; three children

Contact

Email: bcutter@kcrlegal.com
Tel.: 916-448-9800
Fax: 916-669-4499

Exhibit QQ

EXHIBIT L
Part 6

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

BEFORE THE HONORABLE WILLIAM B. SHUBB, JUDGE

---oOo---

KELLY CASTILLO, et al.,

Plaintiffs,

vs. No. Civ. S-07-2142

GENERAL MOTORS CORPORATION,

Defendants.

/

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LAW AND MOTION

MONDAY, SEPTEMBER 2, 2008

---oOo---

Reported by: KATHY L. SWINHART, CSR #10150

KATHY L. SWINHART, OFFICIAL COURT REPORTER, USDC -- (916) 446-1347

Exhibit RR

APPEARANCES

For the Plaintiffs:

KERSHAW, CUTTER & RATINOFF
401 Watt Avenue
Sacramento, California 95864
BY: C. BROOKS CUTTER

and

LAKIN LAW FIRM
300 Evans Avenue
Post Office Box 229
Wood River, Illinois 62095
BY: MARK L. BROWN
and ROBERT W. SCHMIEDER

For the Defendant:

ISAACS, CLOUSE, CROSE & OXFORD
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
BY: GREGORY R. OXFORD

SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 2, 2008, 2:10 P.M.

---o0o---

THE CLERK: Item 10, Civil S-07-2142, Kelly Castillo, et al., versus General Motors Corporation. Counsel, please state your appearances.

MR. CUTTER: Brooks Cutter, Kershaw, Cutter & Ratinoff, for plaintiff Castillo.

MR. BROWN: Mark Brown of the Lakin Law Firm on behalf of plaintiffs.

THE COURT: So one of you represents Castillo and the other one represents one of the other plaintiffs?

MR. CUTTER: We're co-counsel, Your Honor.

THE COURT: Co-counsel. All right.

MR. SCHMIEDER: Rob Schmieder of the Lakin Law Firm on behalf of plaintiffs.

THE COURT: Okay.

MR. OXFORD: Greg Oxford for General Motors Corporation, Your Honor.

THE COURT: Who's going to speak on behalf of the plaintiffs?

MR. SCHMIEDER: I am, Rob Schmieder, Your Honor.

THE COURT: All right. Mr. Schmieder.

I've been over your papers, and I see several problems. One of the options that the Court has is to give

D

preliminary approval and then let you come back with the details and make my determination at that time as to whether to approve the settlement without specifically approving any aspect of it at this time. But even if I am to do that, I think there are some things that I ought to point out to you

that trouble the Court and that ought to trouble you so that you can be thinking about them.

To begin with, there was a motion to dismiss which the Court had under consideration and came close to being required to decide before you submitted your class action settlement, and so I have some opinions about the potential merits of the various claims in the lawsuit.

There was a serious question as to whether the plaintiffs were entitled to recover on their various claims, specifically the breach of express warranty claim and the unjust enrichment claim as examples. And I noted that you were dealing with different state laws. And one of the things you don't talk about or at least don't talk about very much in your request for the Court to approve this settlement is the differences in the claims that the parties would have depending on where they purchased the vehicle, where they live, conflict of laws questions as to which state law applies.

And then originally you asked only to file your claims on behalf of similar parties situated in the states of

California, Florida, Georgia, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, and Virginia. That's only 13 states. Now you've amended it to include every state in the union, and I'm wondering why. So those are some of the questions that I have first on whether these claims are really that similar based upon different states.

The next question that comes to my mind is whether these claims are similar based upon the kinds of damage. I recognize that you could have a class action where the damages are different with respect to the various class members, but here I have some concerns as to whether they're even the same kind of damages.

Specifically looking at your class representatives just as a representative sampling of the kinds of damages that you're talking about, you have -- I'm trying to remember her name -- Nichole Brown. Her vehicle reached 78,000 miles, and she had an independent mechanic replace it for $4,000. So that's the kind of damage she has.

Your next named plaintiff is Brenda Digiandomenico in Virginia. The first one was in Georgia. Her car reached 52,000 miles, but it was replaced under warranty, so that's different. And then when it reached 116,000 miles, it was replaced for $1,900. So it's just less than half of what it cost the other one, we don't know why, and you've got the

intervening occurrence that it was replaced within the warranty. And you start to get up to the number of miles that most people don't even expect to own a car anyway.

Your third plaintiff is Valerie Evans, she's in Missouri. Her car got up to 83,000 miles, and the only thing she was charged was the towing cost. So apparently that one was under warranty, and there's no cost to replace the transmission claimed of.

Your next plaintiff is Barbara Glisson. There were

two incidents when her transmission failed at 33,000 and 68,000 miles, it was replaced under warranty both those times, and then when it reached 107,000 miles, it was replaced for $5,500.

Excuse me. It wasn't replaced. She elected not to repair or replace it, so there's a different situation. It wasn't replaced, so we have to look to maybe the reasonable value to replace it or some other measure of her damages.

Your next plaintiff is Sarah Ozarkowski. Her vehicle reached 83,000 miles, and it was replaced for a cost of $1,200.

And then finally you have Donna Santi. Her vehicle reached 102,000 miles, which is a lot, but the cost to replace it was only $377.26.

Now, these are just your named plaintiffs. There's no discussion about all those people who may have traded in their

vehicles before they reached 100,000 miles, which I would venture to guess is a very common occurrence. And how you fix their damages, you've suggested something about the loss of value in selling their car, and I don't know how you're going to prove in each individual case how much less they got for their car because somebody may have perceived that it had transmission problems or not perceived that it had transmission problems. And then dealing with who owns this car now, whether you're going to give damages to the person who bought it in the meantime if nothing happened to the transmission before the first owner sold it.

You know, I look at this as a real headache to administer, and I see that as a real problem with certifying the class. And at first, after we get into those -- after we get past those problems of typicality and commonality, I see problems with numerosity. You have suggested that there are 90,000 plus members of this class, but you haven't suggested how many actually have problems one way or the other with these transmissions.

It's like saying -- I was talking to my law clerk about this on the way in -- somebody was the victim of some kind of malpractice, and you say, well, they all have in common that they died. Well, they're all going to die, but proving whether they died as a result of the malpractice is another issue.

And I don't have any doubt that all these cars were sold and maybe even the transmissions went out, but you may have a problem of proving whether the transmission went out because of this defect or for some other reason. A lot of transmissions go out in that period of time anyway whether there's a defect or not. And I don't see any showing in here as to how many class members you actually have who were damaged as a result of these transmissions.

Now, you've suggested that you're going to administer this by either having GM or somebody at GM's behest receive all the claims and then adjust them I gather pretty much like a claims adjuster would do. But if there are, in fact, as many class members as you suggest, I don't know who is going

to administer 90,000 claims, because there are just as many differences in each of those claims as there would be claimants as far as I can tell. You're going to have to individually adjust every one of these claims if you're going to do it fairly and correctly, avoid people coming in and abusing the class action process on the one hand, but making sure that they're fairly compensated on the other hand.

And I don't know whether you're going to get a thousand people that are each going to adjust 90 claims or whether you're going to get 90 people that are each going to adjust a thousand claims, but 90 claims -- I had a case in here where it was a bad faith insurance case, and the claims

adjuster in that case had less than 90 files, I think she was trying to adjust something like 20, and their testimony was that she just had so many claims to adjust that she couldn't get to them, and that was the reason why they never settled the plaintiff's claim. So I don't know how you're going to administer this settlement if it's approved.

Now, finally -- and this may not be finally, but it's the final thing that comes to my mind at the moment -- I don't know how you get to four million dollars in attorneys' fees. You're suggesting that it's a percentage of the total. Well, as I've told you already, I don't know what the total is, and I don't think I'll have any way of knowing that until the claims come in and we see what happens. But I don't know what's been done on this case so far. If we get to that point, I'll probably ask you for your time sheets and let you

explain how many hours you've put in on the case and how much you want per hour to do it.

As I said, with all those concerns, I can probably go ahead and give you provisional certification and wait and see what comes in after you've proceeded further.

MR. SCHMIEDER: Would the Court like me to --

THE COURT: Sure, I'll hear whatever you have to say.

MR. SCHMIEDER: Okay.

Good afternoon, Your Honor. I would like to address just a few of the points that the Court raised.

The settlement provides a rather simple basis for evaluating the claims of the various class members. There are 90,305 class vehicles out there. We're not suggesting that all of them have failed, but we know a significant portion of them have failed. In my affidavit attached to the motion for preliminary approval, I apprised the Court that we have spoken with over 250 class members who have had transmission failures during this time, so I think the Court's concern about numerosity, I think we've already established that.

And actually since we have posted a --

THE COURT: I don't know whether you have or not. The fact of 250 transmission failures doesn't get you past the question of causation. I don't know if you called -- first of all, I don't know how many you called. But if you start calling everybody that bought any type of vehicle and you included those that had gone the number of miles that the various plaintiffs have gone in this case, I don't know

whether you'd find more or less than 250 people that had transmission failures.

MR. SCHMIEDER: Well, they -- these are all people that have contacted us, and we've spoken with them, and actually since then I believe the number is now 351. Just within the last month, we've received phone calls or E-mails from another seventy -- approximately 70 class members who owned a Saturn vehicle with this continuously variable

transmission, the VTI transmission.

The settlement does not distinguish -- unlike other settlements involving auto manufacturers and defects with regard to various products, this is not a settlement that distinguishes the type of transmission failure from an administrative standpoint, so there's not going to be any causation issue.

The issue is simple. If they have a transmission problem, they're covered under the settlement as long as they're within the parameters, the mileage parameters.

THE COURT: Okay. What are the mileage parameters?

MR. SCHMIEDER: The mileage parameter is 125,000 miles, the outer limit.

THE COURT: Okay. But even before you brought this action, my recollection is that GM extended the warranty. It was 36,000 miles or three years, and they extended it to five years or 75,000 miles. So all you're doing is extending it from 75,000 miles to 120,000 miles.

MR. SCHMIEDER: A hundred twenty-five, yes, Your

Honor.

THE COURT: 125,000 miles, that's all you're doing.

MR. SCHMIEDER: Well, that's not all we're doing. What we're doing is the settlement provides relief in two different ways, people who have experienced past problems and people who will experience future problems.

For people who already expended money or lost money, it provides relief in a couple different ways. It covers transmission repair, replacement, inspection, towing and car rental expenses up through the 125,000 miles to varying degrees depending upon -- there's a 100,000 break point, which we established during the discovery that that's the standard by which GM set based upon its survey of consumer expectations that its consumers expect the transmissions to last 100,000 miles under severe customer usage. So then during negotiations we pushed that up to 125,000 with some reduced amount of reimbursement for that claim.

So it takes care of anybody who is currently out of pocket who has ever owned one of these vehicles for any transmission-related problem. It gives them a percentage of, if not a hundred percent -- if they purchased it new and it failed before 100,000 miles, it gives them a great deal of reimbursement for that failure up to that point in time.

THE COURT: Well, but if it was within the warranty period, that's de minimus, right?

MR. SCHMIEDER: That's true.

THE COURT: So it's only going to make a difference to

Exhibit RR

those people that have the problem between the time when their warranty expired, which might be 75,000 miles if it was after the date that they extended the warranty, and the time that it reaches 125,000 miles.

MR. SCHMIEDER: Theoretically that's true, but our experience with talking with all these Saturn owners is that's not the way the warranty was handled out in the field. I'm not saying that that's GM's fault, but the dealers certainly didn't either provide the information about the extension of the warranty that we definitely have class members who under 75,000 miles were charged money out of pocket for transmission failures.

THE COURT: Well, but are you telling me that GM wouldn't voluntarily pay those people since they were under warranty anyway?

MR. SCHMIEDER: They haven't to date, Your Honor.

THE COURT: Maybe because they didn't go back to GM and tell them, I don't know.

MR. SCHMIEDER: Well, in certain circumstances I believe that's the case, but in other circumstances I know we have documentation where people continued to go back to their dealers and try to get coverage.

Now, in other circumstances --.

THE COURT: Well, okay. But you're telling me that GM had a warranty, and they ignored the warranty, and they continued to ignore the warranty, and they won't pay on the warranty. Well, if we enter into a settlement, there's

Exhibit RR

nothing I can do about that anyway. I could extend it to 125,000 miles and, if they still decide not to honor the

warranty, there's nothing more I could do about it. I guess I could hold them in contempt.

MR. SCHMIEDER: Absolutely.

THE COURT: Okay. But that's --

MR. SCHMIEDER: Judge, and we'll be -- I mean, that's the whole point of -- we're going to be monitoring the settlement for an extended period of time to make sure that they're honoring this. We're going to be handling calls from class members up through the year 2012 to make sure that all of these claims are being paid.

Now, what -- but what it does is -- the Court talked about the headache of administration. The administration is going to be very simple. Anybody with a claim or a past claim is going to submit a claim form, attach their receipts with their -- what they paid out of pocket. So there will be a repair estimate or repair bill from the Saturn dealer, car rental receipt, and GM has agreed to pay those at the reimbursement levels on the charts A and B that we submitted as part of the settlement.

For future claims, the process will be the same. Of course, they don't have that yet --

THE COURT: What are you going to -- I don't know the statistics on the people that sell their cars before they get to 125,000 miles, but I think I'm one of the few that don't do that. What are you going to do with the people that probably

Exhibit RR

constitute the majority of the purchasers who sold their vehicle before it had any problems to somebody else?

MR. SCHMIEDER: They weren't damaged, Your Honor.

THE COURT: That's right.

MR. SCHMIEDER: So they weren't damaged, so they receive no benefit under the class.

THE COURT: All right.

MR. SCHMIEDER: So they're not harmed -- they're not benefiting nor are they harmed by the settlement.

THE COURT: So are you going to send out notices to the people that bought them used?

MR. SCHMIEDER: Absolutely. They are part of the class.

THE COURT: Okay. How do you send out -- how do you know who bought the car used?

MR. SCHMIEDER: What we've done is agreed to use the Polk Company. The Polk Company will take the vehicle identification number, the VIN numbers, go to each of the states -- actually they have a rolling database where they have arrangements with the states to collect this information. From that we will be able to identify all the owners, the current owners and the past owners on the title of the vehicles on these Saturn -- on these specific Saturn model year vehicles with VTI transmission. From that list, we will then run it through the national change of address database,

and from there -- to update any changes of addresses, and we'll send direct first class mail notice to every single member.

THE COURT: All right. That's good. But I thought I remembered somewhere in your papers that you said that you were going to try to indemnify people for the diminution in value of their vehicles.

MR. SCHMIEDER: In -- we had an allegation in our complaint, and we still do actually, that these vehicles did suffer based upon our information I believe at the time from a diminution in value. We did not request that in our prayer for relief because we wanted to conduct more information -- more investigation at the time.

What this settlement does, though, is for anybody who had a transmission failure, who -- because we have a number of people that have contacted us, who elected instead of spending -- we've had estimates up to four, five, sometimes up to $8,000 to repair this transmission. Instead of spending that money, they then traded in their vehicle at a dramatically reduced price. What GM has agreed to do under the settlement is to reimburse those people for the loss they sustained.

How we will calculate that loss is they will submit the repair estimate that they had at the time of repair. We will then use that repair estimate as the basis for the loss

and, depending upon the odometer readings and whether they're a new or used purchaser, they will receive the applicable reimbursement rate under chart A. I'm sorry, chart B.

So that's how we'll do it. So every --

THE COURT: Only if they actually had the transmission fail and went in and got an estimate would they be allowed to be compensated for any decrease in value; is that --

MR. SCHMIEDER: That's absolutely true.

THE COURT: Okay.

MR. SCHMIEDER: Because again -- I'm sorry.

THE COURT: I just want to make sure.

MR. SCHMIEDER: No, that's absolutely true. Because if it didn't fail, there was no harm. And so this isn't -- this class action is tailored to those people who have had -- who have had failures in the past and have paid out of pocket to recover that money. And then going forward to give them the assurance that they will have coverage, GM doesn't want to call it an extended warranty, I don't know what we can call it, but they have coverage for -- to reimburse them for expenses relating to transmission problems going forward for the durational and mileage limitations in chart A and chart B of the settlement.

THE COURT: All right.

MR. SCHMIEDER: I believe -- I think I've answered all of them. I know the Court raised some state law variation

issues. I feel comfortable that we'll be able to address

those in our final papers, but I can assure the Court that we have done the research. And especially when a court is considering the settlement class, the issue is for that settlement class in the context of administrating the benefits under the settlement, does predominance exist? Are there any variations in state law or other issues that may -- a court may confront on certification? But when dealing with a settlement class, the real issue is, within the class are there any interstate -- or I'm sorry -- intra-class conflicts?

THE COURT: Well, I take it what you're telling the Court is you're going to settle this case as if it's strict liability without necessarily any theory to hook onto. You're not going to have to look to the warranty law of Alaska or something else. You're just going to say if the transmission failed in any way, we're going to assume that there's liability, and we are not going to be troubled with what law it might have violated.

MR. SCHMIEDER: Well, no. What we did is we did an extensive analysis, and our breach of warranty claims were premised on 2-302 and Section 2-719 of the Uniform Commercial Code. Those laws, I believe all except for the state of Louisiana, are absolutely the same, it's the Uniform Commercial Code.

And based upon those laws, we are trying to strike the

durational limits and/or the mileage limitations as unconscionable under the UCC. We -- because they are the same throughout, we believe -- and Louisiana, although I don't

believe it's adopted the UCC, I believe there is common law that addresses the same issue. I don't have that in front of me. But what it does is we have a uniform structure requesting relief for the whole class, the class affected by the same transmission. There's a common nucleus here, Your Honor, of issues relating to this VTI transmission that binds the class together. There's a remedy that's uniform across the country, and the remedy is striking those durational limits. And as the Court just recognized a few minutes ago, that's exactly what we did, we extended the warranty.

THE COURT: Well, I didn't think much of your argument when I was considering the motion to dismiss, but you're telling me that it doesn't make that much difference whether your cause of action is really valid or not. You're willing to settle it as if there's liability whether it's express liability -- I mean, express warranty, implied warranty, state law fraud claims, whatever. You're willing just to settle it as if it's strict liability.

MR. SCHMIEDER: Well, I think that proves the remarkable nature of the settlement that we've been able to achieve on behalf of the class. If the Court doesn't believe that some of the claims that we had were -- had much weight,

that only goes further -- to further support approval of this settlement.

Because the touchstone of -- when a court considers whether a settlement is fair, adequate and reasonable, the touchstone that courts always go back to is what did the

plaintiffs request and did the settlement respond to that request? We requested a striking of the durational limits, we requested reimbursement for failures, and the settlement does both of those things.

Even if the Court doesn't believe that we should prevail on the merits -- and I understand the Court's not saying we shouldn't, but what I'm saying is even if the Court believes that, that only goes to further support the remarkable nature of the relief that we're getting for the class.

THE COURT: That's not my point here. My point is I just want to make sure you're telling me that differences in state law don't make any difference. The merits of your claims are not the basis to settle. You're settling as if there's strict liability regardless of what the state law is.

MR. SCHMIEDER: I -- the settlement obtained the result as if it's strict liability, but we did not ignore state law when reaching that settlement. And I believe that there are no material differences especially with the breach of warranty claims under the UCC that are material. I mean,

the issue is are there any material outcome determinative differences? I don't believe there are any, Your Honor. So I believe in that framework we've done exactly what we set out to do.

THE COURT: All right.

MR. SCHMIEDER: Unless the Court has any other questions.

THE COURT: No, I think I've said essentially what's on my mind.

MR. SCHMIEDER: Thank you.

THE COURT: Yes, Mr. Oxford, did you want to add anything?

MR. OXFORD: Just briefly, Your Honor.

The question I sort of hear the Court asking is why did you settle this case? And the answer to --

THE COURT: Well, I just asked that almost --

MR. OXFORD: Rhetorically.

THE COURT: -- rhetorically and peripherally, because the real question I have in my mind is how is this thing going to be administered?

MR. OXFORD: Right. And I'm just here to say that we're here because this is a product that didn't perform as well as we would have liked. And so we were willing -- and no one is more familiar with the legal defenses and the differences in state law than I am. I wrote that motion to

dismiss that unfortunately troubled Your Honor.

But our position is we agreed to the settlement with the basis that we would assume liability in all the different states notwithstanding the state law differences. We wanted to make this right with our customers and do the right thing. It would be an enormous -- present an enormous difficulty to settle the case in some states and not in other case -- in other states, rather.

For example, Nevada was not an original state. So we

tell someone in South Lake Tahoe we're going to give you the -- whatever it cost to repair your transmission, and the person across the line in Reno, Nevada, we say sorry, you know, tough luck. I mean, we can't do that, Your Honor. It isn't fair.

So we basically agreed to the settlement in order to do rough justice. The settlement can be administered basically by giving people what it is that they paid to have the transmission fixed.

Now, there were field actions by the Saturn organization where -- in the case of these people who got their transmissions repaired for $300. It wasn't $300, it cost a lot more than that. It's just GM in individual cases or Saturn organization in individual cases agreed to absorb a significant amount of those expenses in the interest of customer satisfaction, the same interest really, Your Honor,

that motivate our willingness to enter into the settlement.

THE COURT: Well, what motivated your willingness to pay four million dollars to the plaintiffs' attorneys?

MR. OXFORD: Umm, well, we agreed in the settlement agreement to pay the plaintiffs' attorneys the fees and expenses that were awarded by the Court up to an upper limit of 4.3 million dollars. I don't believe that we're entitled to agree to pay the plaintiffs any specific amount absent court approval.

THE COURT: Well, you're not. You can't do anything absent court approval on a settlement in a class action --

MR. OXFORD: That's right, Your Honor.

THE COURT: -- so that just goes without saying that the Court has to approve it. But that's what you're volunteering to pay, and I just asked a simple question. What motivated you to agree to pay that much?

MR. OXFORD: We wanted to get this settlement, avoid litigation, and make our customers happy.

THE COURT: Whenever I get a notice of a class action where I'm a member, and it happens more than I would have thought, I'm always struck by how much the court agrees to pay the plaintiffs' attorneys. And that often makes me a little unhappy because if I was a -- I mean, I remember one I got, it was on some car that I bought, and the fee there was four million dollars. Judge Patel had approved the settlement.

Probably one of Mr. Cutter's cases, I don't know, or Mr. Kershaw's case.

But I looked at the settlement, and plaintiffs' attorneys got four million dollars coincidentally, I remember that was the fee, and what I got were some coupons for a discount on different services like a lube job or set of new tires or something like that. And I turned to the Sunday paper, and I found the same coupons, some of them a little bit better in the Sunday paper.

And the other thing that it said -- you could check this out yourself -- it said that I would get a $500 discount on a new car at this dealer. And anybody that can't negotiate a $500 discount off the asking price of a new car doesn't

deserve to be buying a new car.

And so my point is that sometimes if you're trying to make your customers happy agreeing to pay large attorneys' fees doesn't always make them happy --

MR. OXFORD: Yes.

THE COURT: -- when they see that.

MR. OXFORD: I couldn't agree with what you said any more, Your Honor. I would add only one thing. In this case, the class members are not getting coupons, they're getting real relief.

THE COURT: Well, yeah, but --

MR. OXFORD: They're getting substantial relief.

THE COURT: Well, some are getting substantial relief, and some of them are getting maybe two hundred, $300 that they paid for the towing of their car.

MR. OXFORD: But only because they already got essentially a free transmission repair already, otherwise that number would have been four thousand.

THE COURT: Well, I know. But the example I gave you --

MR. OXFORD: Right.

THE COURT: -- it was a same thing. I didn't loose anything.

MR. OXFORD: I don't want to evade the Court's question. I think --

THE COURT: Well, it's a rhetorical question really because the correct answer is it's what they asked for, it's

what you could afford to pay and you really would like to have this case behind you.

MR. OXFORD: All of that is correct, Your Honor. I'll just add one final thought, that it was a lot easier to settle this case than it was to settle the issue of attorneys' fees as I believe the papers reflect.

THE COURT: All right. Well, I'm going to do --

MR. CUTTER: Your Honor, I'd just add that we were not counsel in that matter before Judge Patel.

THE COURT: Did you know that case?

MR. CUTTER: I am aware of it --

THE COURT: It was years ago. The only reason I remember it is because I was the one who got notice. I'm sure there are dozens of those.

MR. CUTTER: Well, I think it's important that this is a cash settlement, Your Honor, where people are being reimbursed real dollars, and the fee request is based upon a conservative valuation of the benefit conferred on the class.

THE COURT: I'm going to do what I suggested at the beginning. I'm going to give you a preliminary approval. I'm going to set out some of my concerns in the written order, and you can keep your notes on the concerns that I've expressed here in court because you're going to have to come back to court eventually for final approval, and I'm not telling you whether or on what terms I might give that final approval. So this is sort of a road map as to what I think you need to do in order to come back and ask for final approval of this

Exhibit RR

settlement.

MR. OXFORD: Your Honor, from an administrative standpoint, I think that what needs to be done is there needs to be an actual date for a fairness hearing, which --

THE COURT: Yes.

MR. OXFORD: -- would tee off 90 days from whenever Your Honor would enter the preliminary approval. And I think Your Honor just said you were going to add some stuff in the

minute order, so I don't know when that would be.

THE COURT: Well, what I'm suggesting, and you can change this date if you want, was mid February of 2009.

MR. OXFORD: Okay.

THE COURT: Does that meet with your --

MR. SCHMIEDER: It does, Your Honor.

THE COURT: Okay. All right. Thank you.

MR. SCHMIEDER: Thank you, Your Honor.

MR. OXFORD: Thank you, Your Honor.

THE CLERK: Court's adjourned.

(Proceedings were concluded at 2:50 p.m.)

---oOo---

Exhibit RR

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Kathy L. Swinhart
KATHY L. SWINHART, CSR #10150

Exhibit RR

22

23

24

25

Exhibit RR

OPT-OUT- No Longer Owns and Did Not Have Any Out-of-Pocket Expenses

	Name (Last, First)	State
1	Adams, Marijke	Florida
2	Agosta, Andria M.	Washington
3	Bahr, Denise L.	Iowa
4	Bayer, Elouise K.	Ohio
5	Boles, Delmar I.	Maryland
6	Borek, Joseph A.	Pennsylvania
7	Brodeur, Melba Faye	Missouri
8	Bryant, William	Kentucky
9	Burkart, Mandy	Florida
10	Burrows, Carl D.	Pennsylvania
11	Chilcote, Tracy	Iowa
12	Dagenais, Jason	Tennessee
13	Edwards, James	Ohio
14	England, Martin R.	Ohio
15	Escoffie, Perla	Texas
16	Fors, Angela	Georgia
17	Ghanayem, David	Illinois
18	Goehring, Daniel	California
19	Gowens, Judith A.	Arizona
20	Gunn, Ann R.	Virginia
21	Hardwick, Mignon D.	California
22	Harrington, Kerry	California
23	Heffner, Emily	California
24	Kelley, Nancy R.	Texas
25	Laird, Linda	Indiana
26	LoVerde, Steven L.	Pennsylvania
27	Malacarne, Doris A.	Illinois
28	Martinez, Henry	Ohio
29	Moore, Deborah	Tennessee
30	Navarro, Karen A.	Nevada
31	Nibbio, Chris and Naomi	Illinois
32	Parrott, Stacy	Tennessee
33	Peters, Kathy	Arizona
34	Robin, Bertha	Louisiana
35	Shultz, Rita D.	Florida
36	Simpson, Brian	Virginia
37	Smith, Patricia G.	Pennsylvania
38	Spawton, Kenneth D.	New York
39	Starrett, Jodi	Wisconsin

Exhibit SS

40	Viren, Holly L.	Illinois
41	Watkins, Richard W.	Florida
42	Webber, Cynthia S.	Pennsylvania
43	Windle, Denise	Michigan

Exhibit SS

OPT- OUT- Reason Unknown

	Name (Last, First)	State
1	Allen, Melissa L.	Virginia
2	Barmby, Anne S.	California
3	Beeby, Ronald H.	Nevada
4	Card, Kristine	California
5	Gamber, Carol	Illinois
6	Garlock, Lawrence	Ohio
7	Getter, Kellie J.	Michigan
8	Harris, Benjamin J. and Dana N.	Louisiana
9	Hayward, David W.	California
10	Kryjeski, Kristin	New York
11	Kubiak, Jamie H.	Louisiana
12	Lafferty, Damie Jo	Pennsylvania
13	Leffler, Carol	Arizona
14	Nelson, Joan M.	Wisconsin
15	Perry, Hilda	North Carolina
16	Serio, Janet T.	Florida
17	State Farm Mutual Automobile Insurance Company	Illinois
18	Tesch, Lisa	Minnesota
19	Varady, Rebecca Lee	Ohio
20	Webber, Cynthia S.	Pennsylvania
21	Williams, Brent	Louisiana
22	Zammit, Amanda	California

Exhibit SS

OPT-OUT- Verbal or Post-Deadline

	Name (Last, First)	State
1	Bucher-Kellogg Jennifer	Maryland
2	Findlay, Mary	
3	Hart, Heather	Colorado

Exhibit SS

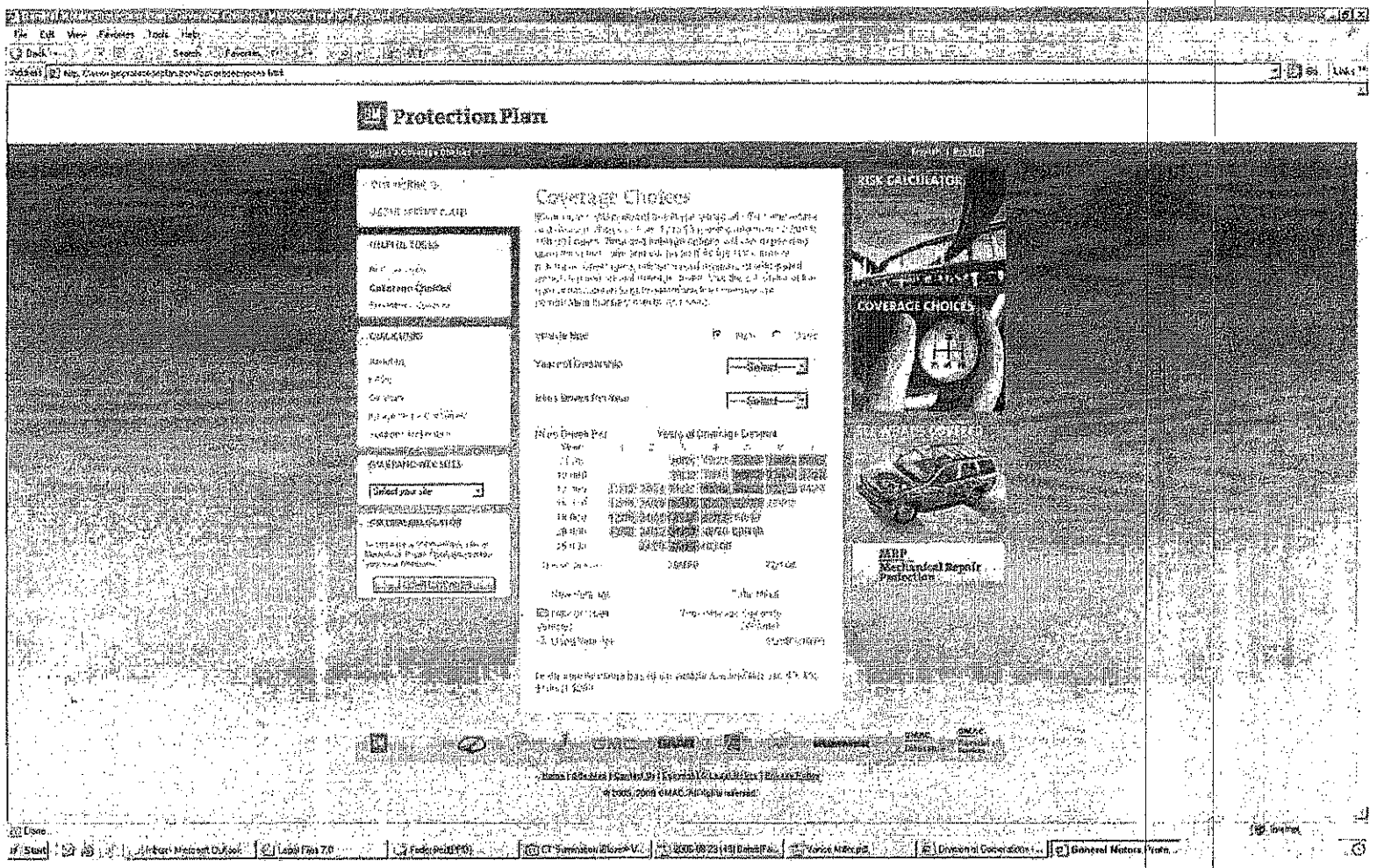

Protection Plan
Coverage Choices
RISK CALCULATOR
COVERAGE CHOICES
MRP
Mechanical Repair
Protection

Exhibit TT

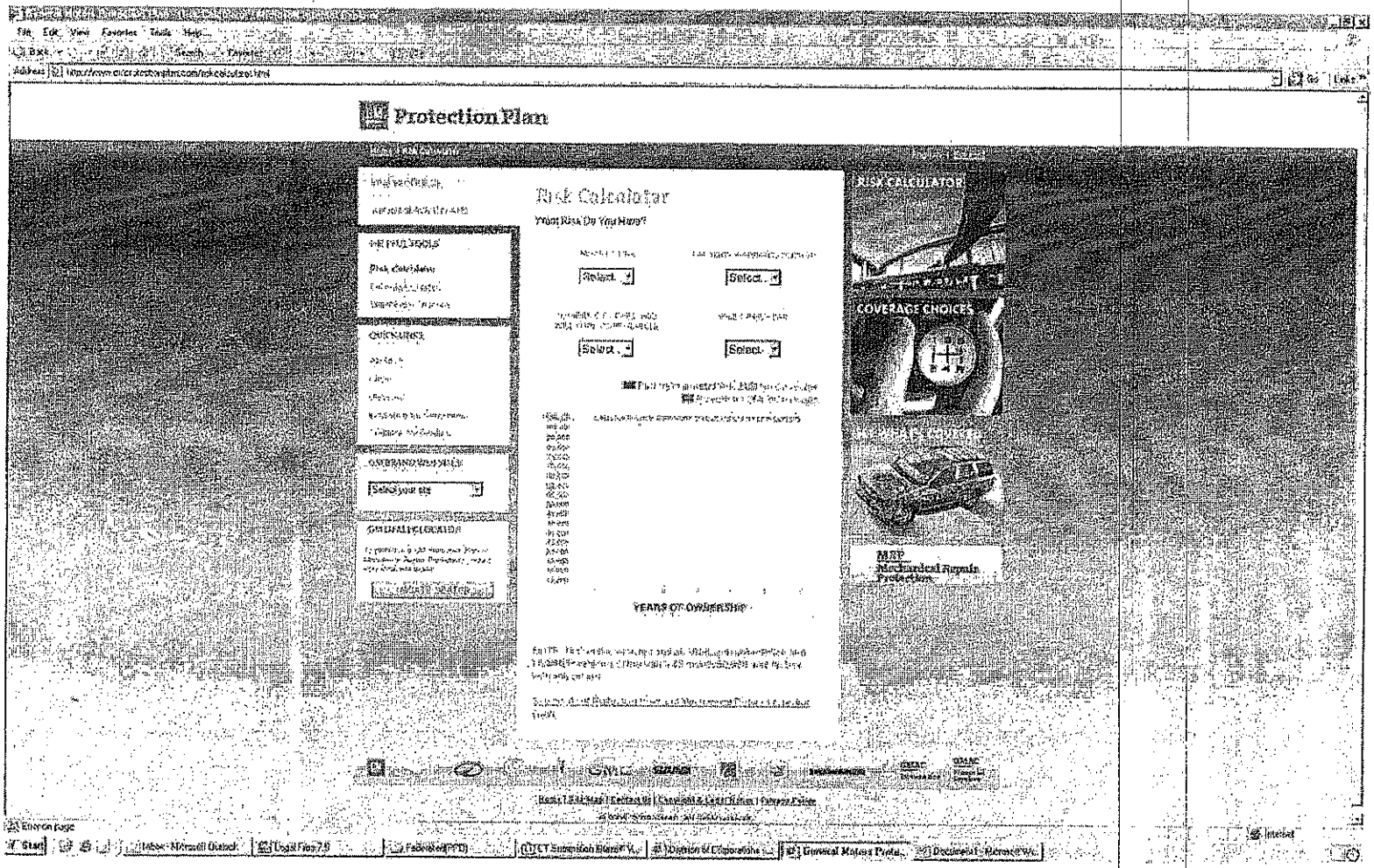

Protection Plan
Risk Calculator
COVERAGE CHOICES
MBP
Mechanical Repair
Protection

Exhibit TT

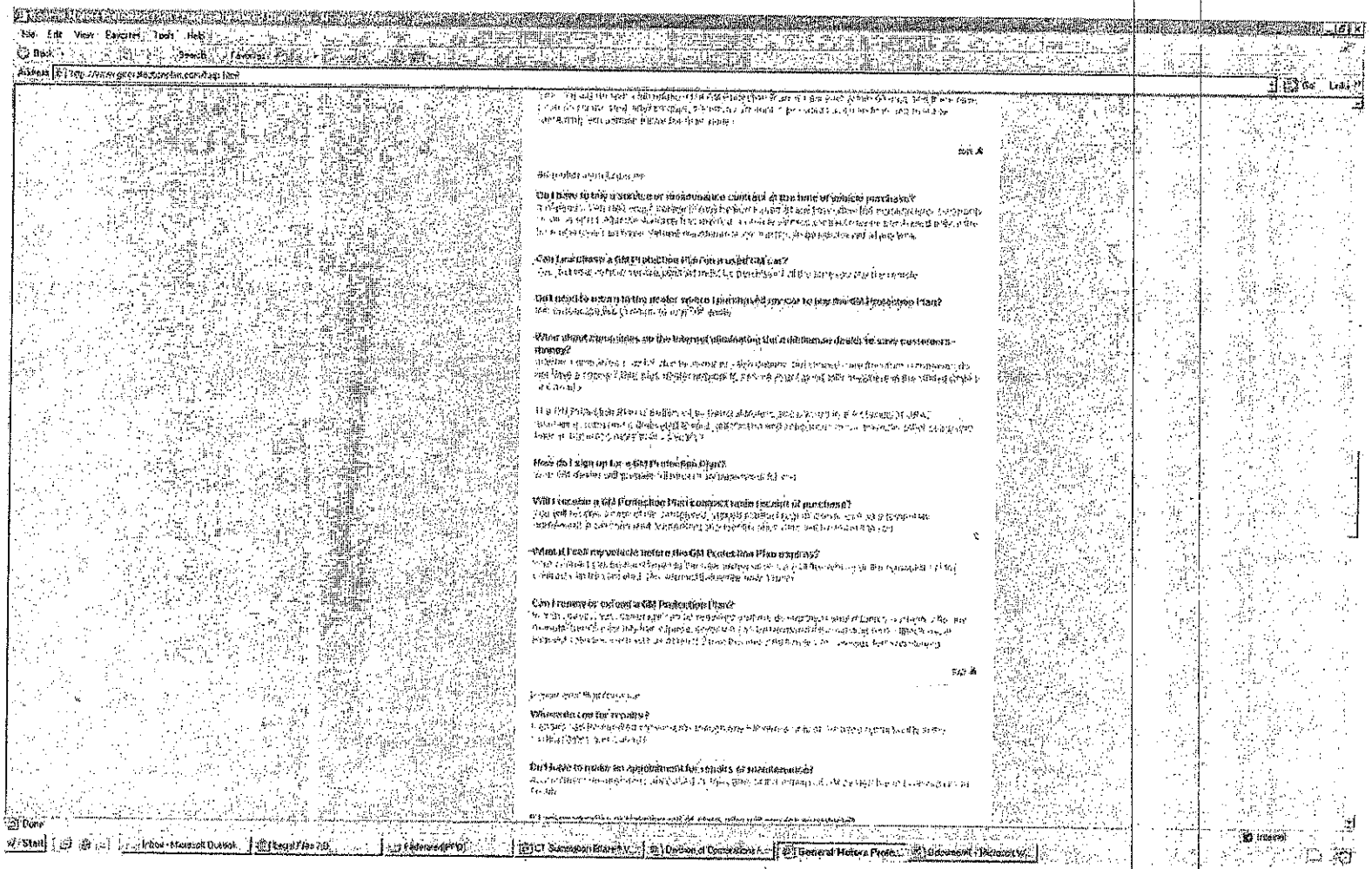


Exhibit TT

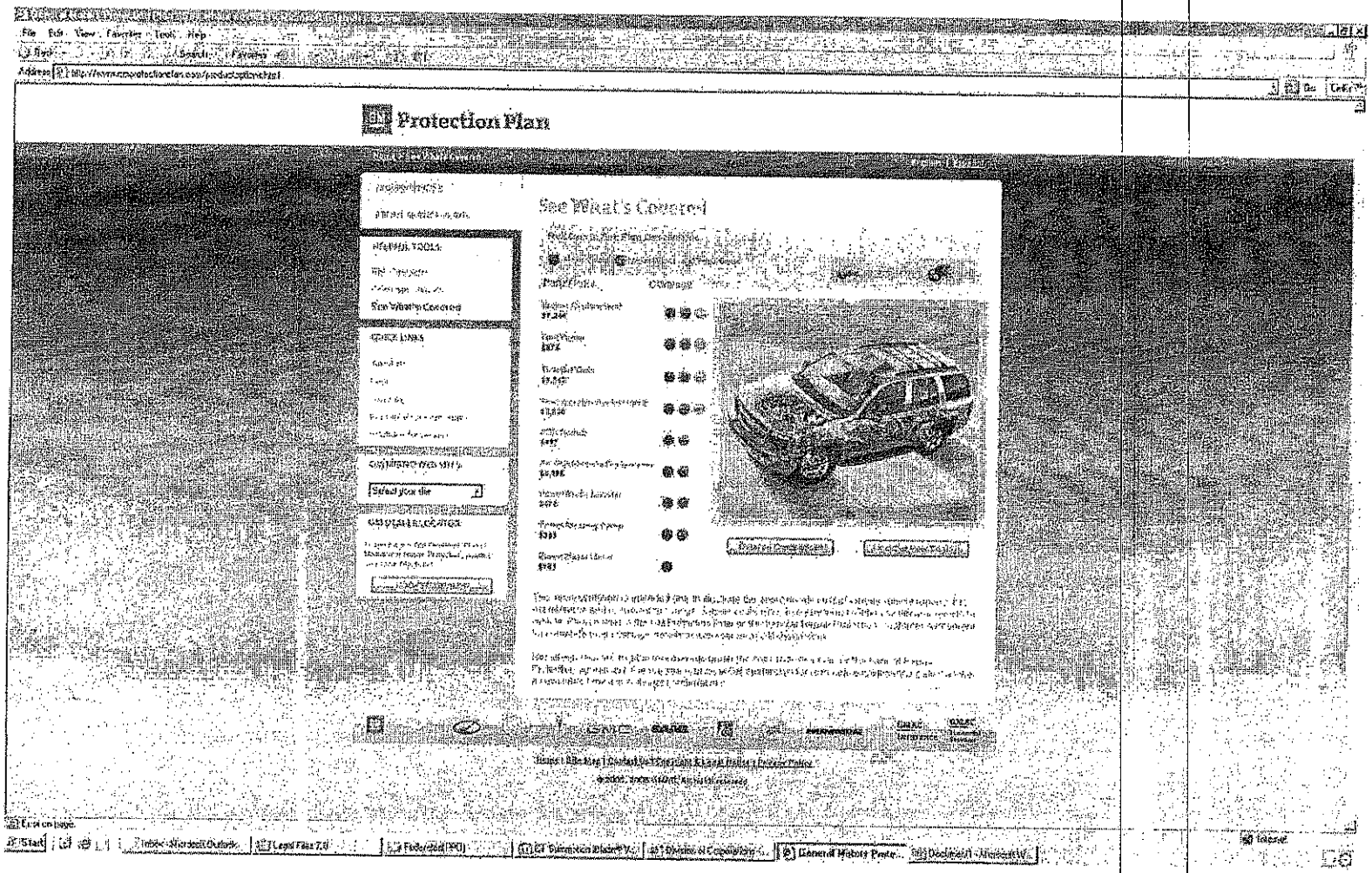


Exhibit TT

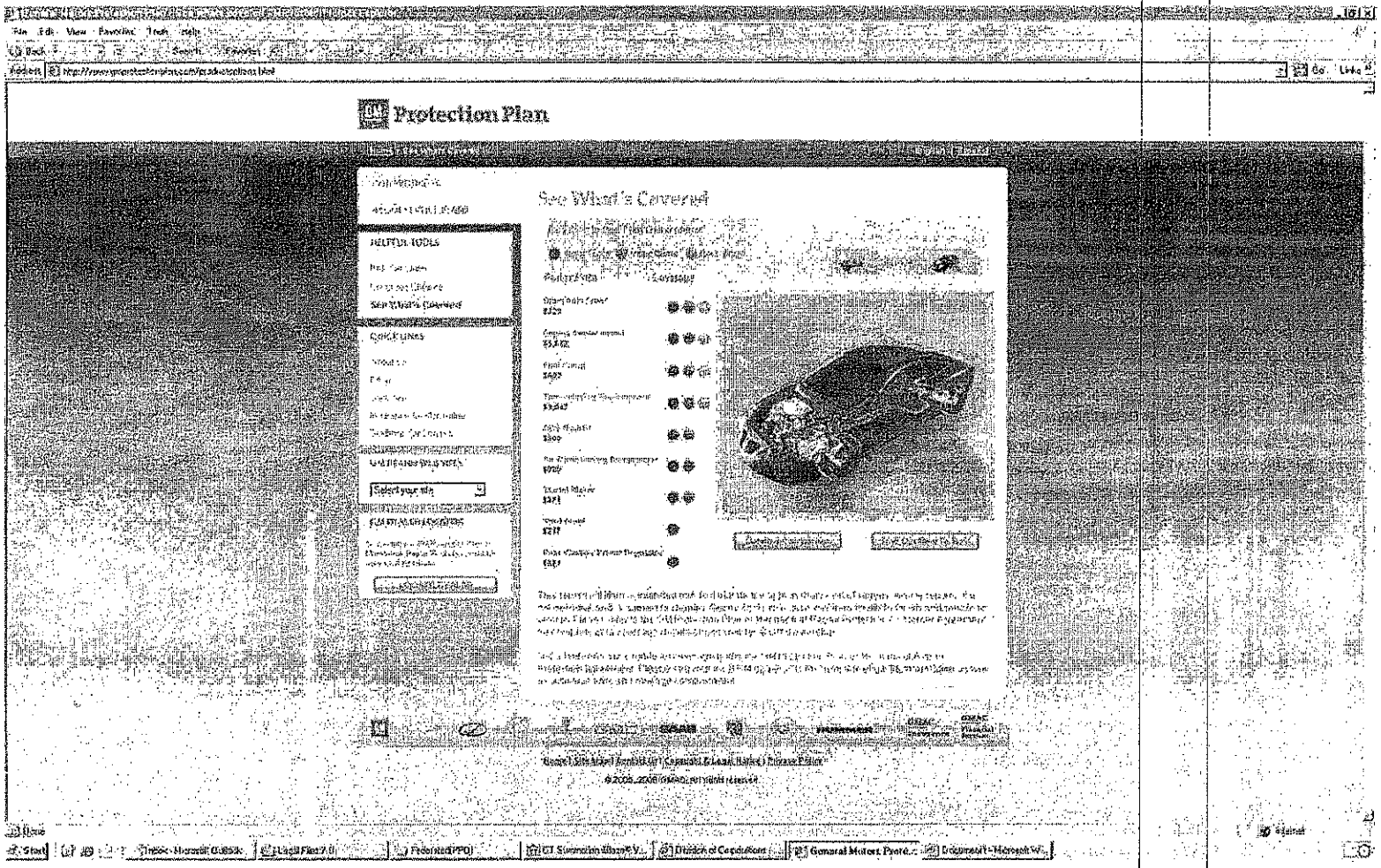


Exhibit TT

Exhibit UU to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

Exhibit VV to Be Filed Under Seal

Pursuant to Stipulation to File Exhibits to Memorandum in Support of Final Approval of Class Settlement Under Seal Pursuant to Protective Order, *Doc. 63*

EXHIBIT L
Part 7

I, Shannon Sinclair, hereby state:

I am over eighteen years of age and have personal knowledge of the facts stated herein.

I purchased my 2003 Saturn Vue used in February of 2006 from Saturn of Brunswick in North Brunswick, New Jersey.

In October of 2006, the VTi transmission failed and was replaced by Saturn of Brunswick under the extended warranty.

In August of 2008, and when the vehicle reached approximately 61,840 miles the vehicle began to act funny again. Saturn of Limerick told me that it was the way the vehicle was supposed to feel. Unsatisfied with this response, I took my 2003 Saturn Vue to Saturn of the Valley, and they stated that the transmission needed to be replaced. I called Saturn Corporate, and they agreed to replace the transmission at a cost to me of $1,564.52. Also, I paid $32 a day for a week on a rental vehicle while the VTi transmission on my 2003 Vue was being replaced.

On January 27, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

I feel that it is more than appropriate to have this Class Action Settlement. My experience with my 2003 Saturn Vue has been a complete nightmare. As I look back when I was buying the car and when the gentleman was trying to have me buy the extended warranty he asked me, "what if your transmission goes," that should have been a red flag. Replacing one transmission I could have almost overlooked, but when the second one broke less than two years later I think it is pathetic. I thought I was doing a good thing buying an American made car, but this has been proved otherwise in my eyes.

I am very happy with LakinChapman LLC. Class Counsel has gotten back to me in a timely manner. I am happy to see that Class Counsel got the settlement it got, and that they are moving forward with the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Shannon Sinclair

Dated: 2-20, 2009

Exhibit WW

I, Erin Sullivan, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue used from Saturn of Springfield in Springfield, Massachusetts with approximately 6,300 miles.

3. When the vehicle reached approximately 82,000 miles, the VTi transmission failed. Best Transmissions diagnosed a transmission failure, and quoted me $5,500 to replace the VTi transmission. Due to my current financial condition I am unable to afford the transmission replacement. My inoperable 2003 Saturn Vue has been sitting in the driveway for the last six months.

4. On January 29, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

5. The settlement gives me the means to fix my 2003 Saturn Vue that has been sitting in my driveway the last six months as I continue to make payments. I am absolutely happy with the help that the settlement provides. When I purchased my Saturn vehicle I was really wanting to purchase a vehicle manufactured in the U.S., and I definitely feel that I was taken advantage of. I am very discouraged in purchasing another Saturn product.

6. Class Counsel did a great job getting the settlement, and was able to provide me all the information I needed. It was also very nice to speak with a real person to help me through this settlement. I am absolutely happy with the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2/10, 2009

Erin K. Sullivan

Exhibit XX

I, Bruce Willix, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in 2003 from a Saturn dealership in Miami, Florida.

3. When the vehicle reached approximately 53,000 miles (still under the extended warranty), the VTi transmission failed. I paid approximately $4,000 for a non-GM affiliated repair shop to replace the transmission, and for the vehicle to be towed.

4. On April 25, 2008, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

5. Class Counsel notified me that my 2003 Saturn Vue was still under warranty. I then contacted GM, and was reimbursed the money I paid to replace the transmission.

6. Due to the information I received from Class Counsel I was able to get fully reimbursed for the transmission repairs. I believe that the settlement is great because not only will it reimburse people for past failures, but it puts a plan in place for future problems I may have with the VTi transmission in my 2003 Saturn Vue.

7. I fully support the whole settlement, and am thankful for the excellent service of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Bruce E Willix

Dated: 1/13, 2009

Exhibit YY

I, Bertha LoCurto, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2002 Saturn Vue used with 70,509 miles in 2008 through a private sale.

3. When the vehicle reached approximately 74,000 miles, the VTi transmission failed. The service department of Dave's Used Cars diagnosed a transmission failure. The service department of Dave's Used Cars replaced the VTi transmission at a cost to me of $4,150.

4. On January 26, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

5. I am very disappointed in the quality and workmanship of the Saturn Vue transmission. I feel that the transmission should last longer than it did. I bought this vehicle because my husband's employer took all company vehicles away from its employees. Five to six months later I was putting $4,150 into a rebuilt transmission. This was a lot of money for us to put out because we just bought the car six months earlier. We could really benefit from the recovery the settlement provides, and I support the recovery that the settlement provides to all others who have had and may have similar problems with the VTi transmission.

6. I am very grateful to the LakinChapman LLC law firm for standing up for the consumer. I know they put a lot of time and dedication in their efforts to protect us.

I declare under penalty of perjury that the foregoing is true and correct.

Bertha LoCurto

Dated: 2-6, 2009

Exhibit ZZ

I, Richard P. Courson, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue used from Integrity Auto Exchange in Winter Springs, Florida.

3. When the vehicle reached approximately 67,793 miles, the VTi transmission failed. Saturn of Gainesville diagnosed a transmission failure, and quoted me $5,700 to fix the transmission. I was able to negotiate down the cost of the transmission replacement to a cost of $1,344.20 to me.

4. During the time that Saturn of Gainesville was making the transmission related repairs to my 2003 Saturn Vue, I paid $105 for a rental vehicle.

5. On January 15, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

6. I have owned several Saturn vehicles since 1994. The problems with the VTi transmission has left a very bitter taste in my mouth, and makes me very angry considering how good of a Saturn owner I have been. I take the 2003 Saturn Vue in approximately every 3,000 miles for maintenance, and all repairs that have been made since I have owned the vehicle have been at a Saturn repair shop. I do not think I would purchase another Saturn product. I am happy about the settlement, and I feel much more secure going forward because of the settlement.

7. I am very happy with the settlement that Class Counsel was able to negotiate, and I support it. The relief that the settlement provides for the past expenses is great, and I am happy about the future coverage for the VTi transmission.

I declare under penalty of perjury that the foregoing is true and correct.

Richard P. Courson

Dated: 9 February, 2009

Exhibit AAA

I, Joy Broggi, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2004 Saturn Vue new from Saturn of Metairie in Metairie, Louisiana.

3. During the initial warranty period Saturn of Metairie and Saturn of Baton Rouge performed several transmission related repairs on my vehicle. In one instance, I paid Saturn of Baton Rouge $300 for a transmission flush among other transmission related repairs.

4. When the vehicle reached approximately 85,000 miles, the VTi transmission failed. Saturn of Metairie diagnosed a transmission failure, and quoted me $7,000 to fix the transmission. Due to the high cost, I decided to get another estimate from Cottman Transmission. Cottman Transmission quoted me, and replaced the VTi transmission at a cost to me of $4,500.

5. During the two weeks or so the transmission related repairs to my 2004 Saturn Vue were being made by Cottman Transmission I paid $350.83 for rental vehicles.

6. On January 16, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2004 Saturn Vue and its transmission.

7. I am a Hurricane Katrina victim. At the time that I needed to pay to replace the VTi transmission in my 2004 Saturn Vue, I was just getting my head above water from the financial status I was in from Hurricane Katrina. Once my transmission failed and I was told it would cost me over $4,500 to replace the transmission, I felt financially drained and emotionally spent. There were times I would just cry about the financial and emotional stress I was under due to money needed to replace the transmission. The settlement provides great financial relief, and I am ecstatic about the settlement.

8. My contact with Class Counsel has been great. Class Counsel responded in a timely manner, and even contacted me on the weekend. I am ecstatic that Class Counsel was able to get the financial relief that it got through the settlement. I cannot thank them enough.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Feb 6, 2009 Joy A Broggi

Exhibit BBB

I, Joanna Law, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2004 Saturn Ion used with approximately 20,000 miles from Elkin Chrysler in Elkin, North Carolina.

3. On the way back from visiting my son in California, and when my 2004 Saturn Ion reached approximately 62,000 miles the VTi transmission failed in New Mexico. I paid Slicks Automotive $3,000 to tow my vehicle back to my home in North Carolina. After I got home, Saturn of Charlotte in Charlotte, North Carolina diagnosed a transmission failure and quoted me $6,000 to replace the transmission. I sought other quotes to replace the transmission, and all were more than I was able to spend considering I just spent $3,000 to tow the vehicle from New Mexico. Also, even though my vehicle was under the extended 5 year/75,000 mile warranty, Saturn refused to pay any portion of the transmission replacement. Since I was unable to pay for the transmission replacement I sold the vehicle to a junk yard for $800.

4. On January 16, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

5. I am disabled, and I have two disabled children. When I purchased my 2004 Saturn Ion, I paid all the money I had for what I thought would be a reliable vehicle. All transmission problems associated with my 2004 Saturn Ion really frustrated me. I support the settlement for the relief it provides the class. I will never buy a Saturn again.

6. LakinChapman LLC provided a good settlement to the class, and during our conversations with them they have been very helpful.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2-10, 2009

Exhibit CCC

I, Melody Walthour, hereby state:

I am over eighteen years of age and have personal knowledge of the facts stated herein:

I live in Milford, Virginia. On approximately later part of October or early November of 2006 I purchased my 2003 Saturn Vue from Radley Chevrolet dealership in Fredricksburg, Virginia. My Vue was used and had approximately 4600 miles on it when purchased. My Vue has been in and out of the shop about 4 times since the date of purchase for transmission problems.

The first time I took it in was to Radley Chevrolet, was approximately 4 months after the purchased of the Saturn. They didn't have anyone experienced on knowing that the exact problem was at the time so across the street from them was the Saturn dealership of Fredricksburg. I took it over to them and they kept the vehicle over night; which was an inconvenience to me; the following day they said they had to do repairs on the transmission and they (Saturn Dealership) said they would have it fixed within 4 days. A week later they had the Vue repaired. I asked the gentleman at Saturn what seemed to be the problem. He said that on this particular year of Vue that they were experiencing problems with the transmission and that they had rebuilt my transmission in my Vue.

About 2 weeks later I bought the Vue back and insisted that the Vue still wasn't driving appropriately. This time they (Saturn dealership) kept the Vue for 2 weeks. The gentleman at the garage department said they had to order parts. The parts they had to order were a whole new transmission. From the knowledge of the gentleman in charge of the garage department; he told me that when they rebuilt the transmission they didn't replace the pump in the transmission and that was one of the parts that went bad. He informed me that replacing the pump wasn't necessary. But now it is necessary so instead of rebuilding it again they were just going to replace the whole transmission. After 2 weeks of waiting, I received my Vue back and approximately 6 months later I brought the Vue in again to the dealership for transmission problems, this time they didn't exactly tell me what was wrong just that they had did some more repairs on the transmission.

On approximately, September of 2008, my Saturn was in the shop, "again", and for repairs on the transmission. This time I was so heart broken and so discouraged over the ordeal I have been having with this Vue that I had asked the salesman in the Saturn dealership if there was any type of way I could trade this Vue in for another year other than 2002 – 2004. The salesman tried but with no success. He said that at the state that the economy is in that there weren't really any banks that were giving out any loans at that particular time with a good interest rate. My personal opinion is that the dealership

Exhibit DDD

didn't want to be bothered with this Vue and the state it was in with all the repairs that have been done it and seems to be continually being worked on.

The Saturn dealership also said that if I was to bring my Vue in again and I may think that it may need work done on the transmission that there would be an out of pocket expense to me of $100.00 to put the vehicle on the machine to test the transmission.

With all my discouragements I wrote a letter to the Saturn Corporation in Tennessee. The letter was forwarded to a young lady which she said and I quote," There is nothing we can do for you at this time and that in the future as long as all parts and labor are on warranty that you shouldn't have any problems."

What happens when the warranty does run out? How much does one have to pay for a vehicle that even the head corporation doesn't even want to take as a trade in? I am not asking for the world, just put me into another year of a Saturn Vue that doesn't have to be worked on the transmission every six months or so. I am just an average American trying to make it here in Virginia. I work hard and pay my way through college and can't afford the time of inconvenience of my Vue being in and out the shop like this. For me paying $345.00 a month on a vehicle I am highly disappointed in that wishing I have never even bought.

I have all documentation and every work order that was done on the Vue at the Saturn dealership of Fredricksburg. I fear now that my vehicle has to go back in the shop now but if I am wrong than I would have to pay the $100.00 to put it on the machine to test the transmission and I don't have the money right now.

Each time the vehicle was in the shop being repaired I was personally responsible for renting my own vehicle and then waiting almost 3 to 4 months later to get reimburse. The fee of reimbursement wasn't the full amount but something is better than nothing but I had to borrow the money from friends and relatives to get the rent a car because I didn't have the money to spare at the given time.

When does the Saturn dealership think through all of this that enough is just too much? Sometimes it is all about the money and sometimes it is all about the principle of things and just the pure inconvenience and not even trying to work with someone that really loves their type of vehicles but after all this ordeal I seriously doubt I would ever buy another one again.

I fully support the settlement, and the work that LakinChapman did in obtaining the settlement.

B. Woody L. Waltham

Dated Feb. 14, 2009

Exhibit DDD

I, Fernando Garcia, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2004 Saturn Ion used with approximately 19,000 miles from Bill Wright Toyota in Bakersfield, California.

3. When the vehicle reached approximately 82,728 miles, the VTi transmission failed. Shafter Transmission and Smog in Shafter, California diagnosed a transmission failure, and replaced the VTi transmission at a cost to me of $5,819.35

4. On January 19, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2002 Saturn Vue and its transmission.

5. I think the settlement is fair, and I am happy about the relief that it provides to me and other members of the class. I had to take out a substantial loan to afford the transmission repairs. I have owned vehicles in the past that have lasted me a long time, and have never had to replace a transmission. A transmission on a vehicle should not go out this quickly.

6. I am happy and grateful for the settlement that LakinChapman was able to reach with GM, and the relief that it provides to me and others.

I declare under penalty of perjury that the foregoing is true and correct.

Fernando Garcia

Dated: 02/9/09, 2009

Exhibit EEE

I, Sharon Blackburn, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue used in September of 2004 from Autoland in California.

3. During the initial warranty period Saturn of Whittier and Saturn of Cerritos performed several transmission related repairs on my vehicle that were covered under the warranty.

4. When the vehicle reached approximately 77,956 miles, the VTi transmission failed. I paid $98.00 to Saturn of Torrance to diagnose the transmission failure. Not satisfied with the services Saturn had provided in past, I went to Performance Transmissions to replace the transmission. Performance Transmissions replaced the VTi transmission at a cost to me of $3,089.75.

5. During the various transmission related repairs to my 2003 Saturn Vue I paid $424.76 for rental vehicles. I also paid $75 for the vehicle to be towed due to the failed VTi transmission.

6. On February 2, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

7. I am very glad there is a settlement. I had felt all along that Saturn knew there was a big problem with the transmission and were hoping that the problem would go away. Saturn had an image of taking care of their customers, and I was not taken care of and will never own a Saturn or recommend buying one to anyone.

8. I fully support the whole settlement, and am pleased with the work of Class Counsel. All questions to Class Counsel were answered quickly, and everyone I have contacted has been very helpful.

I declare under penalty of perjury that the foregoing is true and correct.

Sharon M

Dated: Feb 4, 2009

Exhibit FFF

I, Tom Gernand, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2004 Saturn Vue used in February of 2004 from Saturn of Katy Freeway with 15,000 miles.

3. During the initial warranty period (3yr/36,000 miles) and the extended warranty period (5yr/75,000 miles), Saturn of Katy Freeway performed several transmission related repairs on my vehicle that were covered under the warranties. Repairs to my transmission that were performed right before 75,000 miles were covered under warranty, but I had to rent a vehicle at a cost to me of $20 a day.

4. When the vehicle reached approximately 106,000 miles, the VTi transmission failed again. Saturn of Katy Freeway diagnosed a transmission failure, and the transmission was replaced for $4,683.44. GM paid 75% ($3,512.58), and I covered the 25% ($1,170.836) difference. While my 2004 Saturn Vue was being repaired I paid $761.87 for a rental car for 17 days.

5. On January 22, 2009, I received the Notice of Class Action Settlement, and I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2004 Saturn Vue and its transmission.

6. I appreciate the opportunity to share this information after being notified of the pending class action lawsuit because I think GM has treated this situation unfairly and with a lack of regard for the consumer. After doing some investigation on my own, and after receiving the notification, I feel it is apparent that GM has known of this defective transmission for some time but never issued a recall or notice to any of its consumers in an effort to fix the problem once and for all.

7. I fully support the whole settlement, and am very satisfied with the service of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Feb. 4, 2009

Exhibit GGG

I, Ray Richey, hereby state:

I am over eighteen years of age and have personal knowledge of the facts stated herein.

I purchased my 2003 Saturn Vue new in 2003 from a Saturn dealership in Fresno, California. I had repeated problems with the transmission during the warranty period.

During and after the warranty period, I purchased several transmission fluid changes at costs ranging from $10.74-$27.60.

When the vehicle reached approximately 108,091 miles, the Saturn dealership in Fresno suggested that the VTi transmission needed to be serviced or the transmission needed to be replaced. I paid $380.97 for Saturn of Fresno to service the VTi transmission. On the way home from Saturn of Fresno the transmission failed. I paid $64.00 to have my 2003 Saturn Vue towed to A.R. Transmission, Inc. A.R. Transmission, Inc. diagnosed a transmission failure.

Saturn of Fresno prepared a written repair estimate of $ 4,882.47 to replace the VTi transmission. A.R. Transmission, Inc. quoted me $4,574.07 to replace the transmission. Not feeling satisfied with the service I have received from Saturn of Fresno, I decided to have A.R. Transmission, Inc. replace the transmission at a cost of $4,574.04 to me.

On December 13, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

I believe that the settlement provides fantastic relief to

Exhibit HHH

compensate fellow Saturn owners for past problems. I no longer own my 2003 Saturn Vue, but I believe that the settlement provides great protection in the event of future problems.

I fully support the whole settlement, and am thankful for all of the fantastic efforts of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Ray C. Richey

Ray C. Richey

Jan 27, 2009

I, Cory Deal, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2003 Saturn Vue new in 2003 from a Saturn dealership in Santa Fe, New Mexico. I had repeated problems with the transmission during the warranty period.

3. When the vehicle reached approximately 89,412 miles, the Saturn dealership in Santa Fe diagnosed a transmission failure. I paid $2,7990.80 to replace the transmission, and $440.31 for a rental car while the vehicle was being worked on.

4. When the vehicle reached approximately 105,049 miles, the vehicle suddenly lost acceleration and had to be towed to a repair shop. The repair shop informed me that the loss of acceleration was due to a overheated transmission, and that the transmission did not need to be replaced. I paid $94.06 for towing expenses, and $24.50 for a rental car.

5. When the vehicle reached approximately 118,156 miles, the vehicle was experiencing transmission problems in the form of a grinding noise. Saturn of Santa Fe diagnosed a transmission failure, and suggested that I replace the transmission. Instead of replacing the transmission, I told Saturn of Santa Fe to perform the minimum service so that I could get rid of the vehicle. I paid $230.12 for repairs, and $683.58 for a rental car.

6. On June 26, 2007, I contacted The Lakin Law Firm, P.C. ("Class Counsel") about the problems that I was having with my 2003 Saturn Vue and its transmission.

7. I believe that the settlement provides fantastic relief to compensate fellow Saturn owners for past problems. I no longer own my 2003 Saturn Vue, but I believe that the settlement provides great protection in the event of future problems.

8. I fully support the whole settlement, and am thankful for all of the fantastic efforts of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Cory Deal

Dated: January 16, 2009

Exhibit III

I, Christopher Lewis, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2004 Saturn Ion new in June of 2005 from Saturn of Puyallup.

3. When the vehicle reached approximately 104,000 miles, the VTi transmission failed. I had the 2004 Saturn Ion towed to Saturn of Puyallup at a cost to me of $25. Saturn of Puyallup diagnosed a transmission failure, and quoted me a price of $5,500 to replace the transmission. Not satisfied with the quote that Saturn of Puyallup provided I called Pro Automotive. Pro Automotive replace the VTi transmission on my 2004 Saturn Ion at a cost to me of $3,427.

4. On January 21, 2009, I contacted LakinChapman LLC ("Class Counsel") about the problems that I was having with my 2004 Saturn Ion and its transmission.

5. I am happy with the money that the settlement provides me for the out of pocket expenses I had for replacing the VTi transmission on my 2004 Saturn Ion, and for the future relief. I had to borrow money to replace a transmission on a vehicle I was still paying money on. Overall I have had numerous problems with my 2004 Saturn Ion, and based on my experience with this vehicle I will never buy a Saturn product again. The VTi transmission on my 2004 Saturn Ion has not only cost me a lot of money, but it has also been a source of great aggravation.

6. I am happy with the work of LakinChapman LLC, and the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2/18/09, 2009

Exhibit JJJ

Tana Burton

From:	caed_cmecf_helpdesk@caed.uscourts.gov
Sent:	Friday, February 27, 2009 3:32 PM
To:	caed_cmecf_nef@caed.uscourts.gov
Subject:	Activity in Case 2:07-cv-02142-WBS-GGH Castillo et al v. General Motors Corporation Memorandum in Support of Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered by Schmieder PHV, Robert on 2/27/2009 at 1:31 PM PST and filed on 2/27/2009

Case Name:	Castillo et al v. General Motors Corporation
Case Number:	2:07-cv-2142
Filer:	Kelly Castillo
	Nichole Brown
	Barbara Glisson
	Brenda Alixis Digiandomenico
	Stanley Ozarowski
	Donna Santi
	Valerie Evans
Document Number:	67

Docket Text:
MEMORANDUM by Stanley Ozarowski, Donna Santi, Kelly Castillo, Nichole Brown, Barbara Glisson, Brenda Alixis Digiandomenico, Valerie Evans. *In Support of Final Approval of Class Settlement* (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Exhibit G, # (8) Exhibit H, # (9) Exhibit I, # (10) Exhibit J, # (11) Exhibit K, # (12) Exhibit L, # (13) Exhibit M, # (14) Exhibit N, # (15) Exhibit O, # (16) Exhibit P, # (17) Exhibit Q, # (18) Exhibit R, # (19) Exhibit S, # (20) Exhibit T, # (21) Exhibit U, # (22) Exhibit V, # (23) Exhibit W, # (24) Exhibit X, # (25) Exhibit Y, # (26) Exhibit Z, # (27) Exhibit AA, # (28) Exhibit BB, # (29) Exhibit CC, # (30) Exhibit DD, # (31) Exhibit EE, # (32) Exhibit FF, # (33) Exhibit GG, # (34) Exhibit HH, # (35) Exhibit II, # (36) Exhibit JJ, # (37) Exhibit KK, # (38) Exhibit LL, # (39) Exhibit MM, # (40) Exhibit NN, # (41) Exhibit OO, # (42) Exhibit PP, # (43) Exhibit QQ, # (44) Exhibit RR, # (45) Exhibit SS, # (46) Exhibit TT, # (47) Exhibit UU, # (48) Exhibit VV, # (49) Exhibit WW, # (50) Exhibit XX, # (51) Exhibit YY, # (52) Exhibit ZZ, # (53) Exhibit AAA, # (54)

Exhibit BBB, # (55) Exhibit CCC, # (56) Exhibit DDD, # (57) Exhibit EEE, # (58) Exhibit FFF, # (59) Exhibit GGG, # (60) Exhibit HHH, # (61) Exhibit III, # (62) Exhibit JJJ)(Schmieder PHV, Robert)

2:07-cv-2142 Electronically filed documents will be served electronically to:

C Brooks Cutter bcutter@kcrlegal.com, kdonnel@kcrlegal.com, kgradwohl@kcrlegal.com, landerson@kcrlegal.com, vburnsworth@kcrlegal.com

Gregory Oxford goxford@icclawfirm.com, arobinson@icclawfirm.com

Mark L. Brown-PHV markb@lakinchapman.com, docket@lakinchapman.com, shawnb@lakinchapman.com

Robert W. Schmieder PHV , II robs@lakinchapman.com, docket@lakinchapman.com, mattc@lakinchapman.com, paulas@lakinchapman.com, tanab@lakinchapman.com

2:07-cv-2142 Electronically filed documents must be served conventionally by the filer to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-0] [b737140e31e1f5a905889864de5d8abf7c4a7eeaa9d7fd26b53c7c62ca61e40b86f 1c68b936b27f59b7b48ce8d4b9614657d4e484da34b55c37ed41f08fb7687]]
Document description: Exhibit A
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1] [213482a2643d52834914d1bb4acdfe5b641562bc0b95c37595c48b0f1edee6adb2d 18c2d784239ecfd757e97e6d572d025633901bbb035fcfddc20bd6cc43656]]
Document description: Exhibit B
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2] [6a848749402e2a5a6419370ad335bee76f560f89a6f07b4d4c5a27818fbda0502e9 9ead7b79b44522df99edfaf6b71f5c3ff869e58e064592fe51f7e2001a8d9]]
Document description: Exhibit C
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3] [a53ecd0983eb7a832746ab4c8ee2117e0a84e4e450a217321d2967cf610b56138d3 bfd03d6cf9020765e7fb5c6dea769e9c5a7931822f359ccef8506a85bf1b8]]
Document description: Exhibit D
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4] [368e9f35ceb9a0ff2e85a5b2698b49b7cc42844ee890827d654a3e3bc6d002dc520 a117f9281d74eb7199163551371121f053da9a71ce1df8297c16607222fca]]

Document description: Exhibit E
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
] [9f069505c9f6480b2f04e671d76e7d2eb881c08b175114e0439a3e9e895d693795d
4d732a3a4ae7101fa55bdd348e0104719bad2909963d0cf65db583474f863]]
Document description: Exhibit F
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-6
] [33c2b815d886803f9cc04bc0620d444de16096092000fef9026087ec0e145c62dc3
f0f0ff99b822a48a7de83f872db44e8e9051c93bf4b72ddb1b236d5b60c6e]]
Document description: Exhibit G
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-7
] [1ff67eddd796f65f37f42475b4f0da1ef7886e6ed92be1cac3664ff9dab0b4acedf
6926e5cab75e09b2123b4c5656eab44a8471c8a1d9864a7a6b467adcb31cc]]
Document description: Exhibit H
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-8
] [a4e7c7e2e7e938c6f81a4c37709ce3578861341ae0bd4b5a77a1eed04f15a38cfe0
5d13575696ab7b5803ae7ad1f741077fdb1c84b044b5772f32d05ea774fa5]]
Document description: Exhibit I
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-9
] [8bda3a507b80ae9818a0ed8ca7d00a86f590c141e09185a556a51cbe1f4baa5bda0
308603cc8975edd56a0d8e24704aba00748631463dbc4b67422edc888b5cf]]
Document description: Exhibit J
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
0] [6cebf85497b4c3803187424efb90d31f874bd9cf74f0845530e213db51f809b7cf
9f565cfdd2bc8613316d3cc8e37ead8f5f1c28a4a92f4f11105d3611c0fa54]]
Document description: Exhibit K
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
1] [4fbb339bc4881bf763b9a81678b85501787cc854a91f7e362a6827532012a899aa
4db1d13e4b7c5afc96dc1e3e9e80f1597ef860898a62f4145f66110dd3dd92]]
Document description: Exhibit L
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
2] [14a7925150d9adc70397f7a8660b3c58c6841b2c10988551b0dbf1520506c4958d
ee6a55029752b80527f219497584abdaa665b54f9509acd4ad3683fd2b2e20]]
Document description: Exhibit M
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
3] [5f06005b395b8d24fd41d122039b3da44f77424ce9cae371adb6f85c973dc8b716
34fbdc0c477385f1c964ec07563ec2f83817e62571eeef2e25e8d92bd085bd]]
Document description: Exhibit N
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
4] [2a895f3a3b219d2f3554fdd35d03b0eb36f99bf79b07a3f6d634cfcf70ff643293
e3ceb80cf0b78210b6a342dac1f7fb732bb9533d8f1e2a5aff251efa2b8761]]
Document description: Exhibit O
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
5] [8e6dd9a266ba47ad34f676a07dc40a10ac963b23b133446448739be48f8f88d2b2
991a0faccae25b1cf56d9debbfa40cc195042f26220fefeeeacf691e4b1545]]
Document description: Exhibit P
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
6] [7b015aabfee0cbf177145f80c132874357bd3c2013de99e3d851144cd8344aed5f
7f4c6a7b16e27e6dbd5a1615abb38eb34e09a346d2fb8410d92f2b3d728f96]]
Document description: Exhibit Q
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
7] [8f92c3905a803f59aa9fc7154caa6e32fe1ead9b9b28f2312d4f2e713d9c1e457c
496206dfde5a5f1a202c93ae3e857f74926c8aeb8d50862672e35b534f4ae1]]
Document description: Exhibit R
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
8] [7a1803a9dec3e31399e61d076036891d672188e8fedd3823bfaa6eebb8223cbd50
b791545025de11903c3b904d423d36d23ef5853428ab79f764ff63b9359c2a]]
Document description: Exhibit S
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-1
9] [6c6994ce8f7c44ed6a7ba83b121852d70ad9f14e3467014aa8c4ca8528e4a6ae90
05b470126296a9f15efc8fb97b28dde14c9e638cba65d4541829fcb5c91bde]]
Document description: Exhibit T
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
0] [c040b6a1d63c5b5a8d8be3299325fd0e218d803f7fbc6317cc1ea8cb9da6e451a8
d23f96d2014ca660a4b3fbddd809a66d8fce94c644e94ad6fa4d8e28e91bf0]]
Document description: Exhibit U
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
1] [26f67068b30b19b183d2c52a6e0556d882dfe2465a5db83e0e0ec11e915a52efb2
b8d3f03ef0e5f7fb58007e148ba7f6780dac78147f16fae43b1284014d9596]]

Document description: Exhibit V
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
2] [0d3c806e17c4a3781a5e9d92d1c46a780d767a069038bedccaa09a85eda3b7367c
5e854027e94bbb4ceae3871774a59e34240d43bc2d00b59b498f40c9a5bb57]]
Document description: Exhibit W
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
3] [19d49ffdcc963e3e408af28f4ca1eb88a713437b7522efb39b6cc271cd25cec314
80be180604335dcf3e07425f0f5ffdccbc123eec94753d90681f7f2db83299]]
Document description: Exhibit X
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
4] [38b9bc69429b3a532f42e541f1fc9b1363c87f1bbd78db70dcd1d0220e9d3a9d1a
70a7187080010eb3a0be58ca2699d477091850857766891e1020324243fb3f]]
Document description: Exhibit Y
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
5] [0a3f8d95d27cc0b5a81da298ec8a086536a814022d7b5bab76439635959e8a04b3
b9656a15ee65351e6c117bdbe6642b76eaaae9eeaedbaf626765b14cb20021]]
Document description: Exhibit Z
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
6] [1dc8d0de3089625590f034701a57133ce2c187642fd1b22e8b7bd57360287f68dd
9833c2e00b3d52a3bdc6adf0636ca6898a22a9546959a61721c358f98ecde4]]
Document description: Exhibit AA
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
7] [080dcddf5902ccd6c91bb85808f7dc74d2e0d5f7c6d07e4ffc959c2eb7086ad9d0
1d6036b5a482f8d00d8698cd7dd61ba874127414f2c9538bcd3e35f17b04cb]]
Document description: Exhibit BB
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
8] [1f7450616fdff8a59aaeffa08f1feb829560fe76b95409471bb918736f4db981d6
287d5acf99b2608e9d1df8ec9938dc6990498376f78508bf0a1bac105288a1]]
Document description: Exhibit CC
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-2
9] [495f1cd4399ad4a2b7172dca47de3245cdaba9d09e116adab05c55072e6687549c
ae139f57182bbed2283ac7e8ab7e9d657c9df8c2327e1340fe87576dd94058]]
Document description: Exhibit DD
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
0] [079bdc546810a064d04de6c9406d3ca68f00bdb6ec69efcd0da7d9b1359e532bbd
5a1ab647b6f548e2bb07af5894f3a7b059a83fd733fcfeefcfb25e8896b255]]
Document description: Exhibit EE
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
1] [98c86bbd4599766dfda1b6297aa4a734db785cdbea5a3ec0cabf5c55a74b5ef530
ea3be9b6f0f2f3a52b1ec8ead9e0351ab60c044e59319d082a687e71e75820]]
Document description: Exhibit FF
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
2] [5a0c3248b9eb47106bcb002c94cc1e7aced68cb74bdabfa9016de92a543b031382
cfe5e8d53e1e7833ebc38d0579c9cd05bc162001ac000c17c4589da2a6ec06]]
Document description: Exhibit GG
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
3] [a90c598dbec4eb5327aefee2c3692447ccbcc6c960cb9badcd5fa9ac6a1dd2b846
975fec9b6abbdbc2e9e29d7582f1206f11a6dc2e9d894e049bf1900844d7e8]]
Document description: Exhibit HH
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
4] [7a19a0a28e4b2e482ba78be3e0c7b1bed50b79eb9478bc00fbe6ee0c8d97bfdb38
2084b617e4735dc6e73a19cad979d5fefaec7e6d2b1830d7cd2c1aaeec8bc2]]
Document description: Exhibit II
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
5] [7d7e123f46918d828814527088db792927519ddefbb96bec22cf5302999125f610
81de260f2753cd79b30b4851dac8b89727595caa7b0801001b8e8fd1807a98]]
Document description: Exhibit JJ
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
6] [1a3a545323ca6c1b1c38481e4ad6d858861864aba56a320be74839928a8166a050
043a21a21f3aaa97b8ca7a2434e95aec0e078a909c376e53b8c7b86c3ab66e]]
Document description: Exhibit KK
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
7] [82b8cc43ba188bf2d7ad7afca69e56ac8452ca662a833d5340295837d642db423b
2f4349b66085d852c8b3b82c05f236820232af7fa25fe2e0daa7cfbc93661b]]
Document description: Exhibit LL
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
8] [767fca611478e5f1c225846dcaa1932afc2c9b97e387ff4e7b8f1269d59393ca0b
b04df06430e8a756a230149040271a4c19ca0fc1195b6c577812cebd37adfc]]

Document description: Exhibit MM
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-3
9] [62001e2f6523959bd2ad4ea65b9f948d878f122dfe4b5931bf1fa0af7c7bfddd69
1e5d2f961995bb761fd54d5c3c61e2c44438144927e22eaf98ad74d4e82abd]]
Document description: Exhibit NN
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
0] [0aea608f0a05a093297f2cde2a80a7f131d1c850f5495f394da87266d15a611e2e
6e263079fc6601f0c0586b66f3a02ef6d3e794951254ea5317581aa4a37fb9]]
Document description: Exhibit OO
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
1] [332ff835c1ffd8a5f2711bbf79f49da72be9aa559d06deb573d21e44821c2830f1
cb83d874e75d1eb99a842675bf517debdbc0912cfc32cda308cdf0352e17a3]]
Document description: Exhibit PP
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
2] [30e2757f6561d4bbe710157af2e476f5b9b9082c469d8916d5b9d6d023a5632dac
49d3562b274676a6448471f4bc0bba7eff24ec3ba3aa18d7c42bb010b38b06]]
Document description: Exhibit QQ
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
3] [760253b02fa73cdd31c5732c45669e2fa7ba62fcd731b577135aa716a0aa7318ed
c1a967d648774b83e562353cee4fbe8d567057077cd7d67122b0a218372ff1]]
Document description: Exhibit RR
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
4] [042b95e7a73e23543d2da23d615816b242291d3b95f86e089ce5ec8bf6ec26fce5
c0ef5c7ac4d58973fb7d3d055906ca49bdc64bd3c4ded5aa6743b468212d7a]]
Document description: Exhibit SS
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
5] [19e4da934fc8b902345666ca844cb97769c03dbeffb7ef8e8433ac1afa9ec192ad
3d30a68ff497cb6e4abbd64e63a0f8000197da84f7c494967ef9069b7d5d53]]
Document description: Exhibit TT
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
6] [0d9fc02cd3fb43197a0a133e4805eea56eeeb583ed94c24d3d8755ee2c4af35170
a8488b78c44e99b3f2091d4b496f5c21744d44605c00162448bcc0864ba23c]]
Document description: Exhibit UU
Original filename:n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
7] [af476162eba6df01f30abcb34b7e32de47d1ce2484e20ca568a6844749ce6ae01c
8d6c81e528e756cb44364a72710d8bbbc4a7c0ab06236b76da761cd04ea7bc]]
Document description: Exhibit VV
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
8] [8fef5afa530985d5d4ddf85a8dc96713bd0754b4d4dd469431bfc39493df3c713e
0c119d3ab48657683838da3ab703169dc1528968438af615241c850899b512]]
Document description: Exhibit WW
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-4
9] [1ffc236249baefa187fc5433f698bff546388ded4e233802c8f6f6f536f266fef8
10f487b758895cc725e13b72ca5a5d31084146ca599a47c05e01536d28c1de]]
Document description: Exhibit XX
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
0] [b133f2907d211c551921f22dd13c5aade364a2ac5aa7da7dc43590216e2060fb6b
c72dcc7be0e949911c37a251345b722cf741d7fbc8f32aeffe4770e783fd9d]]
Document description: Exhibit YY
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
1] [76e9214515565f4d04e3fe5a74cff342430febef0b6ef962e97a7d5e8df99dd7b4
c5294d1c1adbd0d13a95fee5f2e5092ca5cb8b616b9cd4e778601d61a32757]]
Document description: Exhibit ZZ
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
2] [781f61773735607cae258d332678894e9a4ca87cb67a36f6f37093736304c600dd
fbef468f595ccc0556c1a6bbb7f7c2343a30dc7b739160e51a6fc243233ca7]]
Document description: Exhibit AAA
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
3] [6c2b05512d76b866284ec7836983072e595e4b8906878d0891e7e43262f61fdd7b
d9ab79e4111057429b462adf8bc8713f9e0565eeca65095e4c348b63fcb2f3]]
Document description: Exhibit BBB
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
4] [22362b1f38a251aaf4dc86762d766703e7578860f75112653a8524a4a253f1cf50
6faa80af3a6684f54eb3163dbd931fe3ec60a5d15ae48a49a207efee4530a2]]
Document description: Exhibit CCC
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
5] [a7e83768824778a8dc6e8b20345e915d90f6a9bbd8ec9820a3067616c187bb3e63
a5888d9612799f07a2b1cf3581cac16dc07e5d15ac13842ef259ab5417b26a]]

Document description: Exhibit DDD
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
6] [7ac1ac7c2981e0f0f43960d4e8fe2ac5154cebc12524ce3c59da100e2c84d71fbf
088586780d6c5a9e6e0a498f810877961279146098 2ce55ed4a16f35cb51e7]]
Document description: Exhibit EEE
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
7] [52c3007579f935e9db419553459cad707ec50f6ebca6b1bd1c156b7a86cd3c5fd2
efa204710fac95b47c9a6ffd7ddbb996c8a49091612aeba7df101e9a0a8340]]
Document description: Exhibit FFF
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
8] [153a31738c093832cf7552941b15a02824046548b27e9fc0be16b9a4cb431b25e3
43f3ee0975f7953eb83bf0e0531af4e477a5585f1bfd84f79d058658c64e37]]
Document description: Exhibit GGG
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-5
9] [27100dc142e3fe65b53eb11adab990bda55d3b756d6fe89d34bf8e65e43466689e
e8de3bdbf6e5240b8252e6278537c6584275f5206a3b2f9d32ba7f1269db52]]
Document description: Exhibit HHH
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-6
0] [3addffce586fe409929281d07d2ece2932c1add5df7c94c6968041686f83c67df
c5146027833a8d7cf72e4813ccb111712e25fb14f053cb0d726821daebc1a5]]
Document description: Exhibit III
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-6
1] [91a89157ac638390b7b114d284df9c0af3fd653db75eaf9cdbad3a7c237420786c
5b901c938a7a1e28b187b4a2abecb7bd988299fe4ddcc44ad00f58323ebf8e]]
Document description: Exhibit JJJ
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1064943537 [Date=2/27/2009] [FileNumber=2888336-6
2] [841b21f1e43d6c1fb086e5fb6a96799d9972c24d08ebac363dd8fc8e4ac8901abf
71d2368d711146c6eb4cf3dc41b483e361a04df761b1135666ad0e8d83da32]]

EXHIBIT M

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-_____ (___)**
Debtors.	:	**(Jointly Administered)**

MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AUTHORIZING DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CUSTOMERS, DEALERS, AND TRADE CUSTOMERS AND TO OTHERWISE CONTINUE WARRANTY, CREDIT CARD, OTHER CUSTOMER, DEALER, AND TRADE CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

General Motors Corporation ("GM") and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), submit this Motion for authority to (a) fully honor and continue their warranty programs and (b) fully honor and continue certain prepetition customer programs. In support of this Motion, the Debtors respectfully represent as follows:

Background

1. On the date hereof (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11, United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors' committee has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

General Motors' Businesses

3. For over one hundred years, GM, together with its approximately 463 direct and indirect wholly-owned subsidiaries (collectively, "General Motors" or the "Company"), has been a major component of the U.S. manufacturing and industrial base, as well as the market leader in the automotive industry. The Company's brands have been the standard bearer in the development of the American automotive industry, having produced some of the most striking and memorable automotive designs, including: Corvette, Riviera, and Eldorado. Over many years, the Company has supplied one in five vehicles sold in the United States. It is the largest original equipment manufacturer ("OEM") in the country and the second largest in the world. General Motors' highly-skilled engineering and development personnel also designed and manufactured the first lunar roving vehicle driven on the moon. Today, the Company continues as a leading global technology innovator. Currently, it is setting the automotive industry standard for "green" manufacturing methods.

4. William C. Durant founded General Motors in 1908 to implement his vision of one company growing through the creation and management of multiple brands. General Motors began as a holding company for Buick Motor Company, and, by 1916, the Company's brands included Chevrolet, Pontiac (then known as Oakland), GMC, Oldsmobile, and Cadillac. Under Mr. Durant's successor, Alfred P. Sloan, Jr., General Motors adopted the groundbreaking strategy of "a car for every purse and purpose," which revolutionized the automotive market by dividing it into distinct price segments, ranging from low-priced to luxury. Based on that strategy, the Company proceeded to build an automotive manufacturing giant offering distinctive brands and models for each market segment.

5. Over the past century, the Company grew into a worldwide leader in products and services related to the development, manufacture, and marketing of cars and trucks under various brands, including: Buick, Cadillac, Chevrolet, GMC, Daewoo, Holden, HUMMER, Opel, Pontiac, Saab,[1] Saturn, Vauxhall, and Wuling. The Company has produced nearly 450,000,000 vehicles globally and operates in virtually every country in the world. The recent severe economic downturn has had an unprecedented impact on the global automotive industry. Nevertheless, particularly in the United States, the automotive industry remains a driving force of the economy. It employs one in ten American workers and is one of the largest purchasers of U.S.-manufactured steel, aluminum, iron, copper, plastics, rubber, and electronic and computer chips. Almost 4% of the United States gross domestic product, and nearly 10% of U.S. industrial production by value, are related to the automotive industry.

[1] As a result of the global economic crisis and its effect in the automotive industry, Saab commenced reorganization proceedings in Sweden in February 2009.

6. GMAC LLC ("GMAC") is a global finance company that provides a range of financial services, including customer vehicle financing to the Company's customers and automotive dealerships and other commercial financing to the Company's dealers.

7. The Company's automotive operations include four automotive segments – GM North America, GM Europe, GM Latin America/Africa/Mid-East, and GM Asia Pacific – each of which functions as independent business units with coordinated product development and functional support. Each geographic region has its own management team, subject to oversight by the Company. Substantially all of General Motors' worldwide car and truck deliveries (totaling 8.4 million in 2008) are marketed through retail dealers in North America and through distributors and dealers outside North America, most of which are independently owned. In addition to the products sold to dealers for consumer retail sales, General Motors sells cars and trucks to fleet customers, including rental car companies, commercial fleet companies, leasing companies, and governmental units.

8. As of March 31, 2009, General Motors employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried employees. In the United States, approximately 62,000 (68%) of the employees were represented by unions. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") represents the largest portion of General Motors' U.S. unionized employees (totaling approximately 61,000 employees).

9. As of March 31, 2009, General Motors had consolidated global recorded assets and liabilities of approximately $82,290,000,000 and $172,810,000,000, respectively. Global revenues recorded for fiscal year 2008 aggregated approximately $150 billion.

The Economic Downturn and the U.S. Treasury Loan

10. In 2008, the Company was confronted by the worst economic downturn and credit market conditions since the Great Depression of the 1930s. Consumers were faced with illiquid credit markets, rising unemployment, declining incomes and home values, and volatile fuel prices.

11. This economic turmoil resulted in significant financial stress on the automotive industry. In the last quarter of 2008, new vehicle sales in the United States plummeted to their lowest per capita levels in fifty years. The Company's revenues fell precipitously, thereby draining liquidity that, one year prior, had been considered adequate to fund operations. As a result of the impending liquidity crisis, the Company was compelled to seek financial assistance, on a secured basis, from the federal government in order to sustain the Company's operations and avoid the potential for systemic failure throughout the domestic automotive industry, with an attendant effect on hundreds of thousands of jobs and the sequential shutdown of numerous ancillary businesses.

12. The federal government recognized the potentially devastating negative effect of a GM failure on the U.S. economy. On December 31, 2008, GM and the United States Department of the Treasury (the "U.S. Treasury") entered into an agreement (the "U.S. Treasury Loan Agreement") that provided GM with emergency financing of up to $13.4 billion pursuant to a secured term loan facility (the "U.S. Treasury Facility"). A number of the Company's domestic subsidiaries guaranteed GM's obligations under the U.S. Treasury Facility and also guaranteed each of the other guarantors' obligations that were entered into concurrently with the U.S. Treasury Facility. The U.S. Treasury Facility is secured by a first priority lien on and security interest in substantially all the assets of GM and each of the guarantors that were previously unencumbered, as well as a junior priority lien on encumbered assets, subject to

certain exceptions. The U.S. Treasury Facility is also collaterally secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, subject to certain exceptions.

13. The U.S. Treasury Facility required that the Company develop a plan to transform GM and demonstrate future viability. On February 17, 2009, in order to address this condition, GM submitted a proposed viability plan (the "Long-Term Viability Plan") to the automobile task force appointed by President Obama to deal with the issues confronting the automobile industry and advise him and the Secretary of Treasury in connection therewith (the "Presidential Task Force").

The U.S. Treasury-Sponsored Program for GM

14. On March 30, 2009, President Obama announced that the Long-Term Viability Plan did not meet the federal government's criteria to establish GM's future viability and, as a result, did not justify a substantial new investment of taxpayer dollars. The President outlined a series of actions that GM would have to undertake to receive additional federal assistance. In conjunction with this announcement, in the interests of the Company's receiving further support from the U.S. Treasury, G. Richard Wagoner, Jr., who had been CEO since June 1, 2000, agreed to resign as Chairman and CEO of GM. In addition, Kent Kresa, a director since 2003, was appointed as Chairman of the Board, and it also was announced that a majority of the Board would be replaced over the next few months because it "will take new vision and new direction to create the GM of the future." Barack H. Obama, U.S. President, Remarks on the American Automotive Industry at 4 (Mar. 30, 2009) [hereinafter *Presidential Remarks*].

15. President Obama also stated that the U.S. Treasury would extend to the Company adequate working capital for a period of sixty days while it worked with the Company to develop, propose, and implement a more aggressive viability plan that would include a

"credible model for how not only to survive, but to succeed in th[e] competitive global market." *Id.* The President observed that the Company needs a "fresh start to implement the restructuring plan" it develops, which "may mean using our [B]ankruptcy [C]ode as a mechanism to help [it] restructure quickly and emerge stronger." *Id.* at 5. President Obama explained:

> What I'm talking about is using our existing legal structure as a tool that, with the backing of the U.S. Government, can make it easier for General Motors . . . to *quickly* clear away old debts that are weighing [it] down so that [it] can get back on [its] feet and onto a path to success; a tool that we can use, even as workers stay on the job building cars that are being sold.
>
> What I'm not talking about is a process where a company is simply broken up, sold off, and no longer exists. We're not talking about that. And what I'm *not talking about is a company that's stuck in court for years, unable to get out.*

Id. at 5-6 (emphasis added).

16. The U.S. Government set a deadline of June 1, 2009 for the Company to demonstrate its viability plan to achieve the foregoing objectives. Consistent with the President's guidance, the Company began a deeper, more surgical analysis of its business and operations in an effort to develop a viability plan that would accommodate the needs of its secured creditors and other stakeholders by quickly achieving (i) sustainable profitability, (ii) a healthy balance sheet, (iii) a more aggressive operational transformation, and (iv) technology leadership. The U.S. Treasury indicated that, if an out-of-court restructuring was not achievable in that timeframe, then the Company should consider undertaking a new, more aggressive plan using an expedited, Bankruptcy Court-supervised process to implement the purchase of the Company's assets by a U.S. Treasury-sponsored purchaser pursuant to section 363 of the Bankruptcy Code (the "363 Transaction"). The purchaser would immediately take ownership of the purchased assets as "New GM" free from the entanglement of the bankruptcy cases.

Although the U.S. Treasury has committed to provide debtor in possession financing for the Company to implement the sale and to support the new enterprise, it requires that the sale of assets occurs promptly to preserve value and avoid the devastating damage the industry would suffer if the business operations were not promptly extricated from the bankruptcy process.

17. The U.S. Treasury will provide the financing to create New GM. The U.S. Treasury also indicated that if such a transaction were consummated, it would assure that New GM had adequate financing and a capital structure that would assure New GM's long-term viability. The U.S. Government consistently has emphasized that a fundamental premise of its approach is that a quick approval of the 363 Transaction as the tool for restructuring will avoid potentially fatal revenue perishability by restoring confidence in GM employees, its customers, its vendors, as well as the communities that depend on GM. New GM will be perceived by consumers as a reliable, economically sound automobile company that will stand behind its products and extend value to the purchasing public.

18. On April 22, 2009, the U.S. Treasury Loan Agreement was amended to increase the availability under the U.S. Treasury Facility by $2 billion to $15.4 billion. GM borrowed the additional $2 billion in working capital loans on April 24, 2009.

19. As part of the Company's efforts to rationalize its business and to balance large vehicle inventories, on April 24, 2009, the Company announced that it would temporarily shut down certain production facilities starting on May 4, 2009 for a period not to exceed twelve weeks (the "Temporary Shutdown"). As of the Commencement Date, certain of the Company's assembly facilities remain operating, while other assembly facilities continue to be shut down. A number of those assembly facilities that currently are shut down are expected to resume operations by July 13, 2009 if the 363 Transaction is approved.

20. On May 22, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $4 billion to $19.4 billion. GM borrowed the additional $4 billion in working capital loans on May 22, 2009.

The Exchange Offer

21. In an effort to achieve long-term viability without resort to the bankruptcy process and its negative effect on revenue, on April 27, 2009, GM launched a public exchange offer for the approximately $27 billion of its unsecured bonds (the "Exchange Offer"). The Company believed that the Exchange Offer would provide the least intrusive means to restructure its indebtedness for the future success of the Company. The Company, however, did announce in connection with the Exchange Offer that if it did not receive enough tenders to consummate the Exchange Offer, it would likely seek to achieve the joint goals of the Company and the U.S. Treasury, as the Company's largest secured creditor, by initiating cases under the Bankruptcy Code.

22. The Exchange Offer expired on May 26, 2009 without achieving the threshold of required tendered acceptances.

The 363 Transaction

23. Recognizing that the Exchange Offer might not be successful, the Company and the U.S. Treasury determined that it would be in the best interests of the Company and its stakeholders to prepare for the implementation of the 363 Transaction on a contingency basis while the Exchange Offer was being solicited.

24. Consistent therewith, over the past several weeks, GM and its Debtor subsidiaries (the "Sellers") have been engaged in negotiations with the U.S. Treasury with respect to the 363 Transaction. These negotiations culminated in the proposed Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC (the "Purchaser"), a purchaser

sponsored by the U.S. Treasury, dated as of June 1, 2009 (the "MPA"). The 363 Transaction, as embodied in the MPA, contemplates that substantially all of GM's assets, including the capital stock of the majority of its subsidiaries, will be sold to the Purchaser to effect the transformation to New GM and preserve both the viability of the GM enterprise and the U.S. automotive industry. The assets excluded from the sale will be administered in the chapter 11 cases for the benefit of the stakeholders in the chapter 11 cases. From and after the closing, the Purchaser or one or more of its subsidiaries will provide the Sellers and their remaining subsidiaries with services reasonably required by the Sellers and such subsidiaries to wind down or otherwise dispose of the excluded assets and administer the chapter 11 cases. As part of the 363 Transaction, the Debtors, the Purchaser, and the UAW have reached a resolution addressing the ongoing provision of certain employee and retiree benefits.

25. The Debtors intend to use the chapter 11 process to expeditiously consummate the 363 Transaction and establish New GM as an economically viable OEM, serving its customers, employees, suppliers, and the interests of the nation. The MPA is a critical element of the program adopted by the U.S. Treasury to rehabilitate the domestic automotive industry. The 363 Transaction furthers public policy by avoiding the fatal damage to the industry that would occur if New GM is unable to immediately commence bankruptcy-free operations.

26. Notably, both the Government of Canada and the Government of Ontario, through Export Development Canada ("EDC"), Canada's export trading agency, have agreed to participate in the DIP financing provided by the U.S. Treasury to assure the long-term viability of GM's North American enterprise.

27. The gravity of the circumstances cannot be overstated. The need for speed in approving and consummating the 363 Transaction is crucial. The business and assets to be transferred are extremely sensitive and will be subject to major value erosion unless they are quickly sold and transferred to New GM. Any delay will result in significant irretrievable revenue perishability to the detriment of all interests and will exacerbate consumer resistance to readily accept General Motors products. Expeditiously restoring and maintaining consumer confidence is a prerequisite to the successful transformation and future success of New GM.

28. The expedited approval and execution of the 363 Transaction is the foundation of the U.S. Government's objective "to create the GM of the future," and to preserve and strengthen the U.S. automotive industry and the tens of thousands of jobs involved. To paraphrase President Obama's remarks, the 363 Transaction "is our best chance to make sure that the cars of the future are built where they've always been built – in Detroit and across the Midwest – to make America's auto industry in the 21st century what it was in the 20th century – unsurpassed around the world." *Presidential Remarks* at 7.

Jurisdiction

29. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

30. The Debtors' customers are the lifeblood of their business. In this highly competitive business, customer satisfaction is the key to survival. Before the Commencement Date and in the ordinary course of their business, the Debtors offered certain customer programs

and engaged in certain customer practices to develop and sustain a positive reputation in the marketplace for their services and to engender customer loyalty.

31. As described above, the Debtors' business operations primarily involve the manufacture and distribution of motor vehicles through a network of authorized dealers ("Dealers") operating under the Buick, Chevrolet, Pontiac, GMC Truck, Hummer, Saturn, Saab, and Cadillac trade names. As of April 30, 2009, the Debtors sold vehicles to approximately 6,099 Dealers in the United States, 708 in Canada, and 270 in Mexico. Dealers, in turn, resell vehicles and parts to retail consumers and are primarily responsible for maintaining the business relationships with consumers. The Dealers negotiate pricing with their customers and provide service and repair following a vehicle purchase. Sales incentives are a major component of the economic relationship between the Debtors and their Dealers.

32. In addition to the vehicles sold to Dealers for consumer retail sales, the Debtors also have a direct customer relationship with businesses and governmental units that purchase at least five motor vehicles from the Debtors per year ("Fleet Customers"). Sales to Fleet Customers are consummated through the Debtors' network of Dealers, and in some cases, directly by the Debtors. In 2008 worldwide fleet sales amounted to approximately 2.3 million units, approximately 820,000 of which were sold in the United States. Fleet sales represent in excess of 25% of the Debtors' total vehicle-unit sales.

33. The operations of the Debtors are not limited to the sale of vehicles, as the sale of automotive parts and accessories to direct customers are also integral to the business of the Debtors. The Debtors conduct the automotive parts and accessories business through various brands, including, ACDelco, GM Parts, GM Performance Parts, GM Restoration Parts, and GM Accessories; and maintain relationships with buying groups and various primary and secondary

customers, including, dealers, distributors, jobbers, independent repair facilities, and various group purchasing organizations (collectively, "Trade Customers").

34. Prior to the Commencement Date and in the ordinary course of their businesses, the Debtors maintain certain customary business practices and programs for the benefit of Dealers, Fleet Customers and Trade Customers in connection with the marketing and promotion of the sale of their vehicles, and parts and accessories (collectively, the "Customer Programs"). Such practices and programs include, among others, warranty programs, recall programs, credit card programs, sales incentive programs, Dealer support programs, customer rebates and allowances, and repurchase programs, certain of which are described in greater detail below. The objective of the Customer Programs is to maximize revenues and profitability, generate customer loyalty and goodwill, ensure consumer satisfaction, and maintain a competitive position in the marketplace.

35. Pursuant to sections 105(a), 363(c), 1107(a), and 1108 of the Bankruptcy Code, the Debtors request authority in their business judgment to (a) perform and honor their prepetition obligations related to the Customer Programs as they deem appropriate, and (b) continue, renew, replace, implement new, and/or terminate one or more of the Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court.

36. The Debtors believe that the assurance to the consumer public that all vehicle and parts warranties (whether pre- or postpetition) will be honored on an uninterrupted basis is crucial to their ongoing business operations and goodwill, and absolutely essential to maintaining customer loyalty. Similarly, maintenance of the other Customer Programs will further the same goals and serve to preserve long-standing relationships, promote the Debtors'

competitive position in the marketplace, and ultimately enhance revenue and profitability. The aggregate cost to the Debtors to honor and continue the Customer Programs is insignificant when compared to the irreparable harm and detrimental impact on their businesses that will be suffered if these programs are abandoned. Maintenance of the Customer Programs is essential to the ability of the Debtors to effectively compete in the market and to the continued viability of the Debtors' business enterprise.

37. The following are general descriptions and examples of certain of the Customer Programs provided by the Debtors. They include the Debtors' Warranty and Service Programs, Recall Programs, GM Card Programs, Sales Incentive Programs, Dealer Support Programs, Vehicle Repurchase Programs, and Trade Customer Programs (each as defined below). The following is not all inclusive and does not set forth all of the Customer Programs that are provided by the Debtors.

A. Warranty and Service Programs

38. Like all automotive manufacturers, GM provides a written warranty of various parts, systems, and accessories in connection with the retail sale of its parts and motor vehicles. Dealers, in turn, agree to perform repairs on qualified vehicles upon the owner's request and in some very limited circumstances, arrange for the repurchase of the vehicle. In exchange, GM has agreed to reimburse its Dealers and certain Fleet Customers for such services in accordance with GM's Service Policies and Procedures Manual (the "Service Manual"), which applies to all Dealers throughout the United States. Ultimately, retail customers and Fleet Customers obtain a wide range of after-sale vehicle services and products through the Dealer network, such as maintenance, light repairs, collision repairs, vehicle accessories, courtesy

transportation, road-side assistance, and extended service warranties (collectively, the "Warranty and Service Programs for Consumers and Fleet Customers").

39. GM's reimbursement levels provide Dealers with reasonable compensation for performing warranty work. Pursuant to the Service Manual, and subject to local regulatory requirements, GM typically reimburses its Dealers in the United States based on a uniform methodology that uses a fixed markup over the Dealer list price of the parts, plus the Dealer's established hourly rate for labor, multiplied by GM's labor-time guidelines, which provide the labor hours allotted for a specific repair. Although Dealers typically submit reimbursement requests promptly following the repairs they perform, the Dealers have up to 180 days from the service date to submit warranty reimbursement claims. During 2008, the Debtors estimate that they accrued approximately $273 million per month in obligations in connection with the Warranty and Service Programs for Consumers and Fleet Customers.

40. In addition to these reimbursements to Dealers, in order to maintain customer satisfaction, the Debtors sometimes reimburse customers for out-of-pocket expenses or inconvenience in connection with informal claims consumers send to the Debtors alleging individual problems with the quality or performance of the GM vehicles purchased or leased, or with the purchased automotive parts and accessories that arise from but are not covered by the written warranties, but that are nevertheless considered part of the Debtors' Warranty and Service Programs for Consumers and Fleet Customers. On occasion, the Debtors repair or repurchase such vehicles as part of their consumer satisfaction efforts. On occasion, the Debtors resolve such customer satisfaction issues through its own alternate dispute resolution mechanism, state-run dispute resolution mechanisms or in-court resolution. The Debtors estimate that, during

2008, they accrued approximately $3 million per month in obligations in connection with these customer satisfaction efforts.

41. In the case of Trade Customers, GM also provides limited written warranties to Trade Customers and to consumers under a third-party insured program underwritten by Universal Warranty Corp. ("Trade Customer Warranty," and together with the Warranty and Service Programs for Consumers and Fleet Customers, the "Warranty and Service Programs").

42. It is self-evident that continuation of the Warranty and Service Programs is essential to the Debtors' ongoing business operations, to the maintenance of customer goodwill and loyalty, and to efforts to preserve the residual value of GM-branded products in the marketplace. Any risk that these programs will not continue in accordance with past practice would irreparably damage the GM enterprise and its reputation in the marketplace, to the detriment and prejudice of all parties in interest. Indeed, if existing and future consumers cannot rely on the continued availability and honoring of warranty claims, GM's entire customer base would likely erode.

B. Recall Programs

43. In the ordinary course of their businesses, the Debtors, like all other OEMs, sometimes are required by federal law to institute recall campaigns to correct suspected defects in vehicles (the "Recall Programs"). Repair and maintenance work related to such Recall Programs (generally performed by the Dealers) occasionally is necessary to both (a) comply with applicable law and (b) maintain public confidence in the quality of the Debtors' brands and the safety of their vehicles. Indeed, from time to time, the Debtors initiate their own Recall Programs to repair vehicles or have their vehicles checked by authorized repair technicians for

certain potential defects. As of the Commencement Date, approximately $173.2 million was due and owing to Dealers under the Recall Programs. By this Motion, the Debtors seek authority to continue to honor the Recall Programs and related policies in the ordinary course of business.

C. GM Card Program

44. The Debtors maintain several credit card affinity programs maintained by third party financial institutions whereby GM provides reward points redeemable for discounts on GM-branded automotive products in exchange for fees and a share of revenues generated by use of the credit cards (the "GM Card Earnings and Redemption Allowance Program" or the "GM Card Program"). The GM Card Program represents an extremely valuable marketing tool for Dealers and is responsible for building customer loyalty as well as introducing new customers to GM-branded products.

45. Continuation of the GM Card Program is important to GM's sale efforts at this critical time by permitting the redemption of points by potential customers who might otherwise not purchase a GM product. Additionally, prohibiting the further redemption of points would send the wrong message to customers about the viability of GM. By this Motion, the Debtors request authority to honor, in their discretion, the GM Card Program in the ordinary course of business, including, without limitation, allowing the continued redemption of reward points earned prior to the Commencement Date as well as authorizing the continued performance by the Debtors under agreements with the financial institutions administering the GM Card Program.[2]

[2] The authorization sought hereunder is not intended to constitute an assumption of any contract or agreement pursuant to section 365 of the Bankruptcy Code.

D. Sales Incentive Programs

46. As stated, the Debtors' motor vehicles and certain GM-branded automotive products are sold through various dealerships across the United States and abroad. In connection with their relationships with the Dealers and other participants in sales channels through which the Debtors sell such products, the Debtors in the ordinary course of business provide certain rebates, sales allowances, and other incentives (collectively, the "Sales Incentive Programs") to support the development, promotion, and marketing of GM-branded vehicles.

47. There may be numerous types of sales incentives available at any particular time, including a choice of incentives for specific models and custom vehicles that Dealers offer to their customers. Sales Incentive Programs generally are brand specific, model specific, or regionally specific, and are for specified time periods, which may be extended. Dealers that achieve targeted benchmarks may be eligible for rebates and allowances against Dealer invoices. With respect to Fleet Customers, the Debtors frequently enter into contracts offering rebates if such customers meet certain sales quotas. These rebate programs encourage Fleet Customers to concentrate their vehicle purchases on GM-branded vehicles in order to achieve those preferred pricing levels.

48. Sales Incentive Programs are an integral part of the sales package available to consumers, Dealers and Fleet Customers and a fundamental part of the Debtors' ongoing operations and marketing effort. These programs also enable and encourage Dealers to actively and successfully promote the Debtors' products. The inability to honor the Sales Incentive Programs in the ordinary course of the Debtors' business would undermine the sales efforts of both GM and its Dealers with respect to both retail and Fleet Customers.

49. Given the Debtors' current efforts to reduce the overall number of Dealers in the GM dealer network going forward, the Debtors must provide assurances that the Debtors can and will continue to honor all of their financial obligations to those Dealers the Debtors wish to retain. For those Dealers that will not be continuing, the ability to honor these prepetition accruals will be essential to the Debtors' ability to negotiate agreements providing for the orderly wind-down of such Dealers in a manner which maintains the market value of the Debtors' vehicles and reduces substantially the number of vehicles that would otherwise be returned to the Debtors under various financing arrangements.

50. The Debtors incur liabilities for the Sales Incentive Programs based upon the terms of their agreements with the relevant customers. As of the Commencement Date, approximately $412 million was due and owing to Dealers under the Sales Incentive Programs. Based on the foregoing, the Debtors request authorization to honor all of their obligations under the Sales Incentive Programs and to continue them as deemed appropriate, in the ordinary course of business, without further application to the Court.

E. Dealer Support Programs

51. Given the extent of GM's dependence upon its Dealers, GM has long taken steps to ensure the success and financial stability of its Dealer network. To achieve that goal, GM has implemented a variety of Dealer support programs that, among other things, facilitate (i) cash flows between GM and its Dealers, (ii) Dealers' ability to finance their inventory, and (iii) shared advertising by regionally affiliated Dealer associations (the "Dealer Support Programs"). The Debtors incur certain liabilities, credits, and obligations to their Dealers pursuant to these Dealer Support Programs. Below is a sampling of the most significant Dealer Support Programs.

52. First, Dealers are entitled to a refund equal to approximately 3% of each vehicle Manufacturer's Suggested Retail Price ("MSRP"). These payments, which are called "holdbacks," accumulate over time and provide GM with a steady cash reserve to ensure that GM will have positive cash flow with each of its dealerships. Dealers receive refunds of "holdbacks" on either a monthly or quarterly basis.

53. Second, Dealers are entitled to a refund equal to approximately 2-2.5% of MSRP as part of GM's wholesale floor-plan support program. Although this program ultimately compensates Dealers for a portion of the overhead expenses incurred selling GM products, it also encourages Dealers to maintain an inventory of vehicles at the dealerships rather than purchasing vehicles on an "as needed" basis. Like the holdback, Dealers receive refunds for floor-plan support on either a monthly or quarterly basis.

54. Third, the Debtors also participate in programs with their Dealers that obligate the Debtors to support future regional-marketing efforts. Dealers benefit from this program because the Debtors are able to coordinate marketing campaigns on a regional basis for multiple Dealers. Moreover, Dealers obtain cost efficiencies by receiving marketing support from the Debtors and from combining their marketing efforts with other Dealers.

55. Fourth, Dealers are entitled, from time to time, to reimbursement for certain costs associated with product marketing, vehicle delivery and handling.

56. The Debtors estimate that as of the Commencement Date, the accrued and unpaid liabilities with respect to Dealer Support Programs aggregate approximately $677 million. By this Motion, the Debtors seek authorization to honor all obligations under the Dealer Support Programs and to continue them as deemed appropriate, in the ordinary course of business, without further application to the Court.

F. Vehicle Repurchase Programs

57. As indicated above, historically, more than twenty-five percent (25%) of all cars and trucks sold by the Debtors are purchased by Fleet Customers, including daily rental-car companies, commercial fleet customers, leasing companies, and governmental units. To remain competitive with other OEMs, the Debtors entered into agreements relating to certain fleet transactions, particularly with daily rental-car customers, which require that the Debtors guarantee the repurchase of customers' fleet vehicles at contractually agreed upon depreciation values (the "Vehicle Repurchase Programs"). Such vehicles are then made available for sale in the used vehicle market.

58. Maintaining the relationships and the goodwill that the Debtors have established with their Fleet Customers is critical to the long-term prospects of the Debtors' businesses. In order to maintain these relationships, the Debtors believe they must continue to honor contractual obligations to Fleet Customers relating to Vehicle Repurchase Programs in the ordinary course of their businesses. Indeed, the failure to honor these programs will irreparably harm these relationships and undoubtedly result in the loss of a significant revenue stream by Fleet Customers switching to other OEM's for their purchasing needs. The Debtors estimate that outstanding liabilities with respect to Vehicle Repurchase Programs relating to the period prior to the Commencement Date aggregate approximately $2.7 billion. This amount, however, does not take into account the approximately $1.7 billion in revenue generated by the Debtors from the resale of the repurchased vehicles which provides a substantial offset to these payments. Although this represents a significant expenditure by the Debtors, it is a necessary element to maintaining existing Fleet Customers and securing new Fleet Customers and the revenue

associated therewith. Accordingly, the Debtors respectfully request that the Court authorize but not direct the Debtors to continue to honor Vehicle Repurchase Programs in their discretion.

G. Trade Customer Programs

59. In the ordinary course of business, the Debtors offer various customer programs for their Trade Customers, the most significant of which include, but are not limited to, rebates for pre-approved marketing initiatives, rebates for success in satisfying certain specified strategic sales targets, credits for certain inventory returns, and credits based on purchase volume that can be redeemed for merchandise (collectively, "Trade Customer Programs").

60. As of the Commencement Date, the Debtors owed approximately $63 million to Trade Customers on account of Trade Customer Programs. By this Motion, the Debtors request authorization to honor all of their obligations under the Trade Customer Programs and to continue them as deemed appropriate, in the ordinary course of business, without further application to the Court.

Ample Support Exists to Authorize the Debtors to Honor and Continue Their Customer Programs

61. Under section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the Court, after notice and hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). Under section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b).

62. Furthermore, to supplement the explicit authority described above, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A

Bankruptcy Court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); *see also In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15 (Bankr. M.D. Fla. 2005) (recognizing and applying sections 105(a) and 363 of the Bankruptcy Code to justify the payment of prepetition obligations in appropriate circumstances); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) ("While prepetition claims are normally disposed of in a plan of reorganization and in accordance with statutory priorities, there are well-established 'necessity of payment' and similar exceptions."); *In re Lehigh & N. England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Debtors submit, and it hardly can be legitimately disputed, that the continuing support of their customers is imperative to their ongoing operations and the viability of the enterprise, and the uninterrupted continuance of the Customer Programs is critical to maintaining and preserving such support.

63. In a long line of well-established cases, federal Courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of [crucial] business relations"); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied*, 325 U.S. 873 (1945) (Second Circuit extends doctrine for payment of prepetition claims beyond railroad reorganization cases); *Mich. Bureau of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R.

279, 285-86 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower Court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

64. The "doctrine of necessity" functions in chapter 11 cases as a mechanism by which the Bankruptcy Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation). The doctrine is frequently invoked early in chapter 11 cases, particularly in connection with payment of prepetition claims. The Court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with "the principle that a Bankruptcy Court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" The Court stated that "a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 — "facilitating the continued operation and rehabilitation of the debtor." *Ionosphere Clubs*, 98 B.R. at 176. Pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

65. As described above, the Customer Programs are an integral element of the Debtors' marketing effort and relationship with consumers, and critical to the Debtors' ability to effectively compete in the marketplace. The failure to maintain the Customer Programs will completely undermine the Debtors' sales efforts and place the Debtors at a severe, and perhaps

insurmountable, competitive disadvantage. This is particularly true with respect to the Warranty and Service Programs which, if not honored and continued, would have a devastating impact on the Debtors' credibility in the market and its ability to effectively and competitively sell vehicles.

66. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' right to dispute any claim, or an approval of the assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

The Debtors Have Satisfied Bankruptcy Rule 6003

67. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a Bankruptcy Court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty days after the Commencement Date. Fed. R. Bankr. P. 6003. As described herein and in the Affidavit of Frederick A. Henderson Pursuant to Local Bankruptcy Rule 1007-2, the Debtors' business operations rely heavily on the relief requested herein. Without the authority to honor the Customer Programs immediately, the Debtors' competitive position will be irreparably undermined to the detriment and prejudice of all parties in interest. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Waiver of Bankruptcy Rules 6004(a) and (h)

68. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

69. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for EDC, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the holders of the fifty largest unsecured claims against the Debtors, (on a consolidated basis), (vii) the attorneys for the UAW, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, and (xi) the attorneys for the ad hoc bondholders committee. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

70. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
June 1, 2009

/s/Stephen Karotkin
Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL MOTORS CORP., *et al.*,	:	**09-_____ (___)**
Debtors.	:	**(Jointly Administered)**

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AUTHORIZING DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CUSTOMERS, DEALERS, AND TRADE CUSTOMERS AND TO OTHERWISE CONTINUE WARRANTY, CREDIT CARD, OTHER CUSTOMER, DEALER AND TRADE CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS

Upon the Motion, dated June 1, 2009 (the "Motion"),[1] of General Motors Corporation and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), pursuant to sections 105(a) and 363 of title 11, United States Code (the "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order, among other things, authorizing the Debtors to perform and honor, in the ordinary course of business, the Debtors' prepetition obligations related to all warranty and all other Customer Programs, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for EDC; (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the holders of the fifty largest unsecured claims against the Debtors (on a consolidated basis), (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, and (xi) the attorneys for the ad hoc bondholders committee, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 6003, the Debtors, in their business judgment, are (a) authorized to perform and fully honor all obligations with respect to vehicle, and parts and accessory warranties whether

arising prior to or after the Commencement Date; and (b) authorized (but not directed) to perform and fully honor their prepetition obligations related to all other Customer Programs as they deem appropriate, in the ordinary course of business, in each case, without further application to or order of the Court; and it is further

ORDERED that nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any claim by a customer with respect to any Customer Program; and it is further

ORDERED that nothing contained in this Order shall be deemed to constitute an assumption of any executory contract pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that the requirements set forth in Bankruptcy Rule 6004(a) are hereby waived; and it is further

ORDERED that pursuant to Bankruptcy Rule 6004(h), the terms and provisions of the Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2009

_____
United States Bankruptcy Judge

EXHIBIT N

LAW FIRM OF
ISAACS CLOUSE CROSE & OXFORD LLP

21515 HAWTHORNE BLVD
SUITE 950
TORRANCE, CA 90503

TELEPHONE (310) 316-1990
FACSIMILE (310) 316-1330

VIA U.S. MAIL

October 15, 2008

Mark L. Brown
The Lakin Law Firm
300 Evans Avenue
P.O. Box 229
Wood River, IL 62095

Re: Castillo v. General Motors

Dear Mark:

This will confirm our telephone conversation last week and further respond to your letter of September 26, 2008.

Interim Claims Administration Protocol: As we discussed, customers who contact GM's Customer Assistance Center concerning recent VTi transmission problems are being handled by customer relations personnel who have been instructed to provide goodwill repairs and assistance in accordance with the terms of the pending settlement. As discussed, GM is attempting to compile information concerning these customers and will provide your with it once compilation is complete.

Updated Warranty/Goodwill Repair Spreadsheet: We will provide the updated spreadsheet to you shortly. We will try also to provide the shipment date and trouble code information you have requested. The "index" of available information is quite voluminous. Is there any other specific information you would like us to check on?

Dealer Document Retention Policy: After further investigation, it appears that GM service policies call for dealers to retain warranty and customer pay service records for a period of 24 months from the date of service. As discussed, many dealers choose to retain this information for a longer period of time. In many if not most cases, therefore, customers who have not retained receipts should be able to obtain duplicate documentation from the servicing dealer.

Claims Administrator: As discussed, GM is planning to process Class Members' claims internally and engage Campbell-Ewald to do the actual mailing.

Class Notice: Polk personnel have made good progress in obtaining Class Member mailing addresses from most states. GM was advised late last week, however, that the California Department of Motor Vehicles and the corresponding agencies in Kansas, Oklahoma and Pennsylvania have not yet provided the information needed for the class notice mailings. As a result, it will likely take about 45 days longer than originally anticipated to mail the notices. This means that we will need to discuss and present to the Court a slightly revised timetable for notice and the approval hearing. Let's discuss at your convenience.

Dealer Notice: To date, GM has not provided dealers with notice of the proposed settlement. We will share the proposed notice with you once we have prepared it.

Communications with Class Counsel: We agree that your contact information should be included in the class notice.

Rebuilt Transmissions: Here is a historical breakdown of total rebuilt VTi transmissions shipped by Dynamic:

2006: 2,630
2007: 3,175
2008: 3,915

Digiandomenico Replacement Transmission: Contrary to my vague recollection during our telephone conversation, John Ellison advises that the serial number should have nine digits versus the eight digit number in your letter. Could you ask your client to double check the serial number or, better yet, provide us with a good digital photo of the number so that we can attempt to follow up on your inquiry?

Very Truly Yours,

Gregory R. Oxford
of Isaacs Clouse Crose & Oxford LLP

EXHIBIT O

SATURN

SATURN OF FLINT

2430 Dulcher Road
Flint, MI 48532
(810) 720-8800

SERVICE INVOICE

State Registry No: F152391

Sold To:	Service Order Number	Service Advisor	VIN
	168001	NICHOLAS MARTIN	5GZCZ33D84S806919

Color	Year	Make/Model	Engine	Engine	Stock #
	2004	SATURN VUE FWD		L61 2.2LL4	

Mileage In/Out	Tag	Delivery Date		Bay Count	Plan
111946 / 11954	8001			1	

Tax Exempt	Date/Time In	Date/Time Out
	7/16/2009 7:18	7/17/2009 16:00

Business Phone:
Home Phone:

LINE 1 CS SES LIGHT IS ON AND TRANS FEELS LIKE IT IS SLIP ING NOW. ADVISE. AUTH: E

CAUSE: MODL/COMPNT - DAMAGE/CRAK
TECH COMM: C/S SES LIGHT IS ON AND TRANS FEELS LIKE IT IS SLI PPING. C/ CODE P1882 RATIO SLIP. TRANS IS SLIPPING NEEDS TO COME OUT FOR INSPECTION. REMOVED TRANS A ND FOUND SHEAVE DAMAGE AND CASE DAMAGE DUE TO CLUT CH HOUSING BREAKING, C/ REPLACED TRANS ASM AND COM PLETED ALIGNMENT,SET BOTH TOE REASSEMBLED CORE CUST TO PAY 25% OF TOTAL

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE SALE TYPE: WARRANTY - $492.94
CASH - GM 164.31
OPCODE: K7000
HRS: 6.80 OTH HRS: .80
PRIMARY TECH: ROGER COMBS JR. M160886
WARR PARTS: 13 AMT: 3235.32

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	11609618	NUT	N	2	5.796	WARRANTY - GM	$8.69
						CASH - GM	2.90
SN	09180138	BOLT/SCRE	N	3	1.484	WARRANTY - GM	$3.34
						CASH - GM	1.11
SN	11076671	SPLIT PIN	N	2	3.500	WARRANTY - GM	$5.25
						CASH - GM	1.75
SN	15842512	PIPE ASM-	N	1	32.970	WARRANTY - GM	$24.7
						CASH - GM	8.2
SN	15297663	TRANSMISS	Y	1	4170.740	WARRANTY - GM	$3128.0
						CASH - GM	1042.6
SN	22681964	CORE-TRAN	N	1-	980.000	WARRANTY - GM	$735.0
						CASH - GM	245.0
SN	15250985	FLUID-A/T	N	2	33.600	WARRANTY - GM	$50.4
						CASH - GM	16.8
SN	15234609	FLUID-A/T	N	1	9.394	WARRANTY - GM	$7.0
						CASH - GM	2.3
SN	15231847	ADDITIVE-	N	1	10.416	WARRANTY - GM	$7.8
						CASH - GM	2.6

Disclaimer of Warranties

The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. All Service Labor repairs are warranted for 90 days or 4000 miles, whichever occurs first. All Saturn replacement [illegible] for 12 months or 12,000 miles, whichever occurs first. Except for abuse.

Service Repairs Checked and Approved By: X
Authorized Representative

X
Customer Signature

SATURN

SATURN OF FLINT

2430 Dulcher Road
Flint, MI 48532
(810) 720-8800

SERVICE INVOICE

State Registry No: P152391

Sold To:	Service Order Number	Service Adviser	VIN
	168001	NICHOLAS MARTIN	5GZCZ33D84S806918
	Tag	Bay Count	Date/Time In	Date/Time Out
	8001	1	7/16/2009 7:18	7/17/2009 16:00

LINE TOTAL $3991.01

EST.: $.00

LINE 2* CUST PAYS 25% OF LINE 1
TECH COMM: CUST TO PAY 25% OF TOTAL
DW

REPAIR 1 INFORMATION LINE SALE TYPE: CASH - GM $.00
OPCODE: M5300
PRIMARY TECH: ROGER COMBS JR. M160886

"*" Following the line number denotes added operation.

"COMPLETELY SATISFIED"? SERVICE MGR D.BARNES @810/720-8800

LABOR	$164.31
PARTS	$833.44
TAX (Michigan State)	$14.70
CUSTOMER TOTAL	$983.05
PAYMENT (Cash (225))	$983.05

CUSTOMER SIGNATURE _____

Disclaimer of Warranties

The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. All Service Labor repairs are warranted for 90 days or 4000 miles, whichever occurs first. All Saturn replacement parts are warranted for 12 months or 12,000 miles, whichever occurs first. Except for abuse.

Service Repairs Checked and Approved By: X _____ Authorized Representative

X _____ Customer Signature

SATURN OF FLINT
2430 DUTCHER RD
FLINT, MI 48532
810-720-8800

SATURN OF FLINT1
00754200080140940420000

Date: 07/17/2009 05:47:58 PM

CREDIT CARD SALE

CARD NUMBER: **********1203 K
TRAN AMOUNT: $983.05
APPROVAL CD: 084717
RECORD #: 031
CLERK ID: cashier
INVOICE #: 168001

Thank you for your business

Customer Copy

EXHIBIT P

SATURN

SATURN OF GREEN BROOK LLC
270 Route 22 West
Green Brook, NJ 08812
(732) 752-8383
www.saturnofgreenbrook.com

SERVICE INVOICE

SO# 113867 DATE/TIME IN: 7/15/2009 9:00 DATE/TIME OUT: 7/20/2009 16:41
TAG# 770 SA: CARLOS MORA- DOC COUNT: 1 PAGE: 1

04 5GZCZ33D63S813708
2003 SATURN VUE FWD WHITE
ENGINE: L61 2.2LL4

MILES IN/OUT 68373 / 68375
DEL DATE: 7/15/2009

LINE 1 CUST STATES SES LIGHT IS ON EST.: $.00
TECH COMM: TECH CONFIRMED WAS NECC. TO REPLACE FUEL CAP AND CLEAR CODES TO CURE CONCERN.

REPAIR 1 FUEL TANK FILLER CAP REPLACEMENT
OPCODE: L1020 SALE TYPE: CASH $21.00
HRS: .20
PRIMARY TECH: RICHARD PETRUCCELLI

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	10372865	CAP ASM-F	N	1	24.700	CASH	$24.70

LINE TOTAL $45.70

LINE 2 395 CUST STATES CAR SHAKES @ 20-30 MPH
CAUSE: ROTATE PART - WORN/STRIP
TECH COMM: TECH CONFIRMED CODE PRESENT P1752 NO DRIVE. PERFORM DIAGNOSIS TO DETERMINE TRANSMISSION REPLACEMENT. FOUND SEVERE METAL CONTAMINATION IN FLUID AND CAR DOES NOT ACCELERATE ABOVE 20 - 25 MILES PER HOUR. REPLACED TRANSMISSION COMPLETE REPLACED COOLER LINES AND PERFORM COMPLETE FRONT END ALIGNMENT TO CURE CONCERN. CUSTOMER TO PAY 25% OF REPAIR SECOND OWNER UNDER 100.000 MILES.

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE
OPCODE: K7000 SALE TYPE: WARRANTY PO WTY
HRS: 7.90 CASH 194.91
PRIMARY TECH: RICHARD PETRUCCELLI
WARR PARTS: 7

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15297663	TRANSMISS	Y	1		WARRANTY POLICY	WTY
						CASH	1042.69
SN	22681964	CORE-TRAN	N	1-		WARRANTY POLICY	WTY
						CASH	245.00
SN	15250985	FLUID-A/T	N	1		WARRANTY POLICY	WTY
						CASH	8.40
SN	15234609	FLUID-A/T	N	2		WARRANTY POLICY	WTY
						CASH	4.70

Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN

SATURN OF GREEN BROOK LLC
270 Route 22 West
Green Brook, NJ 08812
(732) 752-8383
www.saturnofgreenbrook.com

SERVICE INVOICE

SO# 113867 DATE/TIME IN: 7/15/2009 9:00 DATE/TIME OUT: 7/20/2009 16:41
TAG# 770 SA: CARLOS MORA- DOC COUNT: 1 PAGE: 2

04 5GZCZ33D63S813708

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15231847	ADDITIVE-	N	1		WARRANTY POLICY	WTY
						CASH	2.60
SN	15842512	PIPE ASM-	N	1		WARRANTY POLICY	WTY
						CASH	8.24
SN	09180138	BOLT/SCRE	N	1		WARRANTY POLICY	WTY
						CASH	.17

LINE TOTAL $1016.91

LINE 3 CUST STATES CAR HAS NO PICK UP EST.: $.00
TECH COMM: REPAIR RELATED TO LINE TWO (2)

REPAIR 1 REPAIR RELATED TO LINE 2
OPCODE: M5300 SALE TYPE: CASH $.00
PRIMARY TECH: RICHARD PETRUCCELLI

ANY QUESTIONS OR CONCERNS PLEASE CONTACT ANTHONY RUSSO

LABOR	$215.91
PARTS	$846.70
MISC MATERIALS	$.50
HAZD MATERIALS	$.50
TAX (NEW JERSEY SALE)	$74.46
CUSTOMER TOTAL	$1138.07
PAYMENT (PAYMENT DUE)	$1138.07

CUSTOMER SIGNATURE _____

Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

EXHIBIT Q

SATURN SATURN OF WATERTOWN

715 Straits Turnpike
Watertown, CT 06795
(860) 945-4755

☐ CASH $ _____
☐ CHECK # _____
☐ CREDIT CARD : VISA DISCOVER M/C AMEX

Co.# 03

GUEST	Service Order Number	Service Consultant	VIN
	268060	MICHAEL LIPINSKI	5GZCZ43D39S821917

Color	Year	Make/Model	License	Engine	Stock
	2009				

Mileage In/Out	Tag	Delivery Date	Rate	Doc Count	Plan
99975 /	806	7/10/2009		1	

Tax Exempt	Date/Time In	Date/Time Out
	7/10/2009 8:51	7/22/2009 16:02

LINE 1 CUSTOMER STATES TRANSMISSION IS GOING

AUTH: A

TECH COMM: TECHNICIAN VERIFIED THE CUSTOMERS CONCERN . PERFORMED PRESSURE TEST FAILED, DISSESAMBLE AND FOUND METAL THROUGHOUT UNIT, GEAR TEETH CHEWED . REMOVED AND REPLACED THE FAULTY CASE COVER, FILTER, VALVE BODY, TORQUE CONVERTER AND FLUSHED COOLER LINES AND COOLER. REASSEMBLED AND RETEST CUSTOMERS CONCERN CORRECTED

WARRANTY
JAMES
JZK

REPAIR 1 COVER ASSEMBLY [illegible] DRIVEN PULLEY A
OPCODE: K7104 SALE TYPE: WARRANTY - WTY
HRS: 8.40 OTH HRS: 0.0
PRIMARY TECH: JOSEPH TUPAY
WARR PARTS: 10

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15297659	COVER ASM	N	1		WARRANTY - GM	WTY
SN	22737082	CORE-COVER	N	1		WARRANTY - GM	WTY
SN	24226576	FILTER ASM	N	1		WARRANTY - GM	WTY
SN	24226386	PLATE ASM	N	1		WARRANTY - GM	WTY
SN	15297657	BODY ASM-T	N	1		WARRANTY - GM	WTY
SN	22720281	CORE-BODY	N	1		WARRANTY - GM	WTY
SN	24220201	GASKET-CV	N	1		WARRANTY - GM	WTY
SN	15250985	FLUID-A/T	N	2		WARRANTY - GM	WTY
SN	15231847	ADDITIVE-	N	1		WARRANTY - GM	WTY
SN	15863186	SEALER-TR	N	1		WARRANTY - GM	WTY
SN	15297655	CONVERTER	N	1		WARRANTY - GM	WTY
SN	22681965	CORE-CONV	N	1		WARRANTY - GM	WTY

LINE 2 CUSTOMER STATES NOISE IN REAR END WHEN IN REVERSE
TECH COMM: TECHNICIAN REPAIRED CONCERN THROUGH LINE 1.

REPAIR 1 DIAGNOSIS
OPCODE: M6000 SALE TYPE: INTERNAL SE INT

PRIMARY TECH: JOSEPH TUPAY

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	21170863	KEY ASM-D	N	1		INTERNAL SERVIC	INT

Disclaimer of Warranties
The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN

SATURN OF WATERTOWN

715 Straits Turnpike
Watertown, CT 06795
(860) 945-4755

GUEST
INVOICE

Co.# 03

GUEST	Service Order Number	Service Consultant	VIN
	268080	MICHAEL LIPINSKI	5GZCZ43D38S821917
	Tag	Doc Count	Date/Time In	Date/Time Out
	806	1	7/10/2009 8:51	7/22/2009 16:02

SERVICE APPOINTMENTS AVAILABLE ONLINE AT INGERSOLLAUTO.COM

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

Disclaimer of Warranties
The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

EXHIBIT R

Saturn Corporation
100 GM Renaissance Center
P.O. Box 100
Detroit, Michigan 48265-1000
Jill A. Lajdziak

SATURN

Dear [redacted]

There are many ways to measure the success of a brand, but none are more accurate than the level of passion felt by the owners. You placed your trust in us when you purchased a Saturn, and we heard you when you asked us to keep this brand alive. It was the overwhelming groundswell of support we received from many of you that inspired us to find a way for Saturn to prevail.

So, it is with much gratitude that I am able to report we have reached a preliminary agreement with the Penske Automotive Group to purchase the Saturn brand. While we still have work to do to finalize the sale, we feel confident that we have a potential buyer that truly understands the value of the brand and is committed to its future success.

That means that as GM proceeds through its restructuring, Saturn will look to forge a new path that takes us back to our roots as an independent brand. A brand centered on the customer that strives to make the car buying and ownership experience pleasurable and fun. We will preserve our outstanding network of Saturn retailers and continue the outstanding customer service that has been a hallmark for the brand. And we will continue offering vehicles that Americans demand. Vehicles that are attractive, fuel efficient and affordable.

Saturn has always been a brand you can trust and I want you to be assured your vehicle's Saturn warranty is absolutely safe and sound. There is no change in the new vehicle warranty for any Saturn. In addition, you can be confident that service and parts will continue to be available at Saturn retailers. We are here for you today and dedicated to serve you as we always have.

Saturn, from the beginning, has always been a brand to challenge convention. A belief that good enough isn't good enough. And no matter how great the challenge, a knowledge that there is always a way to persevere. So, at a time when the automotive industry is challenged to find a better way, Saturn stands poised to accept that challenge. It is that enduring spirit that will guide us as we open this new chapter in the Saturn story.

As always, I value your loyalty to this brand. I will continue to update you as events progress.

Sincerely,

EXHIBIT S

Dear _____,

Today we are pleased to announce there is a new GM. Please take note that General Motors Corporation, Saturn LLC, and Saturn Distribution Corporation sold a substantial amount of their assets to a new legal entity, General Motors Company ("GM" or "New GM"). This email is being sent by New GM on behalf of both General Motors Corporation and New GM.

We want to keep you informed about updates that are relevant to you. General Motors Corporation, Saturn LLC, and Saturn Distribution Corporation are transferring your personal information (e.g., your contact information and vehicle purchase history) to General Motors Company. General Motors Company has substantially the same privacy policies in place as General Motors Corporation had. If you do not want to receive marketing messages from GM, call 1-866-MY-PRIVACY (1-866-697-7482) or visit our Consumer Preference System website at gmcontactpreferences.com. To review the new GM Privacy Statement, click here.

We would like to remind you that dealers of GM vehicles will continue to service GM vehicles and honor GM vehicle warranties.

The New GM is positioned for a profitable, self-sustaining and competitive future. What's more, the New GM has several new products and technologies on track to debut, including key vehicle launches in 2009 and 2010. GM has a strong commitment to improving the fuel efficiency of its vehicle fleet, meeting or exceeding new federal fuel economy and emissions regulations, and pushing ahead with advanced propulsion technology. This is highlighted by GM's extended range electric vehicle, to be introduced in 2010. GM also expects to have 14 hybrid models in production by 2012.

In the meantime, be sure to stay up to date on all the great savings on GM's current portfolio of award-winning vehicles. Shop GM Summer Savings, currently online at GM.com/summersavings.

For Copyright & Trademark Information, click here.

The marks of General Motors Company, its divisions, slogans, emblems, vehicle model names, vehicle body designs and other marks appearing in this email are the trademarks and/or service marks of General Motors Company, its subsidiaries, affiliates or licensors. ©2009 General Motors Company. Buckle up, America!

General Motors Company
100 Renaissance Center
482.A00.MAR
Detroit, MI 48265

Exhibit T

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KELLY CASTILLO, NICHOLE BROWN, BRENDA ALEXIS DIGIANDOMENICO, VALERIE EVAN, BARBARA ALLEN, STANLEY OZAROWSKI, and DONNA SANTI, Plaintiffs, v. GENERAL MOTORS COMPANY, f/k/a NEW GENERAL MOTORS COMPANY, INC., Defendant.	Case No. 4840-VCP

AFFIDAVIT

I, Matthew R. Cheatham, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I am a paralegal employed by LakinChapman, LLC ("LC"). During my employment with LC, I have worked on the case styled *Castillo, et. al. v. General Motors Corporation,* U.S. Dist. Ct. E.D. of Cal., Case No. 2:07-CV-02142 since its inception.

3. After notice of preliminary approval of the Saturn VTi settlement was mailed to class members, my responsibilities included implementing and supervising a team of LC employees who would receive and respond to class member inquiries about the settlement. Also, I was responsible for receiving and responding to some class member inquiries.

4. When communicating with class members about the Saturn VTi settlement, some class members provided us with copies of their Service Invoices for repairs to their Saturn vehicles pursuant to the terms of the Saturn VTi settlement.

5. Attached as Exhibits T1 through T14 are true and correct copies of Service Invoices that LC received from class members in connection with the Saturn VTi class action settlement.

Executed on this 13 of October, 2009.

Sworn to and subscribed before me
this 13 day of October, 2009.

Notary Public

Commission Expires: 3/7/12

OFFICIAL SEAL
PAULA STECKEL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 03/07/12

FROM : CAVANAUGHinc PHONE NO. : 818 907 5217 Jul. 28 2009 12:59PM P1

SATURN

BAR# AFR-56415
EPA# CAL-00035565

SATURN OF THE VALLEY

15421 Roscoe Blvd
North Hills, CA 91648
(818) 895-8800

1NTC531D

SERVICE INVOICE

Sold To:

Co.# 0

Service Order Number	Service Advisor	VIN
1425602	JOE GARCIA	1G8AW12F94Z158083

Color	Year	Make/Model	Lic#	Engine	Oil
BLACK	2004	SATURN ION 3 QPE	5HBU925	L61 2.2L4	240483

Mileage In/Out	Tag	Follow Up Date	Date	Doc Count	Rank
86978/ 86986	546	4/28/2004		2	

Tot Estmt	Date/Time In	Date/Time Out
	7/06/2009 12:89	7/10/2009 8:32

LINE 1 CUSTOMER STATES VEHICLE WILL NOT GO INTO REVERSE
TECH COMM: FOLLOWED DOC#1837052 OR BULL#04-07-30-024E.R&R TRA
NS TO REPLACE CASE COVER FILTER&INSP.FOUND REVERSE
CLUTCH WHEEL CAME APART BREAKING SNAPRING SECURING
TABS.FOUND REVERSE CLUTCH HUB DAMAGED,RT AXLE SEAL
LEAKS.REPLACED CASE,REV HUB ASSM&RT AXLE SEAL.FLUS
HED LINES,REINST.ALIGNED&ROAD TEST.GOOD NOW

REPAIR 1 COVER ASSEMBLY, VARIABLE DRIVE AND DRIVEN PULLEY A
OPCODE: K7104 SALE TYPE: WARRANTY SP WTY

WARR PARTS: 12

PARTS		DESCRIPTION	TP	QTY	PRICE	SALE TYPE	
SN	24220201	CASE ASM-T/A	N	1		WARRANTY SPECIA	WTY
SN	15231847	ADDITIVE-	N	1		WARRANTY SPECIA	WTY
SN	15297659	COVER ASM	N	1		WARRANTY SPECIA	WTY
SN	24221233	SEAL-TRANS F	N	2		WARRANTY SPECIA	WTY
SN	15863186	SEALER-TR	N	1		WARRANTY SPECIA	WTY
SN	15250985	FLUID-AUTO	N	1		WARRANTY SPECIA	WTY
SN	15234609	FLUID-A/T	N	1		WARRANTY SPECIA	WTY
SN	24214078	HUB ASM-R	N	1		WARRANTY SPECIA	WTY
SN	24230641	CASE ASM-T	N	1		WARRANTY SPECIA	WTY
SN	24211013	SEAL ASM-	N	1		WARRANTY SPECIA	WTY

REPAIR 2 TRANSMISSION CASE REPLACEMENT
OPCODE: K7800 SALE TYPE: WARRANTY SP WTY
HRS: 7.50
PRIMARY TECH: 190

REPAIR 3 FRONT WHEEL DRIVE SHAFT SEAL REPLACEMENT - RIGHT S
OPCODE: K6900 SALE TYPE: WARRANTY SP WTY
HRS: .20

REPAIR 4 WHEEL ALIGNMENT - CHECK AND/OR ADJUST
OPCODE: E2020 SALE TYPE: WARRANTY SP WTY
HRS: .90

NET ITEM: F OVN SHIPPING CHARGES SALE TYPE
WARRANTY SPECIA WTY

1st Addition to Estimate	$	Total 1st Revised Estimate	$	2nd Addition to Estimate	$	Total 2nd Revised Estimate	$
Date Contacted	Time Contacted	Type of Repair		Date Contacted	Time Contacted	Type of Repair	
Contacted Via ☐ Phone ☐ In Person	Price OK'd By	Phone #		Contacted Via ☐ Phone ☐ In Person	Price OK'd by:	Phone #	

By law customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests.

DISCLAIMER OF WARRANTIES
The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

X _____
I acknowledge notice and oral approval of an increase in the original estimated price.

X _____
I acknowledge receipt of the parts and labor listed above.

T1

SATURN

SATURN OF SOUTHGATE
15600 Fort Street
Southgate, MI 48195
(734) 246-3300
A Member of The Suburban Collection

SERVICE INVOICE
CUSTOMER COPY
STATE REGISTRATION NO. P143003

SO# 4188534 DATE/TIME IN: 7/07/2009 10:51 DATE/TIME OUT: 7/10/2009 10:47
TAG# 6627 SA: DENISE BENSON DOC COUNT: 1 PAGE: 1

5GZCZ33D63S916773
2003 SATURN VUE FWD SILVER NICKEL
ENGINE: L61 2.2LL4
STK#: 3S3905
MILES IN/OUT 42579 / 42585
DEL DATE: 8/29/2003
SALESPERSON: MCBRIDE, JUDY A

LINE 1 CUSTOMER STATES NOISE WHEN DRIVING, SOUNDS LIKE LI
GHT TAPPING OR KNOCKING, UNDER VEHICLE, CAN HEAR
AT LOWER SPEEDS, GOES AWAY OR IS MUTED WHEN DRIVIN
G FASTER
CAUSE: EXTERIOR - FOREIGN MATL
TECH COMM: ROAD TEST VERFIED CONCERN,USED STETHSCOPE TO ISOLA
TE NOISE COMING FROM INSIDE TRANS,PERFROMED LINE P
RESSURE TEST AND FOUND FLUID PRESSURE NORMAL. INSPE
CTED FLUID AND FOUND TO BE HEAVILY BURNED & CONTAI
MAINTED WITH METAL SHAVINGS.REMOVED TRANS & DISAMB
LE.INSPECTED & FOUND INPUT SHAFT TO HAVE EXCESSIVE
PLAY CAUSING SHAFT TO GRIND INTO TRANS CASE.METAL
SHAVINGS FOUND THROUGHOUT TRANS.FOUND SEVERAL BE
RINGS RACES SCORED FROM METAL.CLUTCH PISTONS & OTH
ER SEALS HAVE CUTS FROM METAL.NEC TO REPLACE TRANS
ASSY DUE TO SEVERE FLUID CONTAMINATION FROM INTER
NAL DAMAGE.RESET FRT CAMBER AND TOE ON BOTH SIDES.
ROAD TEST VERFIED REPAIRS

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE
OPCODE: K7000 SALE TYPE: WARRANTY WTY
HRS: 6.80 OTH HRS: .50
PRIMARY TECH: RONALD BOJANOWSKI JR M235421
WARR PARTS: 5

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15297663	TRANSMISS	Y	1		WARRANTY	WTY
SN	22681964	CORE-TRAN	N	1		WARRANTY	WTY
SN	15234609	FLUID-A/T	N	1		WARRANTY	WTY
SN	15250985	FLUID-A/T	N	2		WARRANTY	WTY
SN	15231847	ADDITIVE-	N	1		WARRANTY	WTY

REPAIR 2 WHEEL ALIGNMENT - CHECK AND/OR ADJUST
OPCODE: E2020 SALE TYPE: WARRANTY WTY
HRS: 1.00

LINE 2 Complimentary 27pt Inspection

Certification
All repairs & parts listed were furnished in compliance with Michigan Auto Repair Act (P.A.300). X _____

Disclaimer of Warranties
Any warranties on the product sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

T2

SATURN

SATURN OF SOUTHGATE
16600 Fort Street
Southgate, MI 48195
(734) 246-3300

A Member of The Suburban Collection

SERVICE INVOICE
CUSTOMER COPY
STATE REGISTRATION NO. F143003

SO# 4188534 DATE/TIME IN: 7/07/2009 10:51 DATE/TIME OUT: 7/10/2009 10:47
TAG# 6627 SA: DENISE BENSON DOC COUNT: 1 PAGE: 2

03 5GZCZ33D63S916773

REPAIR 1 SAFETY INSPECTION
OPCODE: M5200 SALE TYPE: INTERNAL SE INT

PRIMARY TECH: RONALD BOJANOWSKI JR M235421

COMPLETE YOUR CSI SURVEY FOR A CHANCE TO WIN $100 GAS CARD

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

Certification
All repairs & parts listed were furnished in compliance with Michigan Auto Repair Act (P.A.300). X _____

Disclaimer of Warranties
Any warranties on the product sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

T3

SATURN

SATURN OF FLINT

2430 Dulcher Road
Flint, MI 48532
(810) 720-8800

SERVICE INVOICE

State Registry No: F152391

Sold To	Service Order Number	Service Advisor	VIN	
	168001	NICHOLAS MARTIN	5GZCZ33D84S808918	

Color	Year	Make/Model	License	Engine	[illegible]
	2004	SATURN VUEFWD		L61 2.2IL4	

Mileage In/Out	Tag	Delivery Date		[illegible]	[illegible]
111948 / 11954	8001			1	

[illegible]	Date/Time In	Date/Time Out
	7/13/2009 7:13	7/17/2009 16:00

LINE 1 CS SES LIGHT IS ON AND TRANS FEELS LIKE IT IS SLIP ING NOW. ADVISE. AUTH: E

CAUSE: MODL/COMPNT - DAMAGE/CRAK

TECH COMM: C/S SES LIGHT IS ON AND TRANS FEELS LIKE IT IS SLI PPING. C/ CODE P1882 RATIO SLIP. TRANS IS SLIPPING NEEDS TO COME OUT FOR INSPECTION. REMOVED TRANS A ND FOUND SHEAVE DAMAGE AND CASE DAMAGE DUE TO CLUT CH HOUSING BREAKING. C/ REPLACED TRANS ASM AND COM PLETED ALIGNMENT,SET BOTH TOE REASSEMBLED CORE CUST TO PAY 25% OF TOTAL

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE SALE TYPE: WARRANTY - $492.94
CASH - GM 164.31

OPCODE: K7000
HRS: 6.80 OTH HRS: .80
PRIMARY TECH: ROGER COMBS JR. M160886
WARR PARTS: 13 AMT: 3235.32

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	11609618	NUT	N	2	5.796	WARRANTY - GM	$8.69
						CASH - GM	2.90
SN	09180138	BOLT/SCRE	N	3	1.484	WARRANTY - GM	$3.34
						CASH - GM	1.11
SN	11076671	SPLIT PIN	N	2	3.500	WARRANTY - GM	$5.25
						CASH - GM	1.75
SN	15842512	PIPE ASM-	N	1	32.970	WARRANTY - GM	$24.73
						CASH - GM	8.24
SN	15297663	TRANSMISS	Y	1	4170.740	WARRANTY - GM	$3128.05
						CASH - GM	1042.6
SN	22681964	CORE-TRAN	N	1-	980.000	WARRANTY - GM	$735.0
						CASH - GM	245.0
SN	15250985	FLUID-A/T	N	2	33.600	WARRANTY - GM	$50.4
						CASH - GM	16.8
SN	15234609	FLUID-A/T	N	1	9.394	WARRANTY - GM	$7.0
						CASH - GM	2.3
SN	15231847	ADDITIVE-	N	1	10.416	WARRANTY - GM	$7.8
						CASH - GM	2.6

Disclaimer of Warranties
The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. All Service Labor repairs are warranted for 90 days or 4000 miles, whichever occurs first. All Saturn replacement ... for 12 months or 12,000 miles, whichever occurs first. Except for abuse.

Service Repairs Checked and Approved By: X ______ Authorized Representative

X ______ Customer Signature

T4

SATURN — SATURN OF FLINT

2430 Dutcher Road
Flint, MI 48532
(810) 720-8800

SERVICE INVOICE

State Registry No: F152391

Sold To	Service Order Number	Service Advisor	VIN
	168001	NICHOLAS MARTIN	5GZCZ33D84S806918
	Tag	Odometer	Date/Time In	Date Completed
	8801	1	7/13/2009 7:18	7/17/2009 16:00

LINE TOTAL $3991.01

EST.: $.00

LINE 2* CUST PAYS 25% OF LINE 1
TECH COMM: CUST TO PAY 25% OF TOTAL
DW

REPAIR 1 INFORMATION LINE SALE TYPE: CASH - GM $.00
OPCODE: M5300
PRIMARY TECH: ROGER COMBS JR. M160886

"*" Following the line number denotes added operation.

"COMPLETELY SATISFIED"? SERVICE MGR D.BARNES @810/720-8800

LABOR	$164.31
PARTS	$833.44
TAX (Michigan State)	$14.70
CUSTOMER TOTAL	$983.05
PAYMENT (Cash (225))	$983.05

CUSTOMER SIGNATURE ____________________

Disclaimer of Warranties
The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. All Service Labor repairs are warranted for 90 days or 4000 miles, whichever occurs first. All Saturn replacement parts are warranted for 12 months or 12,000 miles, whichever occurs first. Except for abuse.

Service Repairs Checked and Approved By: X ____________________ Authorized Representative

X ____________________ Customer Signature

T5

SATURN OF FLINT
2430 DUTCHER RD
FLINT, MI 48532
810-720-8800

SATURN OF FLINT1
007542000801409404200B

Date: 07/17/2009 05:47:58 PM

CREDIT CARD SALE

TRAN AMOUNT: $983.05

CLERK ID: cashier
INVOICE #: 168001

Thank you for your business

Customer Copy

SATURN

SATURN OF GREEN BROOK LLC
270 Route 22 West
Green Brook, NJ 08812
(732) 752-8383
www.saturnofgreenbrook.com

SERVICE INVOICE

SO# 113867 DATE/TIME IN: 7/15/2009 9:00 DATE/TIME OUT: 7/20/2009 16:41
TAG# 770 SA: CARLOS MORA- DOC COUNT: 1 PAGE: 1

5GZCZ33D63S813708
2003 SATURN VUE FWD WHITE
ENGINE: L61 2.2LL4

MILES IN/OUT 68373 / 68375
DEL DATE: 7/15/2009

LINE 1 CUST STATES SES LIGHT IS ON EST.: $.00
TECH COMM: TECH CONFIRMED WAS NECC. TO REPLACE FUEL CAP AND CLEAR CODES TO CURE CONCERN.

REPAIR 1 FUEL TANK FILLER CAP REPLACEMENT
OPCODE: L1020 SALE TYPE: CASH $21.00
HRS: .20
PRIMARY TECH: RICHARD PETRUCCELLI

PARTS	DESC	FP	QTY	PRICE	SALE TYPE	
SN	10372865 CAP.ASM-F	N	1	24.700	CASH	$24.70

LINE TOTAL $45.70

LINE 2 395 CUST STATES CAR SHAKES @ 20-30 MPH
CAUSE: ROTATE PART - WORN/STRIP
TECH COMM: TECH CONFIRMED CODE PRESENT P1752 NO DRIVE. PERFORM DIAGNOSIS TO DETERMINE TRANSMISSION REPLACEMENT. FOUND SEVERE METAL CONTAMINATION IN FLUID AND CAR DOES NOT ACCELERATE ABOVE 20 - 25 MILES PER HOUR. REPLACED TRANSMISSION COMPLETE REPLACED COOLER LINES AND PERFORM COMPLETE FRONT END ALIGNMENT TO CURE CONCERN. CUSTOMER TO PAY 25% OF REPAIR SECOND OWNER UNDER 100.000 MILES.

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE
OPCODE: K7000 SALE TYPE: WARRANTY PO WTY
HRS: 7.90 CASH 194.91
PRIMARY TECH: RICHARD PETRUCCELLI
WARR PARTS: 7

PARTS	DESC	FP	QTY	PRICE	SALE TYPE	
SN	15297663 TRANSMISS	Y	1		WARRANTY POLICY	WTY
					CASH	1042.69
SN	22681964 CORE-TRAN	N	1		WARRANTY POLICY	WTY
					CASH	245.00
SN	15250985 FLUID-A/T	N	1		WARRANTY POLICY	WTY
					CASH	8.40
SN	15234609 FLUID-A/T	N	2		WARRANTY POLICY	WTY
					CASH	4.70

Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

T7

SATURN

SATURN OF GREEN BROOK LLC
270 Route 22 West
Green Brook, NJ 08812
(732) 752-8383
www.saturnofgreenbrook.com

SERVICE INVOICE

SO# 113867 DATE/TIME IN: 7/15/2009 9:00 DATE/TIME OUT: 7/20/2009 16:41
TAG# 770 SA: CARLOS MORA- DOC COUNT: 1 PAGE: 2

04 5GZCZ33D63S813708

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15231847	ADDITIVE-	N	1		WARRANTY POLICY	WTY
						CASH	2.60
SN	15842512	PIPE ASM-	N	1		WARRANTY POLICY	WTY
						CASH	8.24
SN	09180138	BOLT/SCRE	N	1		WARRANTY POLICY	WTY
						CASH	.17

LINE TOTAL $1016.91

LINE 3 CUST STATES CAR HAS NO PICK UP EST.: $.00
TECH COMM: REPAIR RELATED TO LINE TWO (2)

REPAIR 1 REPAIR RELATED TO LINE 2
OPCODE: M5300 SALE TYPE: CASH $.00
PRIMARY TECH: RICHARD PETRUCCELLI

ANY QUESTIONS OR CONCERNS PLEASE CONTACT ANTHONY RUSSO

LABOR	$215.91
PARTS	$846.70
MISC MATERIALS	$.50
HAZD MATERIALS	$.50
TAX (NEW JERSEY SALE)	$74.46
CUSTOMER TOTAL	$1138.07
PAYMENT (PAYMENT DUE)	$1138.07

CUSTOMER SIGNATURE _____

Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN SATURN OF WATERTOWN
715 Straits Turnpike
Watertown, CT 06795
(860) 945-4755

☐ CASH $
☐ CHECK #
☐ CREDIT CARD.: VISA DISCOVER M/C AMEX

Co.# 08 TO: JULIE

GUEST: 1 of 2

Service Order Number	Service Consultant	VIN
258060	MICHAEL LIPINSKI	5GZCZ43D33S821917

Color	Year	Make/Model	Licenses	Engine	Stock
	2003				

Mileage In/Out	Tag	Delivery Date	Rate	Days Count	Plan
99975 /	506	7/10/2009		1	

Key Stamp	Date/Time In	Date/Time Out
	7/10/2009 8:51	7/22/2009 16:02

LINE 1 CUSTOMER STATES TRANSMISSION IS GOING AUTH: A

TECH COMM: TECHNICIAN VERIFIED THE CUSTOMERS CONCERN. PERFORMED PRESSURE TEST FAILED, DISSESAMBLE AND FOUND METAL THROUGHOUT UNIT, GEAR TEETH CHEWED. REMOVED AND REPLACED THE FAULTY CASE COVER, FILTER, VALVE BODY, TORQUE CONVERTER AND FLUSHED COOLER LINES AND [illegible] ASSEMBLED AND RETEST CUSTOMERS CONCERN [illegible]

WARRANTY
12 MS
12 K

REPAIR 1 COVER ASSEMBLY [illegible] DRIVEN PULLEY A
OPCODE: K7104 SALE TYPE: WARRANTY - WTY
HRS: 8.40 OTH HRS:
PRIMARY TECH: JOSEPH TUPAY
WARR PARTS: 10

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	15297659	COVER [illegible]	N	1		WARRANTY - GM	WTY
SN	22737082	CORE-COVER	N	1		WARRANTY - GM	WTY
SN	24226576	FILTER A	N	1		WARRANTY - GM	WTY
SN	24226386	PLATE ASM	N	1		WARRANTY - GM	WTY
SN	15297657	BODY A/M	N	1		WARRANTY - GM	WTY
SN	22720281	CORE-BODY	N	1		WARRANTY - GM	WTY
SN	24220201	CANAR-CORE	N	1		WARRANTY - GM	WTY
SN	15250985	FLUID-A/T	N	2		WARRANTY - GM	WTY
SN	15231847	ADDITIVE-	N	1		WARRANTY - GM	WTY
SN	15863186	SEALER-TR	N	1		WARRANTY - GM	WTY
SN	15297655	CONVERTER	N	1		WARRANTY - GM	WTY
SN	22681965	CORE-CONV	N	1		WARRANTY - GM	WTY

LINE 2 CUSTOMER STATES NOISE IN REAR END WHEN IN REVERSE
TECH COMM: TECHNICIAN REPAIRED CONCERN THROUGH LINE 1.

REPAIR 1 DIAGNOSIS
OPCODE: M6000 SALE TYPE: INTERNAL SE INT

PRIMARY TECH: JOSEPH TUPAY

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN	21170863	KEY ASM-D	N	1		INTERNAL SERVIC	INT

Disclaimer of Warranties
The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

T9

SATURN SATURN OF WATERTOWN 715 Straits Turnpike Watertown, CT 06795 (860) 945-4755

GUEST INVOICE

70 : JULIE

Co.# 03

GUEST: 2 of 2

Service Order Number	Service Consultant	VIN
283060	MICHAEL LIPINSKI	5GZCZ43D68S821917

Tag	Door Count	Date/Time In	Date/Time Out
606	1	7/10/2009 8:51	7/22/2009 16:02

SERVICE APPOINTMENTS AVAILABLE ONLINE AT INGERSOLLAUTO.COM

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

Disclaimer of Warranties
The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN

SATURN OF MONTGOMERY, INC. 8000 Eastern Bypass Montgomery, AL 36116 (334) 260-2064

SERVICE INVOICE

Co.# 0

Sold To:	Service Order Number	Service Advisor	Vin
	99591	ROBERT COMBS	5GZCZ23D53S918900

Color	Year	Make/Model	License	Engine	Sale #
SILVER W/	2003				

Mileage In/Out		Delivery Date	Sale	Dept Count	Clerk
111196/		6/18/2003		1	

Time Stamp	Date/Time In	Date/Time Out
	7/09/2003 18:53	7/28/2003 14:11

LINE 1 TOW IN. CUSTOMER STATES CAR ACTED LIKE THE TRANS W AS SLIPPING. AFTER A WHILE IT STOPPED PULLING. LET IT SIT AND COOL AND IT PULLED OFF AGAIN AND EASED BY TO THE HOUSE. ADVISE.
CAUSE: MODL/COMPNT - WORN/STRIPD
TECH COMM: P1789. REPLACED CASE COVER, TORQUE CONVERTER, INT FILTER, FLUSHED COOLER, UPDATED ECM, ALIGNED 70% CUSTOMER PAY = $2274.38

REPAIR 1 COVER ASSEMBLY, VARIABLE DRIVE AND DRIVEN PULLEY A
OPCODE: K7104 SALE TYPE: WARRANTY PO WTY
HRS: 7.60 OTH HRS: 1.80
PRIMARY TECH: 771
WARR PARTS: 11

PAID JUL 28 2003

Ref # 11014 $ 2274.38

PARTS		DESC	FP	QTY	PRICE	SALE TYPE	
SN		24220201	GASKET-C/	N	1	WARRANTY POLICY	WTY
SN		24220892	PLUG-TRAN	N	1	WARRANTY POLICY	WTY
SN		15297659	COVER ASM	Y	1	WARRANTY POLICY	WTY
SN		22737082	CORE-COVE	N	1	WARRANTY POLICY	WTY
SN		15297655	CONVERTER	N	1	WARRANTY POLICY	WTY
SN		22681965	CORE-CONV	N	1	WARRANTY POLICY	WTY
SN		24226576	FILTER AS	N	1	WARRANTY POLICY	WTY
SN		15231847	ADDITIVE-	N	1	WARRANTY POLICY	WTY
SN		15863186	SEALER-TR	N	1	WARRANTY POLICY	WTY
SN		15250985	FLUID-A/T	N	2	WARRANTY POLICY	WTY
SN		24211020	SEAL-A/TR	N	2	WARRANTY POLICY	WTY

COMMENTS: CUSTOMER TO PAY 70% OF $3249.11 = $2274.38 SATURN TO PAY REMAINDER.

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

12/12 Parts & Labor Warranty
On Work Done on This R.O.
99591

Disclaimer of Warranties JUL 2 8 2003

The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

T11

SATURN

SATURN OF MONTGOMERY, INC.
3000 Eastern Bypass
Montgomery, AL 36116
(334) 260-2064

SERVICE INVOICE

Co.# 0

Sold To:					
	Service Order Number	Service Advisor	VIN		
	98753	ROBERT COMBS	5GZCZ53D58S918900		
	Color	Year	Make/Model	License	Engine	Stk.#
	SILVER W/	2008				
	Mileage In/Out	Tag	Delivery Date	Rate	Dec. Count	Plan
	111249 / 111255		8/18/2008		1	
	Tax Exempt		Date/Time In		Date/Time Out	
			7/24/2008 8:13		8/05/2008 8:28	

LINE 1 TOW IN. CUSTOMER STATES CAR WILL NOT PULL OFF AND IS LEAKING FLUID. ADVISE.

AUTH: AP

CAUSE: MODL/COMPNT - NO/BAD COMM
TECH COMM: VALVE BODY INTERNAL FAULT. REPLACE VALVE BODY. ALSO REOLACE LEFT AXLE SHAFT OIL SEAL VTI GOODWILL POLICY.

REPAIR 1 CONTROL VALVE BODY REPLACEMENT
OPCODE: K6560 SALE TYPE: WARRANTY PO WTY
HRS: 2.20
PRIMARY TECH: 771
WARR PARTS: 4

PARTS		DESC	QTY	PRICE	SALE TYPE	
SN	24235475	SEAL ASM-AXL	1		WARRANTY POLICY	WTY
SN	15250985	FLUID-A/T	1		WARRANTY POLICY	WTY
SN	15297657	BODY ASM-V	1		WARRANTY POLICY	WTY
SN	22720281	CORE-BODY V	1		WARRANTY POLICY	WTY
SN	24226386	PLATE ASM-V	1		WARRANTY POLICY	WTY

NET ITEM: T TOWING SALE TYPE
PO#: 31578 WARRANTY POLICY WTY

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

Disclaimer of Warranties
The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN

SATURN OF MONTGOMERY, INC, 3000 Eastern Bypass Montgomery, AL 36116 (334) 260-2084

SERVICE INVOICE

Co.# 0

Sold To:	Service Order Number	Service Advisor	VIN
	95107	ROBERT COMBS	5GZCZ33D53S913900

Color	Year	Make/Model	License	Engine	Stk #
SILVER W	2003				

Mileage In/Out	Tag	Delivery Date	Rate	Doc. Count	Plan
102841 /		8/18/2003		1	

Tax Exempt	Date/Time In	Date/Time Out
	7/01/2008 13:28	7/01/2008 14:26

LINE 1 VUE VP7 AUTOMATIC

REPAIR 1 SERVICE AUTOMATIC TRANSAXLE, CHANGE FLUID
OPCODE: M5035 SALE TYPE: CUSTOMER PA $80.00
HRS: 1.00
PRIMARY TECH: 026

PARTS			PRICE	SALE TYPE	
SN	15234609	[illegible]	[illegible]50	CUSTOMER PAY	$10.65
SN	15250985	[illegible]	[illegible]00	CUSTOMER PAY	$40.00
SN	15231847	[illegible]	[illegible]00	CUSTOMER PAY	$12.39
SN	24220892	[illegible]	[illegible]00	CUSTOMER PAY	$8.60

REPAIR 2 COURTESY CAR WASH
OPCODE: M5088 [illegible]E TYPE: CUSTOMER PA $.00

[illegible] TOTAL $151.64

LABOR	$80.00
PARTS	$71.64
[illegible] MATERIALS	$8.00
[illegible]AND MATERIALS	$.50
TAX (COUNTY TAX)	$1.79
TAX (CITY TAX)	$2.51
TAX (ALABAMA STATE T)	$2.87
CUSTOMER TOTAL	$167.31
PAYMENT (MAST. CARD)	$167.31

CUSTOMER SIGNATURE _____

[illegible] JUL - 1 2008 BY:

Disclaimer of Warranties

The seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

SATURN SATURN OF GREEN BAY

2800 Ramada Way
Green Bay, WI 54304-5780
(920) 497-6900

8/17/08

SERVICE INVOICE

EMAIL: saturngreenbay@bergstromauto.com
WEB ADDRESS: www.bergstromauto.com

Co.# 02

Sold To	Service Order Number	Service Advisor	VIN
	241690	KENT (GMIN) TREML	5GZCZ33D73S905930

Color	Year	Make/Model	License	Engine	Stock
BLUE *2.2L*	2003	SATURN VUE FWD	952FVW	L61 2.2L L4	28981

Mileage In/Out	Tag	Delivery Date	Rate	Pre-Order	Plan
86377 /		7/29/2008			

Key Exempt Tag	Date Time In	Date Time Out

----------email:----------

LINE 1 CUSTOMER STATES IT SEEMS LIKE TRANS WILL NOT LET YOU ACCELERATE AT TIMES.

AUTH: AE

CAUSE: ROTATE PART-NOISE OPERATI
TECH COMM: CUSTOMER STATES IT SEEMS LIKE THE TRANS WILL NOT LET YOU ACCELERATE. TECH FOUND TRANSMISSION GROWLI NG AND SLIPPING. TECH REPLACED THE TRANSMISSION ASSEMBLY AND [illegible] TEST DROVE. ALL OK NOW.

REPAIR 1 TRANSMISSION ASSEMBLY - REPLACE
OPCODE: K7000 SALE TYPE: WARRANTY PO $701.84
HRS: 6.80 OTH HRS: 1.00
PRIMARY TECH: 011
WARR PARTS: 4 AMT: 4224.[illegible]

PARTS		DESC	QTY	PRICE	SALE TYPE	
SN	15297663	TRANSM[illegible]	[illegible]	4170.40	WARRANTY POLICY	$4170.74
SN	22681964	CORE-TRANS[illegible]	[illegible]	980.00	WARRANTY POLICY	$980.00
SN	15234609	FLUID-AT[illegible]	[illegible]	9.34	WARRANTY POLICY	$9.39
SN	15250985	FLUID-A/[illegible]	[illegible]	33.06	WARRANTY POLICY	$33.60
SN	15231847	ADDITIVE- [illegible]	[illegible]	10.416	WARRANTY POLICY	$10.42
					TOTAL	$3945.95

OUR #1 GOALS "COMPLETELY SATISFIED" & "DEFINITELY RECOMMEND"

CUSTOMER SIGNATURE _____ CUSTOMER TOTAL ..... $.00

"Motor vehicle repair practices are regulated by chapter ATCP 132, Wis. Adm. Code, administered by the Bureau of Consumer Protection, Wisconsin Dept. of Agriculture, Trade and Consumer Protection, P.O.Box 8911 Madison, Wisconsin 53708-8911"

Disclaimer of Warranties
The Seller, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products.

Exhibit U

Exhibit U

I, Dan Richardson, hereby state:

1. I am over eighteen years of age and have personal knowledge of the facts stated herein.

2. I purchased my 2002 Saturn Vue new from Saturn of Fairfield, in Fairfield, CT.

3. I first started having problems with the VTi transmission in my 2002 Saturn Vue in 2008. I took my 2002 Saturn Vue to Ace Automotive in Norwalk, Connecticut. Ace Automotive diagnosed transmission problems and serviced the VTi transmission fluid and sensor switch.

4. On August 11, 2009, when my 2002 Saturn Vue reached approximately 122,000 miles, the VTi transmission failed, and I contacted LakinChapman, LLC about the class notice I received in the mail and how I could receive the benefits of the Saturn settlement. The person I talked to at LakinChapman, LLC, suggested that I contact GM Customer Assistance Center. On August 11, 2009, I contacted the GM Customer Assistance Center and I spoke with a GM representative named Alex. Alex asked me some questions about my vehicle. I provided Alex my 2002 Saturn Vue's VIN, mileage, and other requested information. I then asked about the benefits available under the Saturn VTi settlement. I was then told by Alex at the GM Customer Assistance Center that I needed to have my vehicle towed into a Saturn dealership so that they could diagnosis the VTi transmission failure. She explained that if the Saturn dealership diagnosed my 2002 Saturn Vue with VTi transmission problems or failure, then the dealership would fix it under the settlement terms. After I talked to Alex I called Saturn of Fairfield and received an appointment for August 25, 2009 to bring my vehicle in for diagnosis.

5. On August 24, 2009, I had my 2002 Saturn Vue towed to Saturn of Fairfield. I paid approximately $50 for the tow. On August 27, 2009 I called Saturn of Fairfield to follow up on the diagnosis and was told that my vehicle was diagnosed with a transmission failure, and I was quoted $5,500 to replace the transmission. I then told the person at Saturn of Fairfield that Alex at the GM Customer Assistance Center told me that I was to receive the benefits of the Saturn VTi settlement, and under the settlement GM was going to pay 75% of the VTi transmission replacement. The person at Saturn of Fairfield responded that GM is no longer honoring the settlement, and I was responsible for the entire amount of $5,500. After I got off the phone with Saturn of Fairfield I again contacted the GM Customer Assistance Center. Alex was unavailable, but I spoke with a lady about my case. The lady I spoke with reviewed my claim file, and told me that she was not sure why the dealership would tell me that GM is no longer honoring the settlement. She concluded the conversation by telling me that she would inquire as to the dealership's position, and someone would get back in touch with me.

6. On August 27, 2009, I received a telephone call from Alex at the GM Customer Assistance Center and she told me that they contacted GM corporate, and GM was no longer honoring the terms of the settlement and GM was reverting back to the 5 year/75,000 mile warranty. I was told by Alex to contact LakinChapman, LLC for further assistance as they had already received a lump sum payment for the VTi Transmission class action settlement.

7. Currently, my vehicle is at Saturn of Fairfield and it has not been repaired.

Dan R. Richardson

Dated: September 11, 2009

Sworn to and subscribed before me
this 11th day of September, 2009.

Notary Public

Commission Expires: November 30, 2011

Exhibit V

SERVICE BULLETIN

NO.: 04020
SPECIAL POLICY

DATE: March 2004
CATEGORY TYPE: Transaxle - 02
CATEGORY: Automatic

SPECIAL POLICY

SUBJECT: SPECIAL POLICY ADJUSTMENT – EXTENDED TRANSMISSION WARRANTY COVERAGE FOR THE VARIABLE TRANSMISSION WITH INTELLIGENCE (VTi) TRANSMISSION

MODELS: 2002, 2003 AND 2004 VUE VEHICLES EQUIPPED WITH VTi (M75 AND M16) 2003 AND 2004 ION QUAD COUPE VEHICLES EQUIPPED WITH VTi (M75)

TO: ALL SATURN RETAILERS AND AUTHORIZED SERVICE PROVIDERS

CONDITION

Saturn has determined that 2002, 2003 and 2004 VUE and 2003 and 2004 ION Quad Coupe vehicles equipped with the VTi transmission may experience certain transmission concerns that might affect customer satisfaction, and may require repair or replacement.

SPECIAL POLICY ADJUSTMENT

This special policy bulletin has been issued to extend the warranty on the VTi transmission assembly for a period of 5 years or 75,000 miles (120,000 km), whichever occurs first, from the date the vehicle was originally placed in service, regardless of ownership. The repairs will be made at no charge to the customer.

Effective immediately, vehicles covered by extended vehicle service contracts are covered by this special policy.

VEHICLES INVOLVED

Involved are Saturn 2002, 2003 and 2004 VUE and 2003 and 2004 ION Quad Coupe vehicles equipped with the VTi transmission (RPOs M16 or M75). This policy is applicable to all VTi equipped vehicles with an in-service date prior to April 2004.

PARTS INFORMATION

Parts required to complete a repair under this special policy are to be obtained from Saturn Service Parts Operations (SSPO) as outlined in the current parts catalog.

COPYRIGHT © 2004 SATURN CORPORATION U.S.A. ALL RIGHTS RESERVED.
— *EXCEED CUSTOMER EXPECTATIONS* —

CUSTOMER NOTIFICATION

Saturn will notify customers of this special policy on their vehicles via first-class mail. A copy of the customer letter is included with this bulletin.

SERVICE PROCEDURE

Diagnose and service as outlined in the applicable Saturn Service Manual or Technical Information Bulletin(s). Current Service Manuals and Technical Information Bulletins are available via the Electronic Service Information (eSI) web site.

CLAIM INFORMATION

For vehicles repaired under the terms of this special policy submit a claim using the applicable chart below:

If the vehicle is still within the 3 years and 36,000 miles, use Chart A.

CHART A

Service Performed	Case Type	Labor Op.	Net Item Amount	Net Item Code	# Days Rental	Admin. Hrs.
Applicable Labor Operation for Repair	VW	*	N/A	N/A	See Below	N/A
Rental Reimbursement	GW or SS	T5599	**	C	***	N/A
Customer Reimbursement ****	VW	T5600	***	R		0.2

If the vehicle is beyond 3 years or 36,000 miles but within the 5 years and 75,000 miles special policy coverage use Chart B.

CHART B

Service Performed	Case Type	Labor Op.	Net Item Amount	Net Item Code	# Days Rental	Admin. Hrs.
Applicable Labor Operation for Repair	SP	*	N/A	N/A	See Below	N/A
Rental Reimbursement	SP or SS	T5599	**	C	***	N/A
Customer Reimbursement ****	SP	T5600	***	R		0.2

* To receive credit for a repair to the VTi transmission during the special policy period, submit a claim through the Saturn Retail System using the appropriate labor operation number and labor time from the electronic Labor Time Guide.

** Net item amounts must be submitted as a miscellaneous sale. Rental reimbursement is not to exceed $35/day.

*** Enter number of days vehicle was rented. Not to exceed 3 days.

**** Customer requests for reimbursement of previously paid repairs to VTi transmission assembly.

Produced by GM in Castillo, et al v. GM CASTILLO0000002668

1. Retailers are empowered to use good judgment regarding rental cars. Should the rental exceed the special policy maximum 3-day allowance, contact the Customer Assistance Center at 1-800-828-2112, prompt 6, prompt 1.

2. **Labor operations claimed in this bulletin for rental reimbursement or customer reimbursement must be submitted on individual (unrelated to each other or the repair) CSO lines.**

3. The parts allowance should be the sum total of the current SSPO Retailer Net Price + 40% of all parts required for the repair.

CUSTOMER REIMBURSEMENT

Customers with claims for previously paid repairs to the VTi transmission assembly are instructed to contact their Saturn retailer to arrange for reimbursement. If the repair was performed at a non-Saturn facility, customers will need to provide the original paid receipt or invoice verifying the repair, proof of payment, and proof of ownership of the vehicle at the time of repair. If you have any questions regarding claim processing, please contact the Saturn Customer Assistance Center at 1-800-828-2112 prompt 6, prompt 1.

Customer Reimbursement Claims – Special Attention Required.

A. Customer reimbursement claims must have the date of the VTi transmission assembly repair entered into the "repair date" field of the CSO in the "Labor Detail/Comments" screen.

B. Customer reimbursement claims must have the mileage of the prior repair of the VTi transmission assembly repair entered on the "Service Order Hub" screen in the "miles in" field.

C. Customer reimbursement claims must have entered into the "technician comments" field the CSO number (if repair was completed at a Saturn retail facility) date, mileage, customer name, and any deductibles and taxes paid by the customer.

D. Customer reimbursement claims must be submitted on a different CSO than the special policy repair. This is because the repair date and mileage differ between the two repairs.

Produced by GM in Castillo, et al v. GM CASTILLO0000002669

March 2004

Dear Saturn Owner,

We are writing to let you know of a special policy relating to 2002, 2003 and 2004 VUE and 2003 and 2004 ION Quad Coupe vehicles equipped with the VTi transmission. These vehicles may experience certain transmission concerns that might affect customer satisfaction, and may require repair or replacement.

What We Will Do:

Saturn will provide extended coverage for a period of 5 years from the date the vehicle was originally placed in service, or 75,000 miles, whichever occurs first. This special policy covers both the original owner, and any subsequent owners for the 5-year/75,000-mile duration. Please keep this letter with your other important glove box literature for further reference.

This is not a recall. At this time, it is not necessary to take your vehicle to your Saturn retailer as a result of this letter.

What You Should Do:

If your vehicle should require VTi transmission repairs within 5 years/75,000 miles, whichever comes first, Saturn will repair your vehicle at no charge. A Saturn retailer must perform repairs to qualify for this special coverage.

You will be eligible for reimbursement if you have already paid for some or all of the cost to have VTi transmission repairs, and your vehicle was within the 5-year/75,000-mile parameter at the time of the repair.

Reimbursement:

The enclosed form explains what reimbursement is available and how to request reimbursement if you have paid for repairs for the special policy condition.

We sincerely regret any inconvenience this may cause you. However, we have taken this action in the interest of your continued satisfaction with our product. If you have any questions, please contact your Saturn retailer or the Saturn Customer Assistance Center at 1-800-972-8876, or for the hearing impaired, 1-800-833-6000. We want you to know that we will do our best, throughout your ownership experience, to ensure that your Saturn provides you many miles of enjoyable driving.

Sincerely,

Saturn Corporation
04020

Produced by GM in Castillo, et al v. GM CASTILLO0000002670

Saturn Corporation
Customer Assistance Center
P.O. Box 1500
Spring Hill, TN 37174

SATURN

VTi Transmission SPECIAL POLICY CUSTOMER REIMBURSEMENT PROCEDURE

If you paid for repairs associated with the VTi transmission assembly prior to March 15, 2004, you may be eligible to receive reimbursement.

Requests for reimbursement may include parts, labor, fees and taxes. Reimbursement may be limited to the amount the repair would have cost if completed by an authorized Saturn retailer.

Submitting a special policy reimbursement claim directly to your Saturn retailer may expedite processing, however, if you choose, you may file your claim through the Saturn Customer Assistance Center. Your claim will be acted upon within 60 days of receipt.

If your claim is:

- Approved, you will receive a check from your Saturn retailer or Saturn Corporation,
- Denied, you will receive a letter from your Saturn retailer or Saturn Corporation with the reason(s) for the denial, or
- Incomplete, you will receive a letter from your Saturn retailer or Saturn Corporation identifying the documentation that is needed to complete the claim and offered the opportunity to resubmit the claim when the missing documentation is available.

Please follow the instructions on the Claim Form provided on the reverse side to file a claim for reimbursement. If you have any questions or need assistance, please contact your Saturn retailer or the Saturn Customer Assistance at 1-800-972-8876, or for the hearing impaired, 1-800-833-6000.

Produced by GM in Castillo, et al v. GM CASTILLO0000002671

SATURN
VTI TRANSMISSION SPECIAL POLICY CUSTOMER REIMBURSEMENT CLAIM FORM
04020

THIS SECTION TO BE COMPLETED BY CLAIMANT

Date Claim Submitted: _____

Vehicle Identification Number (VIN):

_____

Mileage at Time of Repair: _____ Date of Repair: _____

Claimant Name (please print): _____

Street Address or PO Box Number: _____

City: _____ State: _____ ZIP Code _____

Daytime Telephone Number (Include Area Code): _____

Evening Telephone Number (Include Area Code): _____

Amount of Reimbursement Requested: $_____

THE FOLLOWING DOCUMENTATION MUST ACCOMPANY THIS CLAIM FORM.

Original or clear copy of all receipts, invoices and/or repair orders that show:

- The name and address of the person who paid for the repair.
- The Vehicle Identification Number (VIN) of the vehicle that was repaired.
- What problem occurred, what repair was done, when it was done and who did it.
- The total cost of the repair expense that is being claimed.
- Payment for the repair in question and the date of payment.
  (copy of front and back of cancelled check, or copy of credit card receipt)

My signature to this document attests that all attached documents are genuine and I request reimbursement for the expense I incurred for the repair covered by this special policy.

Claimant's Signature: _____

Please provide this claim form and the required documents to your Saturn retailer or mail to the following address:

Saturn Corporation
Customer Assistance Center
P. O. Box 1500
Spring Hill, TN. 37174
Mail Drop 371-999-S24

S032004RFP01

Produced by GM in Castillo, et al v. GM CASTILLO0000002672

Exhibit W

Date: 09/29/2009 Ref. number: Service / Service Operations / G_0000039020

Subject: **Saturn VTi Transmission Settlement Clarification**

GM SERVICE AND PARTS OPERATIONS
DCS2303
URGENT - DISTRIBUTE IMMEDIATELY

Date: September 28, 2009

Subject: Saturn VTi Transmission Settlement Clarification

Models: Certain 2002 – 2005 Saturn VUE
Certain 2003 – 2004 Saturn ION
Equipped with VTi Transmission

To: All Saturn Retailers

Attention: Dealer Operator, General Manager, Sales Manager, Service Manager, Used Car Manager, Parts Manager and Warranty Administrator

As you know, General Motors Corporation (now Motors Liquidation Company or "MLC") previously entered into a class wide settlement agreement of certain litigation involving the VTi transmission in 2002-2005 model year Saturn VUE and 2003-2004 model year Saturn ION vehicles. Without admitting liability for any claims made in the litigation and to avoid the costs and expenses of further litigation, MLC agreed that after the effective date of the settlement it would reimburse customers for certain VTi transmission related expenses incurred after the expiration of the of the 5 year/75,000 mile limited warranty applicable to this transmission. In addition, as a customer good will matter prior to the effective date of the settlement, as contained in GM Administrative Message G_0000020717, MLC put in place a practice of reimbursing eligible claims pursuant to the time, mileage and percentage reimbursement schedule contained in the settlement. However, before the effective date of the settlement, MLC was forced to file for bankruptcy protection.

When it emerged from the bankruptcy proceedings, General Motors Company ("GM") did not assume liability under the settlement or otherwise for any reimbursement obligations with respect to the VTi transmission. The Bankruptcy Court's order approving the 363 sale of MLC assets to GM specifically provides that such sale was free and clear of any MLC liabilities unless expressly assumed by GM. Therefore, the responsibility, if any, to provide reimbursement to customers under the settlement remains with MLC subject to the normal procedures of the Bankruptcy Court. Thus, GM Administrative Message G_0000020717 is no longer effective and no reimbursement of VTi transmission related expenses should be made or will be honored by GM pursuant to the terms of the prior policy outlined in that message.

Going forward, repair of VTi transmissions in the subject vehicles should be addressed only pursuant to the terms of the 5 year / 75,000 mile limited express warranty extension issued via Saturn Special Coverage Bulletin 04020 dated March 2004 and superseded by Bulletin 04020A in January 2008.

END OF MESSAGE
GM SERVICE AND PARTS OPERATIONS