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Counsel for Plaintiffs

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
MOTORS LIQUIDATION CORP.,	:	Case No. 09-50026 (REG)
	:	
Debtor.	:	
-----X		
STEVEN GROMAN, ROBIN DELUCO	:	
ELIZABETH Y. GRUMET, ABC FLOORING,	:	
INC., MARCUS SULLIVAN, KATELYN	:	
SAXSON, AMY C. CLINTON, AND ALLISON	:	Adv. Pro. No. _____
C. CLINTON, on behalf of themselves, and all	:	
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
-v-	:	
	:	
GENERAL MOTORS LLC,	:	
	:	
Defendant.	:	
-----X		

COMPLAINT

Dr. Steven Groman, Robin DeLuco, Elizabeth Y. Grumet, ABC Flooring, Inc., Marcus Sullivan, Katelyn Saxson, Amy C. Clinton, and Allison C. Clinton, each individually and as a class representative on behalf of all similarly situated persons (collectively, the “**Plaintiffs**”), through their counsel, Golenbock Eiseman Assor Bell & Peskoe LLP and Wolf Haldenstein Adler Freeman & Herz LLP, on knowledge as to their own status and actions and otherwise upon information and belief, respectfully allege for their Complaint (the “**Complaint**”) against General Motors LLC (“**GM**”), as follows:

Nature of Adversary Proceeding

1. Over a decade ago, GM discovered an ignition switch defect in millions of its vehicles that rendered them unfit for their intended purpose – to provide safe, reliable transportation – insofar as the defect could cause the vehicles’ engines to shut off mid-ride, resulting in a complete and sudden loss of power. Instead of replacing the defective ignition switch, or notifying the National Highway Traffic Safety Administration (“**NHTSA**”), vehicle owners or the consuming public of the danger, GM made a business decision to conceal its existence. When GM eventually began to manufacture vehicles with the corrected part, it used the same part number to avoid any notice of or questions about the change.

2. Once GM could no longer conceal the existence of the ignition switch defect in certain of its vehicles, it was forced to disclose that, by its own count, the defect is linked to at least 31 accidents and 13 deaths. According to the Center for Automotive Safety, data recorded on NHTSA’s Fatal Analysis Reporting System indicates that 303 fatalities have resulted.

3. To make matters worse, during its 2009 chapter 11 case, GM fraudulently concealed the ignition defect as it took billions of dollars in taxpayer money from the U.S.

Government and obtained the U.S. Government's sponsorship of a plan of reorganization that salvaged the company's very existence. During the bankruptcy case, GM crafted and obtained court approval of a sale order that permitted a newly-formed GM entity to buy substantially all of the old GM's assets "free and clear" of any claims, including product liability claims, that arose before court approval of the sale. Despite having long known about the ignition defect, GM did not disclose its existence to the Bankruptcy Court, to persons who owned or leased GM vehicles containing the defect as of that time, the U.S. Government, or to any other parties in interest. As a result, consumers did not have an opportunity to assert or have any reason to believe that they should try to assert any objections or claims in the bankruptcy case concerning damages caused by the defect.

4. Now that the defect has been disclosed as a result of a nationwide recall, GM has taken the position that the claims related to the vehicles' unmerchantability, and its own misfeasance/malfeasance, are barred by this Court's 363 sale order. GM's argument suggests that the U.S. Government would have agreed to extend \$40 billion of taxpayer money for GM's restructuring, and supported shielding it from liability through the sale order, had it known of GM's intentional misconduct.

5. Plaintiffs, who have commenced class action complaints against GM on behalf of themselves and others for losses resulting from the defects, believe otherwise and bring this action to obtain an order declaring that the sale order cannot be used by GM to absolve it of any liability from Plaintiffs' defect claims.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over the Complaint pursuant to 28 U.S.C. §§ 1334(b) and 2201.

7. The Complaint is brought pursuant to Fed. R. Bankr. P. 7001(2), (7), and (9), and is a core proceeding under 28 U.S.C. 157(b)(2), including subsections (A), (K), (N), and (O) thereof.

8. Venue of the Complaint in the Southern District of New York is proper pursuant to 28 U.S.C. § 1409(a).

The Parties and the Class Action Complaints

9. Plaintiff and proposed New York State Class Representative Dr. Steven Groman (“**Groman**”) is a resident and citizen of the State of New York. On April 8, 2014, Groman filed a class action complaint against GM in the United States District Court for the Southern District of New York, which is pending under Case No. 14-cv-02458 (JMF) (the “**Groman Action**”).

10. Plaintiff and proposed New York State Class Representative Robin DeLuco (“**DeLuco**”) is a resident and citizen of the State of New York. On April 16, 2014, DeLuco filed a class action complaint against GM in the United States District Court for the Southern District of New York, which is pending under Case No. 14-cv-02713 (the “**DeLuco Action**”).

11. Plaintiff and proposed California State Class Representative Elizabeth Y. Grumet (“**Grumet**”) is a resident and citizen of the State of California.

12. Plaintiff and proposed Florida State Class Representative ABC Flooring, Inc. (“**ABC**”) is a Florida corporation.

13. Plaintiff and proposed Illinois State Class Representatives Marcus Sullivan (“**Sullivan**”), Amy C. Clinton (“**Amy Clinton**”), and Allison C. Clinton (“**Allison Clinton**”), are residents and citizen of the State of Illinois.

14. Plaintiff and proposed Michigan State Class Representative Katelyn Saxson (“**Saxson**”) is a resident and citizen of the State of Michigan.

15. On March 27, 2014, Plaintiffs Grumet, ABC, Sullivan, Amy Clinton, Allison Clinton, and Katelyn Saxson (collectively, the “**California Class Representatives**,” and together with Groman and DeLuco, the “**Class Representatives**”) filed a class action complaint against GM in the United States District Court for the Southern District of California, which is pending under Case No. 14-cv-0713 (the “**California Action**,” and together with the Groman Action and the DeLuco Action, the “**Class Action**”).

16. In the Class Action, the Class Representatives, on behalf of all similarly situated persons, each of whom own, owned, lease or leased one or more of the following vehicles: 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2003-2007 Saturn Ion; 2006-11 Chevrolet HHR; 2005-2006 Pontiac Pursuit (Canada); 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the “**GM Vehicles**”), filed complaints (collectively, the “**Class Action Complaints**”) seeking to hold GM liable for damages that the class members have suffered as a result of the defective ignition switches installed in the GM Vehicles (the “**Defective Vehicle Claims**”). True and correct copies of the Class Action Complaints are attached hereto as **Exhibits 1 through 3**.

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

18. Plaintiffs bring this action pursuant to Rules 23(a), (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, as incorporated by Rule 7023 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) on behalf of the following Classes:

- a. All persons and entities that purchased or leased Defective Vehicles in the United States between 2002 and the present (the “**Class Period**”) (the

“Nationwide Class”).

- b. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of New York (the **“New York State Class”**).
- c. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of California (the **“California State Class”**).
- d. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of Florida (the **“Florida State Class”**).
- e. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of Illinois (the **“Illinois State Class”**).
- f. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of Michigan (the **“Michigan State Class”**, and together with the New York, California, Florida, and Illinois State Classes are, collectively, the **“State Classes”**)

19. Together, the Nationwide and State Classes shall be collectively referred to hereinafter as the **“Class.”** The Class excludes GM and any entity in which GM has a controlling interest, and its officers, directors, legal representatives, successors and assigns. The Class also excludes any entity in which GM has or had a controlling interest, and its officers, directors, legal representatives, successors and assigns.

20. The Class is so numerous that joinder of all members is impracticable.

21. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

22. The Class Representatives’ claims are typical of the claims of the Class. As alleged herein, the Class Representatives and members of the Class all sustained damages arising out of GM’s same course of unlawful conduct.

23. There are questions of law and fact common to the Class, including but not limited to:

- Whether and when GM and its predecessor had knowledge of the defect prior to its issuance of the current safety recall;
- Whether GM and its predecessor concealed defects affecting the GM Vehicles;
- Whether GM bears liability for GM Vehicles that members of the Class purchased or leased after July 10, 2009;
- Whether the Sale Order (as defined below) was approved in violation of Presale Plaintiffs' (as defined below) due process rights, and as a result cannot bind the Presale Plaintiffs;
- Whether GM is precluded and estopped from invoking, any claimed protections provided by the Sale Order from Defective Vehicle Claims given that the same employees of Old GM who concealed the Defective Ignition Switch (as defined below in paragraph 37) from the Bankruptcy Court thereafter continued to do so as employees of GM, and, like Old GM, thereby prevented Plaintiffs from asserting their rights concerning the Defective Vehicle Claims in the Bankruptcy Case;
- Whether Presale Plaintiffs were denied an opportunity to protect their rights in connection with the 363 Sale (as defined below) as a result of Old GM's concealment and misconduct and, consequently, are entitled to obtain equitable relief from the Sale Order in order to assert their claims against the GM relating to the Defective Ignition Switch;
- Whether Plaintiffs are entitled to a declaration that the Sale Order is void and unenforceable to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims; and
- Whether Plaintiffs are entitled to a declaration that the Sale Order is void and unenforceable as a fraud on the Bankruptcy Court to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims.

24. The interest of members of the Class in individually controlling the prosecution of separate actions is theoretical and not practical. The members of the Class have a high degree of similarity and are cohesive. The Class Representatives anticipate no difficulty in the management of this matter as a class action.

25. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(2) and Bankruptcy Rule 7023 because GM has acted or refused to act on grounds generally

applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

26. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(3) and Bankruptcy Rule 7023 because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Factual Background

Old GM Files for Bankruptcy and Reorganizes with the Backing Of, and Extensive Financial Support From, the U.S. Government

27. In late 2008, while in the midst of a severe liquidity crisis, Old GM was compelled to seek financial assistance from the U.S. Government in order to continue operations and reorganize. Between December 2008 and May 2009, the U.S. Government provided Old GM with billions of dollars of taxpayer money in the form of short-term, emergency funding and working capital loans as Old GM finalized a restructuring plan.

28. On June 1, 2009 (the “**Petition Date**”), Old GM filed a petition under chapter 11 of the Bankruptcy Code (the “**Bankruptcy Case**”) in this Court (the “**Bankruptcy Court**”). At the time of its filing, Old GM’s largest secured creditor was the United States Treasury.

29. On the Petition Date, Old GM filed its motion for approval (the “**Sale Motion**”) to sell substantially all of its assets to a U.S. Treasury-sponsored purchaser via a Master Sale and Purchase Agreement dated as of the Petition Date (the “**363 Sale**”).

30. On June 3, 2009, the U.S. Government provided Old GM with \$30.1 billion in debtor-in-possession financing.

31. As Old GM stated in its filings with the Bankruptcy Court, restoring consumer confidence in GM was critical to its restructuring plan and a fundamental premise of the U.S.

Treasury program:

- In the Sale Motion, Old GM stated that the “363 Transaction will restore confidence on the part of consumers that they can purchase a GM vehicle without concerns regarding residual value, replacement parts, warranty obligations, and maintenance.”
- In its Disclosure Statement, Old GM stated that: “. . . a fundamental premise of the U.S. Treasury program was to revive consumer confidence in [Old] GM products and services for the benefit of [Old] GM’s employees, its extended supplier and dealer network, and the families and communities that depend on [Old] GM operations. Knowing that [Old] GM’s business would exist and be supported in the form of GM, consumers would have the confidence that if they purchased a GM vehicle, there would be a dealer network and U.S. Government support to assure parts, warranty service, and a market for future used GM vehicle trade-ins.”

32. On July 5, 2009, only a month after the Petition Date, the Bankruptcy Court entered an order approving the sale of substantially all of Old GM’s assets to newly-created GM (the “**Sale Order**”), which for all practical purposes is the same as Old GM, under the Amended and Restated Master Sale and Purchase Agreement (“**MPA**”), dated as of June 26, 2009, by and among Old GM and its debtor subsidiaries, as sellers, and GM, the purchaser sponsored by the U.S. Treasury.

33. The Sale Order purported to transfer substantially all of Old GM’s valuable operating assets to GM (the “**Assets**”) “free and clear” of claims, including claims for successor liability. Specifically, Paragraphs 7-10 of the Sale Order provide:

Except for the Assumed Liabilities,¹ pursuant to sections 105(a) and 363(1) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Sale Order.

liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

Except as expressly permitted or otherwise specifically provided by the MPA or [the Sale] Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor liability.

[The Sale] Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities . . .

The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title and interest of the Sellers in and to the Purchased Assets free and clear of any all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

34. On March 29, 2011 (the “**Confirmation Date**”), the Court entered an order confirming Old GM’s Second Amended Joint Chapter 11 Plan (the “**Plan**”). The Plan became effective on March 31, 2011.

35. The Plan established post-confirmation trusts to administer creditor claims and make plan distributions to creditors. The Motors Liquidation Company GUC Trust (the “**GUC Trust**”) was formed for the benefit of general unsecured creditors, and the MLC Asbestos PI Trust (the “**Asbestos Trust**”) was formed for the benefit of asbestos personal injury claimants. All claimants against Old GM as of the Confirmation Date received a beneficial interest in the GUC Trust or the Asbestos Trust.

36. In or about April of 2011, Old GM announced that 97% of creditor claims had been resolved, and distributed more than 75% of the Stock and Warrants that Old GM owned in GM to unsecured creditors.

Old GM and GM Have Collectively Known About, Yet Failed to Disclose, the Defective Ignition Switch for Over a Decade

37. Since 2002, many years before the Bankruptcy Case, GM has sold millions of GM Vehicles throughout the world that had a life-threatening defect that it knew could cause their engines to shut down during normal operation without warning. Namely, in GM Vehicles, the ignition switch, if jostled or if the key had ornaments hanging from it, could unintentionally shift the ignition of a moving car from the run position to “accessory” power mode, which results in a sudden and complete loss of power (the “**Defective Ignition Switch**”). Once the engine and electrical system shut down, the vehicle’s power steering and power brakes fail, and the vehicle’s airbags disengage, creating a substantial risk that the vehicle will be involved in an accident that maims or kills the passengers and potentially others.

38. Old GM installed the Defective Ignition Switch in its cars from 2001 to 2009. GM continued designing and manufacturing vehicles with the Defective Ignition Switch through 2011.

39. Between 2001 and the present, Old GM – and subsequently GM – have received hundreds of complaints that GM Vehicles were prone to sudden shut-off. Despite these complaints and their knowledge about the Defective Ignition Switch, and at all relevant times, Old GM and GM have advertised and promoted the GM Vehicles as highly reliable and safe.

40. GM itself has already linked the Defective Ignition Switch to 31 accidents and 13 deaths.²

41. On March 12, 2014, *The New York Times* revealed that GM has known since 2001 that one of the GM Vehicles had serious safety problems involving the Defective Ignition Switch. In a chronology submitted to regulators, GM has admitted that during the development of the Saturn Ion in 2001, it learned that the ignition switch could turn off inadvertently. While GM insisted that the issue was resolved at that time, a 2003 internal inquiry indicated otherwise.³

42. As another example of Old GM's long-held knowledge of the Defective Ignition Switch, engineers employed by Old GM determined as early as 2004 that a defect in the ignition switch meant a key could be unintentionally jostled out of the "Run" position to the "Accessory" or "Off" position by a heavy key ring or by a nudge from a driver's leg, and that with the ignition switch in the "Accessory" or "Off" position, causing the car to stall and shut down power to the

² Hilary Stout, *A Bid to Park Recalled G.M. Cars is Denied*, The New York Times, Apr. 17, 2014, <http://www.nytimes.com/2014/04/18/business/move-to-ban-recalled-gm-cars-from-roads-is-denied.html>.

³ Hilary Stout, Bill Vlasic, Danielle Ivory, and Rebecca R. Ruiz, *Carmaker Misled Grieving Families on a Lethal Flaw*, The New York Times, Mar. 25, 2014, <http://www.nytimes.com/2014/03/25/business/carmaker-mislead-grieving-families-on-a-lethal-flaw.html>.

engine and electrical system, and also disable the airbags so that any accident ensuing from the sudden and unexpected stall would not deploy the airbag safety devices, which would leave the vehicle's occupants exposed to grave bodily harm.

43. After identifying the Defective Ignition Switch, the Old GM engineers proposed a fix. Old GM executives, however, decided that the cost was prohibitive and declined to take remedial action. It has been reported that the 2004 proposed fix was actually less than \$12 per vehicle. Thus, to save a few dollars per vehicle, Old GM elected not to recall the vehicles or replace the Defective Ignition Switch and, instead, deliberately chose to put millions of defective GM Vehicles on the road and expose its customers and millions of other Americans to mortal danger every time one of the GM Vehicles was on the roadways.

44. Reports detailing sudden ignition turn off continued through 2005; another fix was considered by Old GM but not implemented.⁴ Instead, Old GM sent dealers a technical service bulletin about the 2005-06 Cobalt warning about a stalling problem related to heavy key rings. At that time, an Old GM executive explained, "in rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running. Service advisers are telling customers they can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings."⁵

45. In or about 2006, Old GM considered using the switch with the Defective Ignition Switch in its redesigned 2007 Cadillac SRX station wagon. However, after Old GM test

⁴ See Christopher Jensen, *In GM Recalls Inaction and Trails of Fatal Crashes*, The New York Times, Mar. 12, 2014, <http://www.nytimes.com/2014/03/03/business/in-general-motors-recalls-inaction-and-trail-of-fatal-crashes.html>.

⁵ Id.

engineers complained that they could hit the ignition key with a knee and turn off the vehicle, Old GM chose a different design.⁶

46. In late 2006, Old GM implemented a new ignition switch design to correct the Defective Ignition Switch in parts to be used in later models. But Old GM chose not to issue a new part number for the non-defective part.⁷

47. During and prior to 2007, Old GM conducted an extensive review of electronically captured data retrieved from sensing modules removed from wrecked cars. Premised upon a review of this information, *The New York Times* stated that by the end of 2007, Old GM recognized for certain the “link between a faulty switch and deactivated air bags”:

And an even bigger communication gap on the Cobalt appeared to exist between the engineers in Warren, Mich., and the company lawyers in downtown Detroit. The most glaring example was that GM officials meeting with federal regulators in March 2007 did not know about a fatal Cobalt wreck in 2005 – even though GM’s legal department had had an open file on the case for almost two years.

Within the product development system was an isolated, subgroup of engineers assigned to Cobalt safety tests. According to the chronology GM has submitted to federal safety regulators, an unknown number of engineers were involved in opening – and closing – four separate inquiries on the Cobalt between 2004 and 2009. Engineers also performed four other analyses.

By the end of 2007, GM had examined data from nine “sensing and diagnostic modules” of crashed vehicles. In four cases, the ignition was in the accessory position.⁸

⁶ Hilary Stout, *A Bid to Park Recalled G.M. Cars is Denied*, The New York Times, Apr. 17, 2014, <http://www.nytimes.com/2014/04/18/business/move-to-ban-recalled-gm-cars-from-roads-is-denied.html>.

⁷ See Rich Gardella & Talesha Reynolds, *Document: GM Engineer OK'd No New Part Number in Ignition Switch Fix*, NBC News, Apr. 11, 2014, <http://www.nbcnews.com/storyline/gm-recall/document-gm-engineer-okd-no-new-part-number-ignition-switch-n78566>.

⁸ Christopher Jensen, *In GM Recalls Inaction and Trails of Fatal Crashes*, The New York Times, Mar. 12, 2014, <http://www.nytimes.com/2014/03/03/business/in-general-motors-recalls-inaction-and-trail-of-fatal-crashes.html>.

48. Subsequently, at a May 15, 2009 meeting, Old GM confirmed from the data retrieved from the “black box” of a Cobalt during a post-accident examination that the Defective Ignition Switch had caused the accident.

49. Despite all these events and known data, Old GM continued to conceal the Defective Ignition Switch problem and continued to subject millions of Americans to possible injury or death resulting from a failure of the Defective Ignition Switch.

Old GM and New GM Fraudulently Concealed the Existence of the Defective Ignition Switch from the U.S. Government, the Bankruptcy Court, Plaintiffs, and the Public

50. Nowhere in the Sale Motion or in any of Old GM’s filings did it disclose the Defective Ignition Switch. Old GM also never disclosed the Defective Ignition Switch during the extensive, multi-day hearing on the Sale Motion.

51. Pursuant to an Order of this Court dated June 2, 2009, Old GM was required to give notice to all known creditors of the 363 Sale. Old GM could have reasonably ascertained the Class members through reasonably diligent efforts. Old GM, however, did not notify the Class members of the Sale Motion or the Defective Ignition Switch despite its obligation to do so.

52. In fact, it appears that Old GM intentionally and fraudulently concealed the Defective Ignition Switch from the Bankruptcy Court and parties in interest.

53. Upon information and belief, in March 2009, the U.S. Government told Old GM that it would not support a reorganization and would force Old GM to liquidate unless Old GM presented a viable reorganization plan within sixty days. Hence, Old GM had ample motive to conceal any issue that may have interfered with a viable reorganization plan.

54. GM has already litigated one concealed liability that could have interfered with a reorganization in that time frame. In 2012, the GUC Trust brought an adversary proceeding

asserting that Old GM had defrauded the Bankruptcy Court by concealing a post-petition transaction with numerous hedge funds and other holders of certain Old GM bonds that would have prevented Old GM from producing a reorganization plan acceptable to the U.S. Government had the facts underlying the transaction been disclosed pre-petition. As this Court noted at the time, “[t]here was a lack of disclosure to the court on the matter with the potential to injure [GM] creditors to the extent of hundreds of millions if not billions of dollars.”

55. Old GM’s concealment of the Defective Ignition Switch was similarly necessary to a viable reorganization in the timeframe established by the U.S. Government. Old GM initially proposed a sale that would have completely absolved GM of all claims relating to vehicles acquired prior to the sale. Thirty seven state Attorneys General opposed Old GM’s efforts to completely absolve GM of all warranty or liability claims for vehicles designed and sold prior to the 363 Sale. Only through the efforts of these state Attorneys General did the Sale Order provide a remedy to consumers who purchased vehicles prior to the 363 Sale for injuries or property damage that occurred after the 363 Sale and for certain statutory violations under “Lemon Laws.” Undoubtedly, the Attorneys General would have put substantial additional pressure on Old GM to convey liabilities relating to the GM Vehicles to GM had those liabilities been disclosed.

56. Moreover, by concealing the Defective Ignition Switches, Old GM avoided the significant costs and negative reputational damage that coincide with a recall. Old GM’s failure to disclose the Defective Ignition Switch problem would have been magnified because the ongoing investigation into such failures has revealed that Old GM (and subsequently GM) had a pattern and practice of concealing serious safety issues, like the Defective Ignition Switch, by favoring a lesser measure of issuing service bulletins to its dealers about defects rather than

issuing recalls.⁹ If Old GM's pattern and practice of not recalling vehicles with serious safety defects had been revealed during the bankruptcy proceeding, it could have seriously impacted the U.S. Government's willingness to assist in the reorganization.

57. Old GM directors and executives, moreover, had an independent motive to conceal facts that were potentially harmful to GM's successful reorganization, such as the Defective Ignition Switch, because they would have lost hundreds of thousands to millions of dollars in Old GM stock had Old GM liquidated. While technically their stock was cancelled as part of the Plan, GM has since replaced (and in some cases even enhanced) the value of those officers and directors' lost stock holdings by issuing new GM stock and stock options to those very same directors and executives.

58. Before and after the Petition Date, despite knowing about the Defective Ignition Switch and that it was linked to horrific accidents that included fatalities, Old GM and GM both vehemently and publicly denied any culpability for accidents involving the GM Vehicles.

59. GM employed a harsh litigation strategy when dealing with the claims brought by those who were harmed and the families of the deceased. For example, according to *The New York Times*, "in one case, GM threatened to come after the family of an accident victim for reimbursement of legal fees if the family did not withdraw its lawsuit. In another instance, it dismissed a family with a terse, formulaic letter, saying there was no basis for claims."¹⁰

60. GM also threatened injured parties with retaliatory lawsuits and asserted that the earlier bankruptcy barred these people from pursuing claims. In fact, in multiple proceedings

⁹ Danielle Ivory, Rebecca R. Ruiz, and Bill Vlasic, *Sending Alerts Instead, G.M. Delayed Car Recalls*, *The New York Times*, Apr. 19, 2014, <http://www.nytimes.com/2014/04/18/business/move-to-ban-recalled-gm-cars-from-roads-is-denied.html>.

¹⁰ Hilary Stout, Bill Vlasic, Danielle Ivory, and Rebecca R. Ruiz, *Carmaker Misled Grieving Families on a Lethal Flaw*, *The New York Times*, Mar. 25, 2014, <http://www.nytimes.com/2014/03/25/business/carmaker-mislead-grieving-families-on-a-lethal-flaw.html>.

brought by consumer plaintiffs, GM has filed motions indicating that it plans to ask the Bankruptcy Court to bar any legal action stemming from the Defective Ignition Switch before the Sale Order. *See* Case No. 2:14-cv-89, Dkt. Nos. 2, 53 (S.D. Tex); Case No. 4:14-cv-01339, Dkt. No. 20 (N.D. Cal.).

GM Finally Admits to the Defective Ignition Switch

61. Despite years of warnings and mounting evidence that the GM Vehicles were prone to a sudden and inadvertent electrical shutdown that threatened the lives of passengers and occupants of other vehicles with which the GM Vehicles may collide, Old GM and GM nevertheless advertised that the GM Vehicles were safe and reliable.

62. On February 14, 2014, after years of denying the existence of any problem with the GM Vehicles despite its knowledge to the contrary, GM disclosed in a report posted on the NHTSA's website, dated February 7, 2014, that it would recall 619,000 cars in the United States because either a heavy key ring or a "jarring event" such as running off the road could cause the ignition to shut off and possibly prevent the air bags from deploying in a crash. In a separate news release, GM said it knew of at least six deaths in five crashes in which the front air bags did not deploy.

63. The February 7, 2014 GM letter to NHTSA, detailed the problem as follows:

The ignition switch torque performance may not meet General Motors' specification. If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event, the ignition switch may inadvertently be moved out of the "run" position. The timing of the key movement out of the "run" position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes. Until this correction is performed, customers should remove non-essential items from their key ring.

Dealers are to replace the ignition switch.¹¹

64. On February 25, 2014, GM announced it would double the size of the recall stemming from the Defective Ignition Switch in the GM Vehicles. GM conceded in the release that it was aware of the deaths of at least 12 front-seat occupants in crashes where the front air bags did not deploy. While GM had recently recalled 619,000 vehicles in the United States, including Chevrolet Cobalts from the 2005-07 model years and 2007 Pontiac G5 models, GM added 2003-07 Saturn Ions, 2006-07 Chevrolet HHRs and 2006-07 Pontiac Solstice and Saturn Sky models.¹²

65. On March 28, 2014, GM announced it was expanding the recall to cover ignition switches in all model years of its Chevrolet Cobalt and HHR, Pontiac G5 and Solstice, and Saturn Ion and Sky in the United States since the Defective Ignition Switch may have been used in those vehicles. The recall now covers over 2.6 million GM Vehicles.

Upon Discovery of GM's Concealment of the Defective Ignition Switch, the U.S. Government Launches Criminal and Civil Investigations Into GM's Conduct

66. NHTSA has opened an investigation into GM's failure to notify it of the Defective Ignition Switch and to conduct a timely recall.

67. On April 1-2, 2014, Mary Barra, GM's CEO, testified before the House of Representatives concerning GM's concealment of the Defective Ignition Switch. At that hearing, Congress asked questions concerning Old GM's and GM's concealment of, and failure to correct, the Defective Ignition Switch.

¹¹ Letter from General Motors LLC to Nancy Lewis, Assoc. Admin. for Enforcement, Nat'l Hwy. Traffic Safety Admin., Recall Management Division (NVS-215), (Feb. 7, 2014), <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450012/RCDNN-14V047-1347P.pdf>.

¹² Christopher Jenson, *GM to Expand Small Car Recall to 1.4 Million Vehicles*, The New York Times, Feb. 25, 2014, <http://www.nytimes.com/2014/02/26/automobiles/gm-to-expand-small-car-recall-to-1-4-million-vehicles.html>.

68. On April 11, 2014, five United States Senators sent a letter to the United States Department of Justice (“**DOJ**”) requesting that the DOJ intervene in the pending consumer lawsuits because “[g]iven the crucial role the United States government played in creation of the current General Motors Corporation, we believe the federal government has a moral, if not legal, obligation to take all necessary steps to protect innocent consumers.”¹³ Further, the senators requested the DOJ’s intervention because “[a]s a consequence of this fraudulent and reprehensible concealment, the United States Bankruptcy Court unknowingly authorized a purchase of GM’s assets by the ‘new GM,’ which seemingly shielded this new GM from legal responsibility for these product defects or other illegality occurring prior to 2009. This shield from legal responsibility was granted – with the federal government’s support – despite vehement opposition from consumer advocates, as well as from state attorneys general who warned that this blanket shield from all liability would prove unfair and unwise.”¹⁴

FIRST CLAIM FOR RELIEF
(Declaratory Judgment and Rule 60(b)(4) of the Federal Rules of Civil Procedure –
Violation of Due Process)

69. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 68, as though fully set forth herein.

70. A subclass of Plaintiffs owned GM Vehicles with a Defective Ignition Switch during a time that includes, but is not limited to, commencement of the Bankruptcy Case through approval of the Sale Order (the “**Presale Plaintiffs**”).

¹³ Letter from Richard Blumenthal, Barbara Boxes, Robert P. Casey, Jr., Mazie Hirono, and Edward J. Markey to Eric J. Holder, Jr., United States Attorney General, <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-colleagues-call-on-doj-to-intervene-in-gm-recall>.

¹⁴ Id.

71. Before approval of the Sale Order, GM knew or could have reasonably ascertained through reasonably diligent efforts that Presale Plaintiffs owned GM Vehicles with a Defective Ignition Switch.

72. The Sale Order purports to permit the conveyance of Old GM's Assets to GM free and clear of the Defective Vehicle Claims.

73. At no time before approval of the Sale Order or immediately thereafter did Presale Plaintiffs receive notice from Old GM of the proposed 363 Sale or that their GM Vehicles had a Defective Ignition Switch. To the contrary, Old GM and GM fraudulently concealed the existence of the Defective Ignition Switch from Presale Plaintiffs, the Bankruptcy Court, the United States government, and the public.

74. Because Presale Plaintiffs were not given such notice, they were deprived of due process, and thus the ability to present their objections to the 363 Sale, to pursue their Defective Vehicle Claims against the bankruptcy estate of Old GM, and to otherwise obtain adequate protection or any other appropriate relief.

75. By reason of the foregoing, the Sale Order was approved in violation of Presale Plaintiffs' due process rights, and as a result cannot bind the Presale Plaintiffs.

76. There is a justiciable, actual, real, and substantial controversy between Presale Plaintiffs and GM concerning whether the Sale Order is valid and enforceable against Presale Plaintiffs so as to preclude them from seeking legal recourse against GM for the Defective Vehicle Claims, and a declaration by this Court will have the immediate effect of determining whether the Sale Order bars the Defective Vehicle Claims against GM, solely to the extent such claims are based upon conduct occurring before the Sale Order.

77. Based on the foregoing, Presale Plaintiffs are entitled to a declaration that the Sale Order is void and unenforceable to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims.

**SECOND CLAIM FOR RELIEF
(Declaratory Judgment and Rule 60(d)(3) of the Federal Rules of Civil Procedure –
Fraud on the Court)**

78. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 77, as though fully set forth herein.

79. Presale Plaintiffs seek relief from those parts of the Sale Order that might be construed as precluding them from obtaining legal recourse against GM for the Defective Vehicle Claims on the grounds that Old GM deliberately concealed the Defective Ignition Switch during its Bankruptcy Case, thereby perpetrating a fraud on the Bankruptcy Court.

80. When Old GM sought approval of the proposed 363 Sale to GM, one of the paramount issues that the Bankruptcy Court had to decide as part of the approval process was which liabilities of Old GM would be retained by the bankruptcy estate of Old GM and which would be assumed by GM. These liabilities included, without limitation, litigation liabilities for acts and omissions by Old GM that occurred before the 363 Sale.

81. Before the Bankruptcy Court approved the 363 Sale, and, indeed, as early as 2001, Old GM knew that millions of the vehicles it had manufactured and sold to consumers, including Presale Plaintiffs, contained the Defective Ignition Switch.

82. In seeking approval of the 363 Sale, Old GM intentionally concealed the existence of the Defective Ignition Switch from the Bankruptcy Court by, *inter alia*, (i) hiding the fact that in 2006, Old GM considered using the switch with the Defective Ignition Switch in its redesigned Cadillac SRX station wagon, but chose a different design after Old GM engineers

complained they could hit the ignition key with a knee and turn off the vehicle, (ii) hiding the fact that in late 2006 it implemented a new design to correct the Defective Ignition Switch in parts to be used in later vehicle models while not changing the part number, and (iii) surreptitiously deciding not to recall the millions of earlier models that Old GM knew were defective and instead willfully putting millions of people at continuing risk of death and damage through use of the defective GM Vehicles.

83. Old GM knew the foregoing facts and had a duty, as a debtor-in-possession and officer of the court, to ensure that the Bankruptcy Court was informed about these and related facts that were pertinent to approval of the 363 Sale. In fact, one of the primary duties of a debtor-in-possession is to make full, fair, and complete disclosure to the Bankruptcy Court and all parties in interest.

84. The U.S. Government, which facilitated GM's acquisition of Old GM's assets through billions of dollars in taxpayer-funded financing, was, like the Bankruptcy Court, left equally in the dark by Old GM – and by GM after its formation – about the Defective Ignition Switch until this year.

85. Since the Defective Ignition Switch has been exposed and subjected to public scrutiny, the U.S. Government has launched a criminal inquiry into GM's conduct, while Congress and regulatory agencies embark upon and continue their own investigations of GM's knowledge about the Defective Ignition Switch and its response thereto. Members of Congress have expressed their outrage at Old GM's conduct in connection with the 363 Sale and GM's apparent intent to invoke the fraudulently-induced "free and clear" provisions of the Sale Order as a shield from the Defective Vehicle Claims.

86. Upon information and belief, had the U.S. Government known the foregoing facts, it would have requested that GM agree to, and that the Bankruptcy Court enter a sale order ensuring, the assumption of liabilities by GM for Defective Vehicle Claims or some other meaningful alternative relief for Plaintiffs.

87. Had the Bankruptcy Court known the foregoing facts, it would not have approved the 363 Sale through entry of a sale order that might be construed as not providing relief for Defective Vehicle Claims, or it would have provided some other meaningful alternative relief for Plaintiffs as part of the proposed 363 Sale.

88. The employees of Old GM who had knowledge of and concealed the Defective Ignition Switch from the Bankruptcy Court became employed by GM in substantially similar roles after the 363 Sale. Those persons also continued to conceal the Defective Ignition Switch while employed by GM.

89. GM cannot invoke, and is precluded and estopped from invoking, any claimed protections provided by the Sale Order from Defective Vehicle Claims given that the same employees of Old GM who concealed the Defective Ignition Switch from the Bankruptcy Court thereafter continued to do so as employees of GM, and, like Old GM, thereby prevented Plaintiffs from asserting their rights concerning the Defective Vehicle Claims in the Bankruptcy Case.

90. There is a justiciable, actual, real, and substantial controversy between Plaintiffs and GM concerning whether the Sale Order is valid and enforceable against Plaintiffs so as to preclude them from seeking legal recourse against GM for the Defective Vehicle Claims, and a declaration by this Court will have the immediate effect of determining whether the Sale Order

bars the Defective Vehicle Claims against GM, solely to the extent such claims are based upon conduct occurring before the Sale Order.

91. Based on the foregoing, Plaintiffs are entitled to a declaration that the Sale Order is void and unenforceable as a fraud on the Bankruptcy Court to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims.

**THIRD CLAIM FOR RELIEF
(Declaratory Judgment and Rule 60(d)(1) of the Federal Rules of Civil Procedure –
Independent Action for Relief)**

92. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 91, as though fully set forth herein.

93. If Presale Plaintiffs are not entitled to relief pursuant to Federal Rules of Civil Procedure 60(b)(4) and 60(d)(3) from those parts of the Sale Order that might be construed as precluding them from seeking legal recourse against GM for the Defective Vehicle Claims, then they have no other available or adequate remedy for redress other than this independent claim for equitable relief pursuant to Federal Rule of Civil Procedure 60(d)(1).

94. The Plan provides that March 29, 2011, the confirmation date for the Plan, was the record date for claims against the bankruptcy estate of Old GM. On the Effective Date, all such claims received beneficial interests in the GUC Trust or Asbestos Trust in satisfaction of their claims against the bankruptcy estate of Old GM.

95. For the reasons set forth above, Presale Plaintiffs did not know about the Defective Ignition Switch and were denied an opportunity to protect their rights in connection with the 363 Sale. As a result of Old GM's concealment and misconduct, Presale Plaintiffs are no longer able to assert any claims against the bankruptcy estate of Old GM and have no other

available remedy for claims relating to the Defective Ignition Switch other than to obtain the relief from the Sale Order sought herein.

96. As set forth above, no fault, neglect, or carelessness by Plaintiffs created the circumstances from which they now require equitable relief. Rather, Old GM created, and GM perpetuated, Plaintiffs' need for the equitable relief sought herein by fraudulently concealing the Defective Ignition Switch and failing to provide Presale Plaintiffs with notice and an opportunity to be heard in connection with the 363 Sale.

97. There is a justiciable, actual, real, and substantial controversy between Plaintiffs and GM concerning whether the Sale Order is valid and enforceable against Plaintiffs so as to preclude them from seeking legal recourse against GM for the Defective Vehicle Claims, and a declaration by this Court will have the immediate effect of determining whether the Sale Order bars the Defective Vehicle Claims against GM, solely to the extent such claims are based upon conduct occurring before the Sale Order.

98. Based on the foregoing, Plaintiffs are entitled to a declaration that the Sale Order is void and unenforceable to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims.

WHEREFORE, the Trustee respectfully requests that the Bankruptcy Court enter judgment against the Counterclaim Defendant and Third Party Defendants and award the following relief:

A. On the First Claim for Relief, a judgment declaring that the Sale Order was approved in violation of Presale Plaintiffs' due process rights and is therefore void and unenforceable to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims;

B. On the Second Claim for Relief, a judgment declaring that the Sale Order is void and unenforceable as a fraud on the Bankruptcy Court to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims;

C. On the Third Claim for Relief, if Plaintiffs are not entitled to relief from those parts of the Sale Order that might be construed as precluding them from seeking legal recourse against GM for the Defective Vehicle Claims on the grounds that the Sale Order was approved in violation of due process and/or as a result of a fraud on the Bankruptcy Court, then a judgment should be entered declaring that Presale Plaintiffs have no other available or adequate remedy for redress other than an independent claim for equitable relief pursuant to Federal Rule of Civil Procedure 60(d)(1) and that the Sale Order is void and unenforceable to the extent it purports to preclude Presale Plaintiffs from seeking legal recourse against GM for the Defective Vehicle Claims;

D. On all claims, allowing reasonable attorneys' fees as allowed by law; and

E. On all claims, awarding such other relief as is just and proper.

Dated: New York, New York
April 21, 2014

**WOLF HALDENSTEIN ADLER
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Counsel for Plaintiffs

EXHIBIT 1

DGE FURMAN

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

14 CV 2458

STEVEN GROMAN, Individually, and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

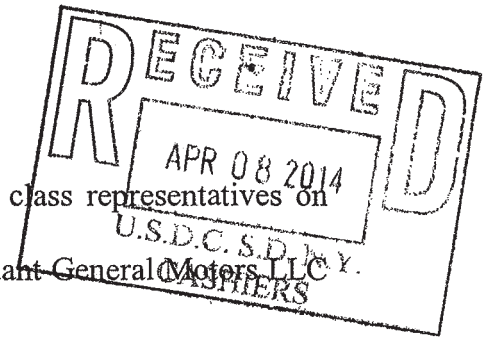
GENERAL MOTORS LLC,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL



Plaintiff Dr. Steven Groman ("Plaintiff"), individually and as class representatives on behalf of all similarly situated persons, bring this action against Defendant General Motors LLC ("G.M.") and alleges as follows:

I. INTRODUCTION

1. Faced with the real possibility that its conduct rises to criminality,¹ Alan Batey, president of G.M. North America, stated that G.M.'s near decade-long investigation of a defective ignition switch design "was not as robust as it should have been." This comment is wholly inexcusable in light of G.M.'s nationwide recall of more than 1.6 million vehicles due to a defect in the ignition switch system that is linked to a least 12 crash related deaths.

2. G.M. marketed and advertised that these vehicles, though equipped with defective ignition switches, were safe and reliable. The vehicles were, however, anything but safe and reliable. In fact, since 2004 (and quite possible as early as 2001), G.M. knew that the defective design of the ignition switches in these vehicles presented serious safety issues. Instead of disclosing the defect and its disabling impact upon other safety systems in these vehicles –

¹ See Emily Flitter, *Federal Prosecutors Open Criminal Probe of GM Recall*: Source, REUTERS, March 11, 2014, available at <http://www.reuters.com/article/2014/03/11/us-autos-gm-recall-probe-idUSBREA2A1RZ20140311>.

including that the defect could shut down the engine and electrical system without warning, and prevent airbags from being deployed in the case of a collision – G.M. consciously chose to conceal it and not address the problem.

3. The efforts by G.M. to conceal the existence of the defectively designed ignition switches in its vehicles, even after it was aware that the defect was linked to several accident related fatalities, displays a wanton degree of corporate malfeasance. Indeed, it appears G.M. may have gone so far as to commit bankruptcy fraud in order to avoid disclosure of the problems with the ignition switch, while, at the same time, taking taxpayer money to salvage a failing business model.

4. G.M. now has grudgingly admitted that it knew millions of its vehicles were equipped with defective ignition switches dating back to as early as 2001 – three years earlier than it initially reported – and has yet to determine the full scope of the problem. Moreover, based on statements by the maker of the ignition component in G.M. cars subject to the 1.6 million-vehicle recall, it would have only cost “a few dollars to produce and minutes to install” a fix.²

5. Plaintiff brings this action on behalf of himself and other Class members, each of whom own, owned, lease or leased one or more of the following vehicles: 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2003-2007 Saturn Ion; 2006-11 Chevrolet HHR; 2005-2006 Pontiac Pursuit (Canada); 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the “Defective Vehicles”).

6. Plaintiff believes that there are additional G.M. vehicles that have the same or similar defect in their ignition switch systems as the Defective Vehicles. Plaintiff will

² Jeff Bennett, *GM Now Says It Detected Ignition Switch Problem Back in 2001*, Wall St. J., (Mar. 12, 2014, 10:35 p.m.), <http://online.wsj.com/news/articles/SB10001424052702304914904579435171004763740?KEYWORDS=gm&mg=reno64-wsj>.

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

II. JURISDICTION AND VENUE

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

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

9. This Court has personal jurisdiction over G.M. because G.M. conducts substantial business in this District, has maintained continuous and systematic business contacts through the advertisement and sale of G.M. vehicles within the State and some of the actions giving rise to the complaint took place in this District.

10. Venue is proper in this District under 28 U.S.C. § 1391 because G.M., as a corporation, is deemed to reside in any judicial district in which it is subject to personal jurisdiction. Additionally, a substantial part of the events and/or actions giving rise to the claims alleged herein occurred in this District.

III. PARTIES

11. Plaintiff and proposed New York State Class Representative Dr. Steven Groman is a resident and citizen of the State of New York. Groman owned a 2008 Chevrolet HHR, which he purchased new in 2008 from East Hills Chevrolet, an authorized G.M. dealer in Roslyn, New York. Groman chose the Chevrolet HHR in part because he wanted a safely designed and manufactured vehicle.

12. Groman saw advertisements for G.M. vehicles before he purchased the car and, although he does not recall the specifics of the advertisements, he does recall that safety and quality were consistent themes across the advertisements he saw before making the purchase of the 2008 Chevrolet HHR. These representations about safety and quality influenced Groman's decision to purchase the 2008 Chevrolet HHR. Groman did not learn of the ignition switch defects until about March 2014. Had G.M. disclosed the ignition switch defects, he would not have purchased the vehicle and would not have paid as much for it.

13. On at least four different occasions, Groman experienced engine shut down in his 2008 Chevrolet HHR. On the first occasion, Groman experienced an engine shut down incident while driving on the Long Island Expressway, and lost power steering in the vehicle. He was ultimately able to get the vehicle to the Expressway shoulder and later took it to the dealer where he had purchased the car. The service technicians, however, were unable to identify the problem that caused the engine to shut down and lose power steering and represented that the vehicle was safe to operate.

14. On the second occasion, Groman experienced another engine shut down incident on the Long Island Expressway in his 2008 Chevrolet HHR and, again, lost power steering. Groman took the vehicle in to the same dealer for service to correct the problem. The dealer again returned the car without locating the cause or fixing the problem and again represented that the vehicle was safe to operate.

15. Groman thereafter changed his commuting habits and avoided driving on the Long Island Expressway out of concern that his 2008 Chevrolet HHR could suffer another shut down incident in fast moving traffic and, and, instead, opted to drive on the slower moving

service roads. Nevertheless, Groman experienced an engine shut down incident for a third and fourth time.

16. After the third engine shut down incident, Groman took the vehicle in to the same dealer for service. For a third time, the dealer again returned the car without locating the cause or fixing the problem and again represented that the vehicle was safe to operate.

17. After the fourth incident, Groman returned the vehicle to dealer with instructions not to call him back until the problem was identified and fixed. Groman was informed by the service manager at the dealership that he had also experienced a shut down incident while test driving Groman's 2008 Chevrolet HHR and eventually determined that there was an issue with the ignition connector (not the ignition switch itself). Out of concern for his personal safety, Groman thereafter traded in the vehicle at a loss in 2011.

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

19. Among the liabilities and obligations expressly retained by G.M. after the bankruptcy are the following:

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

20. G.M. also expressly assumed:

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

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

IV. TOLLING OF STATUTES OF LIMITATION

A. Discovery Rule Tolling

22. Any applicable statute(s) of limitations has been tolled by G.M.'s knowing and active concealment and denial of the facts alleged herein.

23. Plaintiff and the other members of the Class could not have discovered through the exercise of reasonable diligence that their Defective Vehicles were defective within the time period for the applicable statutes of limitation. Indeed, Plaintiff and members of the Class could not have reasonably discovered the true nature of the defect in the ignition switches in their Defective vehicles until shortly before this class action litigation was commenced.

B. Fraudulent Concealment Tolling

24. At all relevant times to this action G.M. affirmatively concealed from Plaintiff and other members of the Class the defects in the Defective Vehicles. G.M. withheld from Plaintiff and other members of the Class information essential to the pursuit of their claims and, as a direct consequence, Plaintiff and other members of the Class could not have discovered the defects upon the exercise of reasonable diligence.

25. As set forth below, G.M. was aware of the design defect in the ignition switches as early as 2001 and despite such knowledge continued to manufacture, market, advertise, sell, lease and warrant such vehicles without disclosing the defects to Plaintiff and other members of the Class.

26. G.M. has repeatedly denied the existence of defects in the Defective Vehicles to Plaintiff and other members of the Class. Such denials concealed G.M.'s knowledge of the defects, as well as the attendant risks, from Plaintiff and other members of the Class.

27. The running of all applicable statutes of limitation have been suspended with respect to any claims that Plaintiff and other members of the Class have in connection with the defects in their Defective Vehicles, pursuant to the fraudulent concealment doctrine.

C. Estoppel

28. G.M. had a continuous duty to disclose to Plaintiff and members of the Class true character, quality and nature of the Defective Vehicles, that this defect is based on a poor design and/or substandard materials, and that it will require repairs, poses a safety concern, and diminishes the resale value of the Defective Vehicles.

29. G.M. knowingly, affirmatively and consciously concealed the true nature, quality and character of the Defective Vehicles from consumers.

30. As a result, G.M. is estopped from relying on any and all statutes of limitation in defense of this action.

V. SUBSTANTIVE ALLEGATIONS

31. Since 2002, G.M. has sold millions of Defective Vehicles throughout the world including within the United States knowing that they were prone to a very dangerous safety defect namely that the ignition switch could unintentionally move from the run position to "off"

or “accessory” resulting in a loss of power, loss of braking, and a failure to deploy airbags in the event of a collision.

32. Upon information and belief, G.M. installed these defective ignition switches in its cars from 2002 to 2011. During this period, G.M. received hundreds of complaints that the Defective Vehicles were prone to sudden shut-off even though it concomitantly touted the Defective Vehicles as highly reliable and safe.

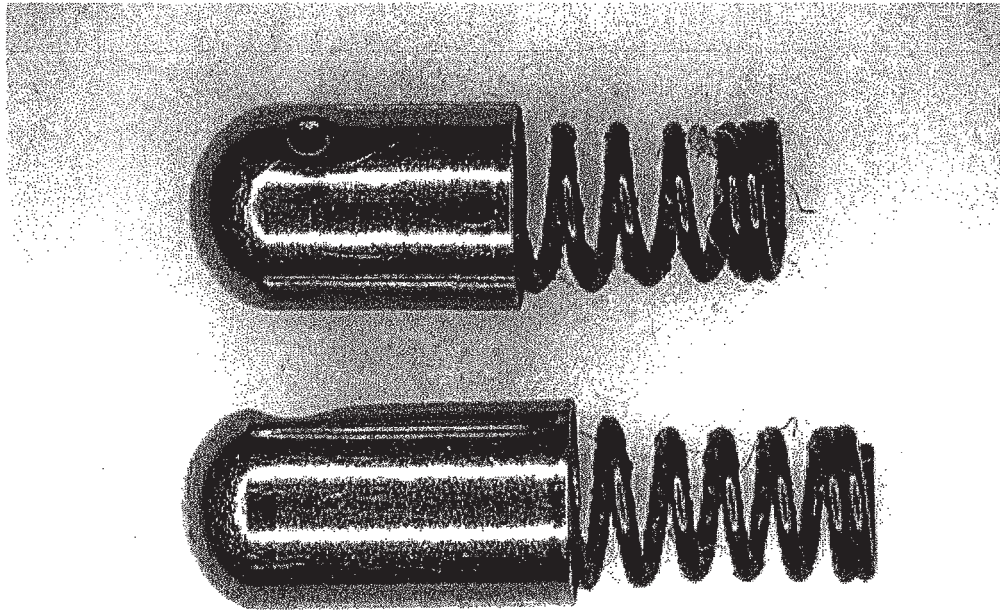
33. The issues surrounding the Defective Vehicles include the period when Old G.M. designed and manufactured the vehicles with defective ignition switches, and failed to disclose the existence of the defect even after Old G.M. became aware that it had caused fatalities. G.M. is liable for Old G.M.’s unfair and deceptive acts and/or omissions by virtue of the statutory obligations it assumed. G.M. also has successor liability for the conduct of Old G.M. because G.M. has continued to operate the franchise of Old G.M knowing full well that the ignition switches were defectively designed.

34. Upon information and belief, Delphi Automotive PLC (“Delphi”) manufactured the defective ignition switches. Delphi was a former subsidiary of Old G.M until it was spun off in 1999 and became an independent company. Upon information and belief, Delphi knew the switches were defective at all relevant times and was in a position to manufacture a corrective device or other fix for a minimal amount of money, possibly from \$2 to \$5 per vehicle.

35. The Defective Vehicles are inherently dangerous because the defective ignition switches renders them vulnerable to inadvertent engine shut off during normal operation. The ignition switches can, during normal driving conditions, shut off the engine and electrical system in Defective Vehicles without warning. Once the engine and electrical system is shut down, power steering and power brakes fail raising a substantial risk that the vehicle will be involved in

an accident. Moreover, with the electrical system down, the vehicle's airbags are disengaged, thus, leaving passengers vulnerable to serious bodily injury or even death in the event of an accident.

36. It has now been disclosed that the defect stems from a small, inexpensive part called the "detent plunger" reproduced below:



37. After years of denying the existence of any problem with the Defective Vehicles, on February 14, 2014, G.M. finally disclosed in a report posted on the National Highway Traffic Safety Administration's ("NHTSA") website, dated February 7, 2014, that it would recall 619,000 cars in the United States because either a heavy key ring or a "jarring event" such as running off the road could cause the ignition to shut off and possibly prevent the air bags from deploying in a crash. The vehicles affected by the initial recall were the 2007 Pontiac G5 and 2005-07 Chevrolet Cobalt. In addition to the vehicles being recalled in the United States, another 153,000 in Canada and 6,100 in Mexico were to be recalled. In a separate news release,

G.M. said it knew of at least six deaths in five crashes in which the front air bags did not deploy. Commenting on the events, a G.M. spokesman said “all of these crashes occurred off-road and at high speeds, where the probability of serious or fatal injuries was high regardless of air bag deployment.”³

38. The February 7, 2014 G.M. letter to the NHTSA, further detailed the problem as follows:

The ignition switch torque performance may not meet General Motors’ specification. If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event, the ignition switch may inadvertently be moved out of the “run” position. The timing of the key movement out of the “run” position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes. Until this correction is performed, customers should remove non-essential items from their key ring.

Dealers are to replace the ignition switch.⁴

39. At the center of the recall was the above-mentioned Chevrolet Cobalt. Engineered more than a decade ago, executives at G.M. touted it as the beginning of a new era and the replacement for the poorly received Chevrolet Cavalier. As reported in *The New York Times* on March 17, 2014, the Cobalt “would not only replace the aging and undistinguished Chevrolet Cavalier, but it would also prove that G.M.’s engineering and manufacturing skills had matured to the point that – like the Japanese automakers – it could build a world-class small

³ Christopher Jenson, *General Motors Recalls 778,000 Small Cars for Ignition Switch Problems*, N.Y. Times, (Feb. 13, 2014), <http://www.nytimes.com/2014/02/14/automobiles/general-motors-recalls-778000-small-cars-for-ignition-switch-problem.html>.

⁴ Letter from General Motors LLC to Nancy Lewis, Assoc. Admin. for Enforcement, Nat’l Hwy. Traffic Safety Admin., Recall Management Division (NVS-215), (Feb. 7, 2014), <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450012/RCDNN-14V047-1347P.pdf>.

car.”⁵ The Cobalt’s “mechanical underpinnings” were first developed in the 2003 Saturn Ion and included the flawed ignition switch.⁶ G.M. knew this flaw existed from the moment the car hit dealers’ floors even though it touted the car as “safe and sound” in an advertisement for a 2007 Saturn Ion.

40. The advertisement states, “The Ion’s designers accounted for almost everything but compromise. It’s nimble, yet strong. Modern, but inviting. Sporty, yet safe and sound. Featuring the U.S. Government’s highest possible front crash-test rating-five stars.”

41. G.M. promotional materials include the following claims of safety and reliability:

2003 Saturn Ion: “The ION sedan and quad coupe are designed to carry on the tradition of being at the top of the class when it comes to safety and security.”

2006 and 2007 Saturn Ion: “Like all Saturns, the Ion was designed with an emphasis on safety and security.”

2006 Pontiac G5: “The 2006 Pontiac G5 Pursuit offers a host of features for safety-minded consumers.”

2006 Chevrolet HHR: “HHR is designed to protect occupants in the event of a crash.”

2007 Saturn Sky: “Sky has a host of safety features ... including dual stage frontal air bags ... that use the latest sensing technology to turn the front passenger air bag on or off.”

2005 - 2007 Chevrolet Cobalt: “Safety was a priority in the development of the Cobalt.” Cobalt’s “rigid body structure ... reinforces occupant safety.” “The rigid body structure ... reinforces its safety [and] load carrying capability for crash protection.”

42. Accordingly, purchasers of the Defective Vehicles were lead to believe that the cars were safe and reliable. This proved to be untrue.

⁵ Christopher Jensen, *G.M. Saw Cobalt as Its Entry Into a Better Small-Car Market*, N.Y. Times, (Mar. 17, 2014), <http://www.nytimes.com/2014/03/18/business/gm-saw-cobalt-as-its-entry-into-the-upscale-small-car-market.html?ref=generalmotorscorporation.html>.

⁶ *Id.*

43. On February 25, 2014, G.M. announced it would double the size of the recall stemming from an ignition switch defect in the Defective Vehicles. G.M. said in the release that it was now aware of the deaths of at least 12 front-seat occupants in crashes where the front air bags did not deploy. While G.M. had previously recalled 619,000 vehicles in the United States, including Chevrolet Cobalts from the 2005-07 model years and 2007 Pontiac G5 models, G.M. added 2003-07 Saturn Ions, 2006-07 Chevrolet HHRs and 2006-07 Pontiac Solstice and Saturn Sky models.⁷

44. On February 26, 2014, *The Associated Press* reported that NHTSA was investigating whether G.M. acted quickly enough to recall 1.6 million older-model small cars in a case linked to 12 deaths. According to the *AP*, the agency has the authority to fine G.M. as much as \$35 million under legislation that went into effect late last year. Automakers must report evidence of safety defects within five days. G.M. filed documents with the safety agency recently however that showed it knew of the problem as early as 2004.⁸

45. The recall follows years of warnings and mounting evidence that the Defective Vehicles were prone to potentially dangerous operational shutdown that rendered the airbags inoperative. It has been reported by *The New York Times* on March 2, 2014, that shortly after the Cobalts left their Lordstown, Ohio assembly plant, G.M. learned that there was a problem with the ignition system.⁹

⁷ Christopher Jenson, *G.M. to Expand Small Car Recall to 1.4 Million Vehicles*, N.Y. Times (Feb. 25, 2014), <http://www.nytimes.com/2014/02/26/automobiles/gm-to-expand-small-car-recall-to-1-4-million-vehicles.html>.

⁸ Tom Krisher, *U.S. Safety Agency Likely is investigating G.M. for Slow Response to Small Car Recall*, A.P. (Feb. 26, 2014), <http://www.usnews.com/news/business/articles/2014/02/26/us-safety-agency-likely-probing-gm-recall-response.html>.

⁹ Christopher Jensen, *In G.M. Recalls Inaction and Trails of Fatal Crashes*, N.Y. Times, (Mar. 12, 2014), <http://www.nytimes.com/2014/03/03/business/in-general-motors-recalls-inaction-and-trail-of-fatal-crashes.html>.

46. For example, engineers determined as early as 2004 that a defect in the ignition switch meant a key could be unintentionally jostled out of the “Run” position to the “Accessory” or “Off” position by a heavy key ring or by a nudge from a driver’s leg. With the ignition switch in the “Accessory” or “Off” position, it would cause the car to stall and shut down power. The powering down of the engine and electrical system would also disable the airbags so that any accident ensuing from the sudden and unexpected stall would not deploy the airbag safety devices and leave the vehicle’s occupants exposed.

47. In 2004, engineers, having identified the problem, proposed a fix. G.M. executives, however, decided, based among other things, that cost was prohibitive and declined to take remedial action. It has been reported that the 2004 proposed fix was actually less than \$12.

48. Reports detailing sudden ignition turn off continued through 2005 and yet another fix was considered but not implemented.¹⁰ G.M. instead, sought to place the burden on customers and, in 2005, G.M. sent dealers a technical service bulletin about the 2005-06 Cobalt warning about a stalling problem related to heavy key rings. At that time, a G.M. executive explained, “in rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running. Service advisers are telling customers they can virtually eliminate this possibility by taking several steps, including removing nonessential material from their key rings.”¹¹

49. G.M.’s apathy for customers and public safety became even more apparent when it was revealed on March 12, 2014, by *The New York Times* that G.M. knew since 2001 there

¹⁰ See *id.*

¹¹ *Id.*

were serious safety problems in the Defective Vehicles. According to an expanded chronology submitted to regulators, G.M. admitted that during the development of the Saturn Ion in 2001, it learned that the ignition switch could turn off. While G.M. insisted that the issue was resolved then, a 2003 internal inquiry indicated otherwise.¹²

50. Further, at a May 15, 2009 meeting, G.M. confirmed from the data retrieved from the “black box” of a Cobalt during a post accident examination that the ignition switch in the Defective Vehicle was the cause of the accident.¹³

51. According to the *N.Y. Times*, there is even more additional evidence of knowledge:

Since the engineers’ meeting in May 2009, at least 23 fatal crashes have involved the recalled models, resulting in 26 deaths. G.M. reported the accidents to the government under a system called Early Warning Reporting, which requires automakers to disclose claims they receive blaming vehicle defects for serious injuries or deaths.

A New York Times review of 19 of those accidents – where victims were identified through interviews with survivors, family members, lawyers and law enforcement officials – found that G.M. pushed back against families in at least two of the accidents, and reached settlements that required the victims to keep the discussions confidential.

In one of those cases, the company settled a lawsuit brought by the family of Hasaya Chansuthus, 25, who crashed her 2006 Cobalt in Murfreesboro, Tenn. After resisting, the company negotiated a deal even though Ms. Chansuthus’s blood-alcohol level was more than twice the legal limit. Data from the black box – which records vehicle systems information – showed that the key was in the accessory or off position, according to court documents, and the air bags did not deploy. (The accessory position turns off the car, disabling the air bags, but allows certain electronics, like the radio, to run.) The terms of the settlement are confidential.

In other instances, G.M. ignored repeated calls, families said. “We did call G.M.,” said Leslie Dueno, whose 18-year-old son,

¹² Hilary Stout, Bill Vlasic, Danielle Ivory, and Rebecca R. Ruiz, *Carmaker Misled Grieving Families on a Lethal Flaw*, *N.Y. Times* (Mar. 25, 2014), <http://www.nytimes.com/2014/03/25/business/carmaker-mislead-grieving-families-on-a-lethal-flaw.html>.

¹³ *Id.*

Christopher Hamberg, was killed on June 12, 2009 – not quite a month after the critical May 15 meeting of G.M. engineers about the ignition data – driving his 2007 Cobalt home before dawn in Houston. He lost control at 45 miles per hour and hit a curb, then a tree, the police report said. “Nobody ever called me. They never followed up. Ever.”¹⁴

52. As explained above, the evidence that G.M. knew there was a link between the defective ignition switches and accidents came in the form of electronically captured data retrieved from sensing modules removed from wrecked cars. Premised upon a review of this information, the *New York Times* stated that by the end of 2007, G.M. recognized for certain the “link between a faulty switch and deactivated air bags”:

Consumer complaints and claims came to the company in a variety of ways – through lawsuits, calls, letters and emails, warranty claims, or insurance claims. G.M.’s legal staff was the recipient of lawsuits, insurance information, accident reports and any other litigation-related paperwork. But warranty claims and customer calls were routed through the sales and service division – a vast bureaucracy that occupies most of one tower at G.M.’s headquarters in Detroit. Because the legal staff reports to the chief executive, and the sales department to the head of G.M. North America, it is unclear whether they share information related to a specific car, like the Cobalt.

And an even bigger communication gap on the Cobalt appeared to exist between the engineers in Warren, Mich., and the company lawyers in downtown Detroit. The most glaring example was that G.M. officials meeting with federal regulators in March 2007 did not know about a fatal Cobalt wreck in 2005 – even though G.M.’s legal department had had an open file on the case for almost two years.

Within the product development system was an isolated, subgroup of engineers assigned to Cobalt safety tests. According to the chronology G.M. has submitted to federal safety regulators, an unknown number of engineers were involved in opening – and closing – four separate inquiries on the Cobalt between 2004 and 2009. Engineers also performed four other analyses.

By the end of 2007, G.M. had examined data from nine “sensing and diagnostic modules” of crashed vehicles. In four cases, the ignition was in the accessory position. But it was not until May 15, 2009, that G.M. engineers verified the data. That day, they met with officials from its supplier Continental, which manufactured the Cobalt’s diagnostic modules, or black boxes. By then G.M. had

¹⁴ *Id.*

recovered 14 modules, and according to Continental, the ignition was in the accessory position on seven of the 14 cases. This appears to be the first proven link between a faulty switch and deactivated air bags.¹⁵

53. Despite knowing full well that the Defective Vehicles' defective ignition switch was linked to horrific accidents including fatalities, G.M. vehemently denied its culpability until just hours before the first recall. Indeed, it employed a harsh litigation strategy when dealing with the claims brought by the many who were harmed and the families of the deceased. According to *The New York Times*, "in one case, G.M. threatened to come after the family of an accident victim for reimbursement of legal fees if the family did not withdraw its lawsuit. In another instance, it dismissed a family with a terse, formulaic letter, saying there was no basis for claims."¹⁶

54. G.M. also threatened injured parties with retaliatory lawsuits and asserted that the earlier bankruptcy barred these people from pursuing claims. As reported in the *Times*:

That same month, lawyers representing G.M. wrote to the lawyer in another wrongful-death case demanding that the lawsuit be withdrawn. The family of Allen Ray Floyd had sued G.M. after Mr. Floyd lost control of a 2006 Cobalt in daylight near Loris, S.C. Two weeks earlier, his sister had lost control of the same vehicle on the same road; she had it towed. The company contended the suit was "frivolous" because the accident occurred on July 3, 2009, a week before the company's bankruptcy agreement took effect, which meant G.M. was not liable for damages.

"They sent us a letter in September telling us to drop our case or else they'd come after us," said William Jordan, the family's lawyer. "They were going to come after me for sanctions, to pay their attorneys' fees."

Mr. Jordan added: "We looked at the prospect of going into bankruptcy court and duking it out with them and looking at the language of the bankruptcy legislation, and it just seemed to be such a big undertaking. We decided to capitulate."

¹⁵ *Id.*

¹⁶ *Id.*

55. Finally, G.M.'s conduct and effort to avoid liability by hiding behind Old G.M.'s bankruptcy, has federal authorities investigating whether the automaker committed fraud by not disclosing defects that could lead to expensive future liabilities. The issue is whether Old G.M. knew about the ignition defect at the time it filed for bankruptcy in 2009, and failed to fully disclose the problem. The record is quite clear, however, that Old G.M. and G.M. knew the defect existed in the Defective Vehicles as early as 2001, and clearly by 2002.

56. G.M. and its predecessor were at all times under an affirmative duty to advise customers about known defects. Specifically, under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act") and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defects. If it is determined that the vehicle is defective, the manufacturer must notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. This duty existed throughout the Class Period.

57. On March 28, 2014, G.M. announced it was expanding the recall to cover ignition switches in all model years of its Chevrolet Cobalt, HHR, Pontiac G5, Solstice and Saturn Ion and Sky in the United States since defective ignition switches may have been used in those vehicles.

VI. SUCCESSOR LIABILITY

58. G.M. was incorporated in 2009 and on July 10, 2009 acquired substantially all assets and assumed certain liabilities of G.M. Corp through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code. Bankruptcy does not immunize G.M. from liability here. Specifically, G.M. expressly assumed certain obligations under, inter alia, the TREAD Act, and is liable for its non-disclosure of the ignition switch defects from the date of its formation on July 10, 2009.

59. G.M. also expressly assumed liability for warranty claims in the Master Sale and Purchase Agreement of June 26, 2009, and this assumption of liability includes the claims of the Class.

60. Moreover, G.M. has successor liability for Old G.M.'s acts and omissions in the marketing and sale of the Defective Vehicles during the Class Period because G.M. has continued the business enterprise of Old G.M., for the following reasons:

- G.M. admits that it knew of the ignition system defects from the very date of its formation;
- G.M. has continued in the business of designing, manufacturing, and marketing vehicles, including at least some of the same vehicles as Old G.M.;
- G.M. retained the bulk of the employees of Old G.M.;
- G.M. acquired owned and leased real property of Old G.M., including all machinery, equipment, tools, information technology, product inventory, and intellectual property;
- GM acquired the contracts, books, and records of Old G.M. Corp; and
- G.M. acquired all goodwill and other intangible personal property of Old G.M.

61. G.M. and Old G.M. did not report information within their knowledge to the Bankruptcy Court, federal authorities (NHTSA or the Auto Task Force of the United States Department of the Treasury) or consumers, nor would a reasonable and diligent investigation have disclosed that G.M. and Old G.M. had information in their possession about the existence and dangerousness of the defect and opted to conceal that information until shortly before this action was filed.

62. G.M. and Old G.M. were, and G.M. remains, under a continuing duty to disclose to NHTSA, Plaintiff and the Class the true character, quality, and nature of the Defective Vehicles; that this defect is based on dangerous, inadequate, and defective design and/or

substandard materials; and that it will require repair, poses a severe safety concern, and diminishes the value of the Defective Vehicles.

63. Because of the active concealment by G.M. and Old G.M., any and all limitations periods otherwise applicable to Plaintiffs' claims have been tolled.

VII. CLASS ACTION ALLEGATIONS

64. Plaintiff brings this action pursuant to Rules 23(a), (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Classes:

- a. All persons and entities that purchased or leased Defective Vehicles in the United States between 2002 and the present (the "Class Period") (the "Nationwide Class").
- b. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of New York (the "New York State Class").

65. Together, the Nationwide and New York State Classes shall be collectively referred to hereinafter as the "Class." The Class excludes G.M. and any entity in which G.M. has a controlling interest, and its officers, directors, legal representatives, successors and assigns. The Class also excludes any entity in which G.M. has or had a controlling interest, and its officers, directors, legal representatives, successors and assigns.

66. The Class is so numerous that joinder of all members is impracticable.

67. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

68. Plaintiff's claims are typical of the claims of the Class. As alleged herein, Plaintiff and members of the Class all sustained damages arising out of the G.M.'s same course of unlawful conduct.

69. There are questions of law and fact common to the Class, including but not limited to:

- Whether G.M. and its predecessor had knowledge of the defect prior to its issuance of the current safety recall;
- Whether G.M. and its predecessor concealed defects affecting the Defective Vehicles;
- Whether G.M. and its predecessor misrepresented the safety of the Defective Vehicles;
- Whether G.M. and its predecessor's misrepresentations and omissions regarding the safety and quality of its vehicles were likely to deceive a reasonable person;
- Whether a reasonable customer would pay less for a car that had the ignition defect;
- Whether a reasonable customer would pay less for a vehicle that did not conform to G.M. and its predecessor's assurances of quality;
- Whether G.M. and its predecessor breached its applicable warranties;
- Whether G.M. bears successor liability for Defective Vehicles that Class Members purchased or leased before July 10, 2009, the date G.M. acquired substantially all of the assets of its predecessor;
- Whether G.M. bears liability for Defective Vehicles that Class Members purchased or leased after July 10, 2009;
- Whether damages, restitution, equitable, injunctive, compulsory, or other relief is warranted; and
- Whether injunctive relief enjoining the reoccurrence of G.M.'s conduct and/or declaratory relief that such conduct is unlawful, is warranted.

70. The interest of Class members in individually controlling the prosecution of separate actions is theoretical and not practical. The members of the Class have a high degree of similarity and are cohesive. Plaintiff anticipates no difficulty in the management of this matter as a class action.

71. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(2) because G.M. has acted or refused to act on grounds generally applicable to the Class,

thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

72. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(3) because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

VIII. CAUSES OF ACTION

COUNT I

VIOLATIONS OF MAGNUSON-MOSS FEDERAL WARRANTY ACT

15 U.S.C. § 2301, *et seq.*

(On Behalf of Plaintiffs and the Nationwide Class)

73. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

74. This claim is brought on behalf of the Nationwide Class (the “Class” for purposes of this Count).

75. This Court has jurisdiction to decide claims brought under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (the “Act”), by virtue of 28 U.S.C. §§ 1332 (a)-(d).

76. The Defective Vehicles constitute “consumer products,” as defined in 15 U.S.C. § 2301.

77. Plaintiff and the other members of the Class are “consumers,” as defined in 15 U.S.C. § 2301.

78. Old G.M. and G.M. are “suppliers” and a “warrantors” of the Defective Vehicles as defined in 15 U.S.C. § 2301.

79. The Defective Vehicles are “consumer products” within the meaning of the Act, pursuant to 15 U.S.C. § 2301(1).

80. Old G.M. supplied a “written warranty” regarding the Defective Vehicles, as defined in 15 U.S.C. § 2301(6).

81. The Defective Vehicles were designed with defective ignition switches that can cause the Defective Vehicles’ engine and electrical system to shut down without warning, exposing vehicle occupants to serious risks of accidents, injuries and potentially death. G.M. issued a recall with respect to the Defective Vehicles, thus, admitting that the ignition switches are defective.

82. As more fully described above, G.M. breached its express and implied warranties to Plaintiff and the members of the Class by, among other things: selling and/or leasing the Defective Vehicles in an unmerchantable condition; selling and/or leasing the Defective Vehicles when they were not fit for the ordinary purposes for which vehicles are used, and which were not fully operational, safe or reliable; and not repairing or curing defects and nonconformities in the Defective Vehicles as they were identified.

83. Plaintiff and each member of the Class had sufficient direct dealings with old G.M., G.M. or their agents (dealerships) to establish privity of contract between G.M. and each member of the Class. Privity, however, is not required here because Plaintiff and each member of the Class are intended third-party beneficiaries of contracts between G.M. and its dealers, and specifically, they are intended beneficiaries of G.M.’s express and implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Additionally, privity is not required because the Defective Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

84. G.M. has successor liability for the acts of Old G.M. as described above.

85. Requiring an informal dispute settlement procedure or affording G.M. a reasonable opportunity to cure its breach of warranties would be unnecessary and futile. At the time of sale or lease of each the Defective Vehicles, G.M. knew, should have known, or was reckless in not knowing of its misrepresentations concerning the Defective Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement – under the Act or otherwise – that Plaintiff resort to an informal dispute resolution procedure and/or afford G.M. a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

86. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the claims under the Act, whether premised upon express or implied warranty, is procedurally and substantively unconscionable under federal law and the applicable state common law.

87. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the claims in this Count is tolled under equitable doctrines. Plaintiff and the other Class members sustained injuries and damages as a proximate result of G.M.'s violation of their written and/or implied warranties and are entitled to legal and equitable relief against G.M., including economic damages, rescission or other relief as appropriate.

88. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

89. Plaintiff, individually and on behalf of each member of the Class, seeks all damages permitted by law, including diminution in value of their Defective Vehicles, in an amount to be proven at trial.

COUNT II

FRAUDULENT CONCEALMENT (On behalf of Plaintiffs and the Nationwide Class)

90. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

91. This claim is brought on behalf of the Nationwide Class (the "Class" for purposes of this Count).

92. Old G.M. and G.M. concealed material facts about the defect in the ignition switches of the Defective Vehicles and the safety of such vehicles.

93. G.M. has successor liability for the acts of concealment of Old G.M. as described above.

94. G.M. had a duty to disclose these safety, quality, dependability, and reliability issues because G.M. consistently marketed the Defective Vehicles as safe.

95. Once G.M. made representations to the public about the safety, quality, dependability and reliability of the Defective Vehicles, G.M. was under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts that materially qualify those facts stated. A manufacturer that volunteers information about its product must be truthful, and the telling of a half-truth calculated to deceive is fraud.

96. In addition, G.M. had a duty to disclose omitted facts with respect to the defects in the ignition switches of the Defective Vehicles because they were known and/or accessible

only to G.M., which has superior knowledge and exclusive access to the facts, and G.M. knew they were not known to or discoverable by Plaintiff and the other Class members.

97. These omitted facts were material because they concern the safety and reliability of the Defective Vehicles. That a defect existed in the ignition switches of the Defective Vehicles which could cause the vehicles' engine and electrical system to shut down without warning, and disable the vehicles' safety systems, are material facts to consumers.

98. G.M. actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the other members of the Class to purchase Defective Vehicles at a higher price for the Defective Vehicles, which did not match Defective Vehicles' true value.

99. G.M. still has not made full and adequate disclosure and continues to defraud Plaintiff and the other members of the Class by concealing material information regarding the defects in the Defective Vehicles and other G.M. vehicles.

100. Plaintiff and the other members of the Class reasonably relied on G.M.'s statements in its marketing and advertising that the Defective Vehicles were safe, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did.

101. As a result of the concealment and/or suppression of the facts, Plaintiff and the other members of the Class sustained damages. For those Class members who elect to affirm the sale, damages include the difference between the actual value of that for which Class members paid and the actual value of what they received, together with additional damages arising from the sales transaction. Those Class members who want to rescind their purchase are entitled to restitution and consequential damages.

102. G.M.'s acts were done maliciously, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the other Class members' rights and well-being, and to enrich itself. G.M.'s conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

COUNT III

VIOLATIONS OF NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS AND PRACTICES, N.Y. Gen. Bus. L. § 349 (On Behalf of Plaintiff and the New York State Class)

103. Plaintiff and the New York State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

104. This claim is brought on behalf of Plaintiff and the New York State Class (the "Class" for purposes of this Count) pursuant to section 349 of the New York General Business Law.

105. Section 349 makes unlawful deceptive acts or practices in the conduct of any business, trade or commerce.

106. Under the TREAD Act, a manufacturer of a vehicle has a legal duty to notify NHTSA, as well as the owners, purchasers and dealers of the vehicle, if the manufacturer learns that the vehicle contains a defect related to motor vehicle safety or the vehicle does not comply with an applicable motor vehicle safety standard. 49 U.S.C. § 30118(c).

107. Plaintiff and the members of the Class were deceived by G.M.'s failure to disclose the defect in the ignition switches of the Defective Vehicles.

108. Old G.M. had knowledge of the ignition switch defects since 2001, however, never disclosed the existence of such defects. GM admitted the existence of the ignition switch defects in the Defective Vehicles in connection with the issuing of the recall in February 2014.

109. G.M. admits that the defect in the ignition switches of the Defective Vehicles has been linked to at least 12 accident related fatalities.

110. In acquiring Old G.M., G.M. assumed the obligations to make all required disclosures under the TREAD Act.

111. G.M. also has successor liability for the unfair or deceptive acts or practices of Old G.M.

112. By failing to disclose and consciously concealing the ignition switch defects in the Defective Vehicles, in violation of the TREAD Act, Old G.M. and G.M. engaged in deceptive acts or practices prohibited under section 349 of the New York General Business Law.

113. Indeed, for more than a decade, Old G.M. and G.M. failed to disclose to NHTSA the known defects in the ignition switches in the Defective Vehicles. As a result, consumers, including Plaintiff and the member of the Class received no notice of the defect that could shut down engine power without warning, disable power steering and brakes, and cause airbags not to deploy in an accident.

114. Old G.M. and G.M. knew that the defects in the ignition switches in the Defective Vehicles rendered such vehicle unreasonably dangerous to consumers, however, failed to disclose the danger to NHTSA, Plaintiff, other members of the Class or the public – despite having a duty to do so.

115. Instead, Old G.M. and G.M. allowed consumers to continue to believe the representations made about the Defective Vehicles in its marketing and advertising that such vehicles were safe. Old G.M. and G.M. engaged in deceptive acts or practices when it failed to disclose material information concerning the Defective Vehicles that was known to G.M. at the time of sale or lease.

116. Old G.M.'s and G.M.'s deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the safety and reliability of the Defective Vehicles.

117. Plaintiff and the other members of the Class have suffered injuries resulting from G.M.'s material omission regarding the Defective Vehicles because they paid an inflated purchase price for such vehicles. If Old G.M. and G.M. had timely disclosed the defect, Plaintiff and the members of the Class would not have purchased the Defective Vehicles at all, or would have paid less.

118. Because Old G.M.'s and G.M.'s unlawful conduct takes place in the context of automobile safety, their deceptive acts or practices affect a public interest. Old G.M.'s and G.M.'s unlawful conduct constitutes acts or practices that have the capacity to deceive consumers, do deceive consumers and have a broad impact on the public at large.

119. Plaintiff and the members of the Class suffered injuries caused by Old G.M.'s and G.M.'s failure to disclose material information. Plaintiff and the other members of the Class overpaid to purchase or lease the Defective Vehicles and did not receive the benefit of their bargain. The value of the Defective Vehicles has diminished now that the G.M. admitted knowledge of the safety issue.

120. Pursuant to section 349 of the New York General Business Law, Plaintiff and the other members of the Class are entitled to recover the greater of their actual damages or \$50.00. Because Old G.M. and G.M. acted willfully and knowingly, Plaintiff and the other members of the Class are entitled to recover three times actual damages, up to \$1000.00.

COUNT IV

VIOLATIONS OF NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS AND PRACTICES,

N.Y. Gen. Bus. L. § 350

(On Behalf of Plaintiff and the New York State Class)

121. Plaintiff and the New York State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

122. This claim is brought on behalf of Plaintiff and the New York State Class (the "Class" for purposes of this Count) pursuant to section 350 of the New York General Business Law.

123. Section 350 makes unlawful false advertising in the conduct of any business, trade or commerce. False advertising means "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity" N.Y. Gen. Bus. L. § 350-a.

124. Old G.M. and G.M. caused to be made or disseminated in New York, through advertising, marketing and other publications, statements regarding the quality, safety and reliability of the Defective Vehicles that were untrue or misleading.

125. By persistently and repeatedly engaging in the acts described above, including the misrepresentations and/or omission of material facts regarding the quality, safety and reliability of the Defective Vehicles, Old G.M. and G.M. engaged in false advertising in violation of section 350 of the New York General Business Law.

126. Old G.M. and G.M. violated section 350 of the N.Y. General Business Law by engaging in conduct that was likely to deceive reasonable consumer, owners and purchaser into believing that the Defective Vehicles were safe and reliable.

127. Old G.M. and G.M. willfully and knowingly engaged in the conduct described above.

128. G.M. has successor liability for the unlawful, unfair and fraudulent acts or practices of Old G.M.

129. Plaintiff and the other members of the Class reasonably relied on Old G.M.'s and G.M.'s statements in its marketing and advertising that the Defective Vehicles were safe and reliable, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did.

130. Plaintiff and the members of the Class have suffered injuries, including the loss of money or property, because of Old G.M.'s and G.M.'s false advertising. In purchasing or leasing their Defective Vehicles, Plaintiff and the other members of the Class relied on the misrepresentations and/or omission of Old G.M. and G.M. with respect to the quality, safety and reliability of the Defective Vehicles.

131. Plaintiff and the other members of the Class overpaid for the purchase or lease of the Defective Vehicles and did not receive the benefit of their bargain. The value of the Defective Vehicles has diminished now that the G.M. admitted knowledge of the safety issue.

132. Plaintiff, individually and on behalf of the other members of the Class, requests that this Court enter such orders and judgments as may be necessary to enjoin G.M from continuing such false advertisements. Pursuant to section 350 of the New York General Business Law, Plaintiff and the other members of the Class are entitled to recover the greater of their actual damages or \$500.00. Because Old G.M. and G.M. acted willfully and knowingly, Plaintiff and the other members of the Class are entitled to recover three times actual damages, up to \$10,000.00.

COUNT V

**BREACH OF EXPRESS WARRANTY OF MERCHANTABILITY, N.Y. U.C.C. § 2-213
(On Behalf of Plaintiff and the New York State Class)**

133. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

134. This claim is brought on behalf of the New York State Class (the “Class” for purposes of this Count).

135. Old G.M. and G.M. were, at all relevant times, merchants with respect to motor vehicles under N.Y. U.C.C. § 2-213.

136. In the course of selling the Defective Vehicles, Old G.M. and G.M. expressly warranted to repair and adjust to correct defects in materials and workmanship of any part supplied by Old G.M. and G.M. G.M. has not repaired or adjusted, and has been unable to repair or adjust the Defective Vehicles’ materials and workmanship defects described herein.

137. These warranties were made, *inter alia*, in advertisements and in uniform statements made by G.M. to the public and consumers of the Defective Vehicles. These affirmations and promises were part of the basis of the bargain between Old G.M. and G.M., on the one hand, and Plaintiff and the other Class members, on the other.

138. Old G.M. and G.M. did not provide at the time of sale, and G.M. has not provided since then, G.M. Vehicles conforming to these express warranties.

139. G.M. expressly assumed all liabilities arising under the written warranties of Old G.M.

140. Furthermore, the limited warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and the other Class members whole.

141. Recovery by Plaintiff and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiff, individually and on behalf of the other Class members, seeks all remedies as allowed by law.

142. Moreover, at the time that Old G.M. and G.M. warranted, sold and leased the Defective Vehicles, it knew that the Defective Vehicles did not conform to the warranties and were inherently defective, and wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Defective Vehicles.

143. Plaintiff and the other Class members were induced to purchase the Defective Vehicles under false and/or fraudulent pretenses and without the benefit of full disclosure of the problems described herein.

144. Many of the damages flowing from the Defective Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as those incidental and consequential damages have already been suffered due to Old G.M.'s and G.M.'s conduct as alleged herein, and due to G.M.'s failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and the other Class members' remedies would be insufficient to make Plaintiff and the other Class members whole.

145. As a direct and proximate result of the breach of express warranties, Plaintiff and the other members of the Class have been damaged in an amount to be determined at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of the other members of the Nationwide and New York State Classes he seeks to represent, respectfully request that the Court enter judgment in their favor and against G.M. as follows:

A. Declaring that this action is a proper class action and certifying the Nationwide and New York State Classes requested herein, designating Plaintiff as Nationwide and New York State Class Representatives, and appointing Plaintiff's attorneys as Class Counsel;

B. Enjoining G.M. from continuing the unfair or deceptive acts or practices alleged in this Complaint and requiring G.M. to repair the Defective Vehicles;

C. Ordering G.M. to pay actual, compensatory and statutory damages to Plaintiffs and the other members of the Nationwide and New York State Classes;

D. Alternatively, if elected, ordering G.M. to repair the defective ignition switches or provide a comparable vehicle that does not have ignition switch defects;

E. Ordering G.M. to pay punitive damages to Plaintiffs and the other members of the Nationwide and New York State Classes;

F. Ordering G.M. to pay pre- and post-judgment interest on any amounts awarded;

G. Ordering G.M. to pay the costs of suit, including Plaintiffs' and the other Class members' reasonable attorneys' fees; and


H. Granting such other and further equitable relief as this Court may deem just and proper.

X. JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury as to all claims in this action.

DATED: April 7, 2014

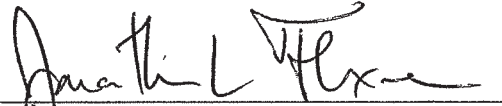
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744427

EXHIBIT 2

14 CV 2713
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBIN DELUCO, Individually, and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

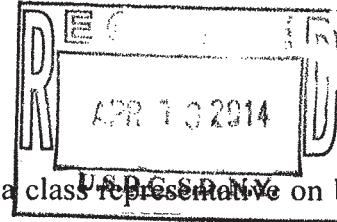
GENERAL MOTORS LLC,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL



Plaintiff Robin DeLuco ("Plaintiff"), individually and as a class representative on behalf of all similarly situated persons, brings this action against Defendant General Motors LLC ("G.M.") and alleges as follows:

I. INTRODUCTION

1. Faced with the real possibility that its conduct rises to criminality,¹ Alan Batey, president of G.M. North America, stated that G.M.'s near decade-long investigation of a defective ignition switch design "was not as robust as it should have been." This comment is wholly inexcusable in light of G.M.'s nationwide recall of approximately 2.6 million vehicles due to a defect in the ignition switch system that is linked to a least 13 crash related deaths.

2. G.M. marketed and advertised that these vehicles, though equipped with defective ignition switches, were safe and reliable. The vehicles were, however, anything but safe and reliable. In fact, as early as 2001, G.M. knew that the defective design of the ignition switches in these vehicles presented serious safety issues. Instead of disclosing the defect and its disabling impact upon other safety systems in these vehicles – including that the defect could shut down

¹ See Emily Flitter, *Federal Prosecutors Open Criminal Probe of GM Recall: Source*, REUTERS, March 11, 2014, available at <http://www.reuters.com/article/2014/03/11/us-autos-gm-recall-probe-idUSBREA2A1RZ20140311>.

the engine and electrical system without warning, and prevent airbags from being deployed in the case of a collision – G.M. consciously chose to conceal it and not address the problem.

3. The efforts by G.M. to conceal the existence of the defectively designed ignition switches in its vehicles, even after it was aware that the defect was linked to several accident related fatalities, displays a wanton degree of corporate malfeasance. Indeed, it appears G.M. may have gone so far as to commit bankruptcy fraud in order to avoid disclosure of the problems with the ignition switch, while, at the same time, taking taxpayer money to salvage a failing business model.

4. G.M. now has grudgingly admitted that it knew millions of its vehicles were equipped with defective ignition switches dating back to as early as 2001 – three years earlier than it initially reported – and has yet to determine the full scope of the problem. Moreover, based on statements by the maker of the ignition component in G.M. cars subject to the 2.6 million-vehicle recall, it would have only cost “a few dollars to produce and minutes to install” a fix.²

5. Plaintiff brings this action on behalf of herself and other Class Members, each of whom own, owned, lease or leased one or more of the following vehicles: 2005-10 Chevrolet Cobalt; 2005-10 Pontiac G5; 2003-2007 Saturn Ion; 2006-11 Chevrolet HHR; 2005-2006 Pontiac Pursuit (Canada); 2006-10 Pontiac Solstice; and 2007-10 Saturn Sky (the “Defective Vehicles”).

6. Plaintiff believes that there are additional G.M. vehicles that have the same or similar defect in their ignition switch systems as the Defective Vehicles. Plaintiffs will

² Jeff Bennett, *GM Now Says It Detected Ignition Switch Problem Back in 2001*, Wall St. J., (Mar. 12, 2014, 10:35 p.m.), <http://online.wsj.com/news/articles/SB10001424052702304914904579435171004763740?KEYWORDS=gm&mg=reno64-wsj>.

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

II. JURISDICTION AND VENUE

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

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

9. This Court has personal jurisdiction over G.M. because G.M. conducts substantial business in this District, has maintained continuous and systematic business contacts through the advertisement and sale of G.M. vehicles within the State and some of the actions giving rise to the complaint took place in this District.

10. Venue is proper in this District under 28 U.S.C. § 1391 because G.M., as a corporation, is deemed to reside in any judicial district in which it is subject to personal jurisdiction. Additionally, a substantial part of the events and/or actions giving rise to the claims alleged herein occurred in this District.

III. PARTIES

11. Plaintiff and proposed New York State Class Representative Robin DeLuco (“DeLuco”) is a resident and citizen of the State of New York. DeLuco owns a 2006 Saturn Ion, which she purchased new in 2006 from an authorized G.M. dealer in New Jersey. DeLuco chose the Saturn Ion in part because she wanted a safely designed and manufactured vehicle.

12. DeLuco saw advertisements for G.M. vehicles before she purchased the car and, although she does not recall the specifics of the advertisements, she recalls that safety and quality were consistent themes across the advertisements she saw before making the purchase of her 2006 Saturn Ion. She also recalls seeing promotional materials about the Saturn at the dealership where she purchased her 2006 Saturn Ion and spoke with Saturn salespeople who told her that the Saturn Ion was one of the safest vehicles in its class. The representations about safety and quality influenced DeLuco's decision to purchase the 2006 Saturn Ion. She did not learn of the ignition switch defects until about March 2014. Had G.M. disclosed the ignition switch defects, she would not have purchased the vehicle and would not have paid as much for it.

13. DeLuco has experienced multiple shut down incidents in her 2006 Saturn Ion, including the sudden and unexpected loss of power steering and brakes. DeLuco experienced these shut down incidents both before and after July 10, 2009. Since becoming aware of the G.M. recall notice, DeLuco has stopped driving her 2006 Saturn out of concern for her safety. She is unable to participate in the G.M. loaner program because the G.M. dealer in New Jersey to which she was directed in order to participate in the program requires the vehicle to be dropped off by DeLuco at the dealership, which refused to bring the loaner vehicle to her.

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

15. Among the liabilities and obligations expressly retained by G.M. after the bankruptcy are the following:

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

16. G.M. also expressly assumed:

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

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

IV. TOLLING OF STATUTES OF LIMITATION

A. Discovery Rule Tolling

18. Any applicable statute(s) of limitations has been tolled by G.M.'s knowing and active concealment and denial of the facts alleged herein.

19. Plaintiff and the other members of the Class could not have discovered through the exercise of reasonable diligence that their Defective Vehicles were defective within the time period for the applicable statutes of limitation. Indeed, Plaintiff and members of the Class could not have reasonably discovered the true nature of the defect in the ignition switches in their Defective vehicles until shortly before this class action litigation was commenced.

B. Fraudulent Concealment Tolling

20. At all relevant times to this action G.M. affirmatively concealed from Plaintiff and other members of the Class the defects in the Defective Vehicles. G.M. withheld from Plaintiff and other members of the Class information essential to the pursuit of their claims and, as a direct consequence, Plaintiff and other members of the Class could not have discovered the defects upon the exercise of reasonable diligence.

21. As set forth below, G.M. was aware of the design defect in the ignition switches as early as 2001 and despite such knowledge continued to manufacture, market, advertise, sell, lease and warrant such vehicles without disclosing the defects to Plaintiff and other members of the Class.

22. G.M. has repeatedly denied the existence of defects in the Defective Vehicles to Plaintiff and other members of the Class. Such denials concealed G.M.'s knowledge of the defects, as well as the attendant risks, from Plaintiff and other members of the Class.

23. The running of all applicable statutes of limitation have been suspended with respect to any claims that Plaintiff and other members of the Class have in connection with the defects in their Defective Vehicles, pursuant to the fraudulent concealment doctrine.

C. Estoppel

24. G.M. had a continuous duty to disclose to Plaintiff and members of the Class true character, quality and nature of the Defective Vehicles, that this defect is based on a poor design and/or substandard materials, and that it will require repairs, poses a safety concern, and diminishes the resale value of the Defective Vehicles.

25. G.M. knowingly, affirmatively and consciously concealed the true nature, quality and character of the Defective Vehicles from its customers.

26. As a result, G.M. is estopped from relying on any and all statutes of limitation in defense of this action.

V. SUBSTANTIVE ALLEGATIONS

27. Since 2002, G.M. has sold millions of Defective Vehicles throughout the world including within the United States knowing that they were prone to a very dangerous safety defect namely that the ignition switch could unintentionally move from the run position to “off” or “accessory” resulting in a loss of power, loss of braking, and a failure to deploy airbags in the event of a collision.

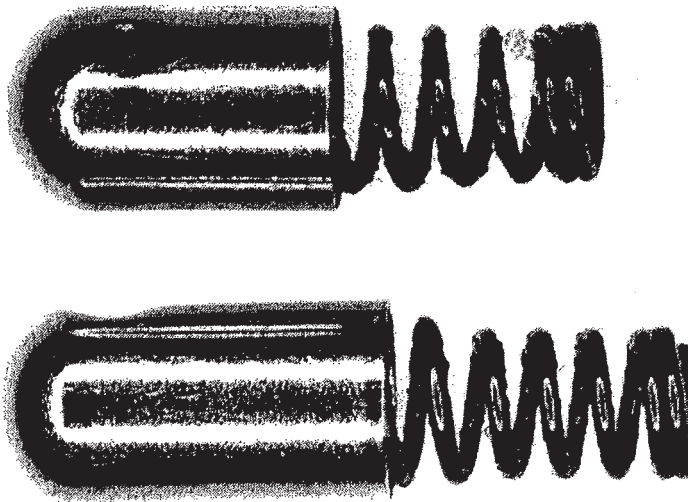
28. Upon information and belief, G.M. installed these defective ignition switches in its cars from 2001 to 2011. During this period, G.M. received hundreds of complaints that the Defective Vehicles were prone to sudden shut-off even though it concomitantly touted the Defective Vehicles as highly reliable and safe.

29. The issues surrounding the Defective Vehicles include the period when Old G.M. designed and manufactured the vehicles with defective ignition switches, and failed to disclose the existence of the defect even after Old G.M. became aware that it had caused fatalities. G.M. is liable for Old G.M.’s unfair and deceptive acts and/or omissions by virtue of the statutory obligations it assumed. G.M. also has successor liability for the conduct of Old G.M. because G.M. has continued to operate the franchise of Old G.M knowing full well that the ignition switches were defectively designed.

30. Upon information and belief, Delphi Automotive PLC (“Delphi”) manufactured the defective ignition switches. Delphi was a former subsidiary of Old G.M until it was spun off in 1999 and became an independent company. Upon information and belief, Delphi knew the switches were defective at all relevant times and was in a position to manufacture a corrective device or other fix for a minimal amount of money, possibly from \$2 to \$5 per vehicle.

31. The Defective Vehicles are inherently dangerous because the defective ignition switches renders them vulnerable to inadvertent engine shut off during normal operation. The ignition switches can, during normal driving conditions, shut off the engine and electrical system in Defective Vehicles without warning. Once the engine and electrical system is shut down, power steering and power brakes fail raising a substantial risk that the vehicle will be involved in an accident. Moreover, with the electrical system down, the vehicle's airbags are disengaged, thus, leaving passengers vulnerable to serious bodily injury or even death in the event of an accident.

32. It has now been disclosed that the defect stems from a small, inexpensive part called the "detent plunger" reproduced below:



33. After years of denying the existence of any problem with the Defective Vehicles, on February 14, 2014, G.M. finally disclosed in a report posted on the National Highway Traffic Safety Administration's ("NHTSA") website, dated February 7, 2014, that it would recall

619,000 cars in the United States because either a heavy key ring or a “jarring event” such as running off the road could cause the ignition to shut off and possibly prevent the air bags from deploying in a crash. The vehicles affected by the initial recall were the 2007 Pontiac G5 and 2005-07 Chevrolet Cobalt. In addition to the vehicles being recalled in the United States, another 153,000 in Canada and 6,100 in Mexico were to be recalled. In a separate news release, G.M. said it knew of at least six deaths in five crashes in which the front air bags did not deploy. Commenting on the events, a G.M. spokesman said “all of these crashes occurred off-road and at high speeds, where the probability of serious or fatal injuries was high regardless of air bag deployment.”³

34. The February 7, 2014 G.M. letter to the NHTSA, further detailed the problem as follows:

The ignition switch torque performance may not meet General Motors’ specification. If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event, the ignition switch may inadvertently be moved out of the “run” position. The timing of the key movement out of the “run” position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes. Until this correction is performed, customers should remove non-essential items from their key ring.

Dealers are to replace the ignition switch.⁴

35. At the center of the recall was the above-mentioned Chevrolet Cobalt. Engineered more than a decade ago, executives at G.M. touted it as the beginning of a new era and the replacement for the poorly received Chevrolet Cavalier. As reported in *The New York*

³ Christopher Jenson, *General Motors Recalls 778,000 Small Cars for Ignition Switch Problems*, N.Y. Times, (Feb. 13, 2014), <http://www.nytimes.com/2014/02/14/automobiles/general-motors-recalls-778000-small-cars-for-ignition-switch-problem.html>.

⁴ Letter from General Motors LLC to Nancy Lewis, Assoc. Admin. for Enforcement, Nat’l Hwy. Traffic Safety Admin., Recall Management Division (NVS-215), (Feb. 7, 2014), <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450012/RCDNN-14V047-1347P.pdf>.

Times on March 17, 2014, the Cobalt “would not only replace the aging and undistinguished Chevrolet Cavalier, but it would also prove that G.M.’s engineering and manufacturing skills had matured to the point that – like the Japanese automakers – it could build a world-class small car.”⁵ The Cobalt’s “mechanical underpinnings” were first developed in the 2003 Saturn Ion and included the flawed ignition switch.⁶ G.M. knew this flaw existed from the moment the car hit dealers’ floors even though it touted the car as “safe and sound” in an advertisement for a 2007 Saturn Ion.

36. The advertisement states, “The Ion’s designers accounted for almost everything but compromise. It’s nimble, yet strong. Modern, but inviting. Sporty, yet safe and sound. Featuring the U.S. Government’s highest possible front crash-test rating-five stars.”

37. G.M. promotional materials include the following claims of safety and reliability:

2003 Saturn Ion: “The ION sedan and quad coupe are designed to carry on the tradition of being at the top of the class when it comes to safety and security.”

2006 and 2007 Saturn Ion: “Like all Saturns, the Ion was designed with an emphasis on safety and security.”

2006 Pontiac G5: “The 2006 Pontiac G5 Pursuit offers a host of features for safety-minded consumers.”

2006 Chevrolet HHR: “HHR is designed to protect occupants in the event of a crash.”

2007 Saturn Sky: “Sky has a host of safety features ... including dual stage frontal air bags ... that use the latest sensing technology to turn the front passenger air bag on or off.”

2005 - 2007 Chevrolet Cobalt: “Safety was a priority in the development of the Cobalt.” Cobalt’s “rigid body structure ... reinforces occupant safety.” “The rigid body structure ... reinforces its safety [and] load carrying capability for crash protection.”

⁵ Christopher Jensen, *G.M. Saw Cobalt as Its Entry Into a Better Small-Car Market*, N.Y. Times, (Mar. 17, 2014), <http://www.nytimes.com/2014/03/18/business/gm-saw-cobalt-as-its-entry-into-the-upscale-small-car-market.html?ref=generalmotorscorporation.html>.

⁶ *Id.*

38. Accordingly, purchasers of the Defective Vehicles were lead to believe that the cars were safe and reliable. This proved to be untrue.

39. On February 25, 2014, G.M. announced it would double the size of the recall stemming from an ignition switch defect in the Defective Vehicles. G.M. said in the release that it was now aware of the deaths of at least 12 front-seat occupants in crashes where the front air bags did not deploy. While G.M. had previously recalled 619,000 vehicles in the United States, including Chevrolet Cobalts from the 2005-07 model years and 2007 Pontiac G5 models, G.M. added 2003-07 Saturn Ions, 2006-07 Chevrolet HHRs and 2006-07 Pontiac Solstice and Saturn Sky models.⁷

40. On February 26, 2014, *The Associated Press* reported that NHTSA was investigating whether G.M. acted quickly enough to recall 1.6 million older-model small cars in a case linked to 12 deaths. According to the *AP*, the agency has the authority to fine G.M. as much as \$35 million under legislation that went into effect late last year. Automakers must report evidence of safety defects within five days. G.M. filed documents with the safety agency recently however that showed it knew of the problem as early as 2004.⁸

41. The recall follows years of warnings and mounting evidence that the Defective Vehicles were prone to potentially dangerous operational shutdown that rendered the airbags inoperative. It has been reported by *The New York Times* on March 2, 2014, that shortly after the

⁷ Christopher Jenson, *G.M. to Expand Small Car Recall to 1.4 Million Vehicles*, N.Y. Times (Feb. 25, 2014), <http://www.nytimes.com/2014/02/26/automobiles/gm-to-expand-small-car-recall-to-1-4-million-vehicles.html>.

⁸ Tom Krisher, *U.S. Safety Agency Likely is investigating G.M. for Slow Response to Small Car Recall*, A.P. (Feb. 26, 2014), <http://www.usnews.com/news/business/articles/2014/02/26/us-safety-agency-likely-probing-gm-recall-response.html>.

Cobalts left their Lordstown, Ohio assembly plant, G.M. learned that there was a problem with the ignition system.⁹

42. For example, engineers determined as early as 2004 that a defect in the ignition switch meant a key could be unintentionally jostled out of the “Run” position to the “Accessory” or “Off” position by a heavy key ring or by a nudge from a driver’s leg. With the ignition switch in the “Accessory” or “Off” position, it would cause the car to stall and shut down power. The powering down of the engine and electrical system would also disable the airbags so that any accident ensuing from the sudden and unexpected stall would not deploy the airbag safety devices and leave the vehicle’s occupants exposed.

43. In 2004, engineers, having identified the problem, proposed a fix. G.M. executives, however, decided, based among other things, that cost was prohibitive and declined to take remedial action. It has been reported that the 2004 proposed fix was actually less than \$12.

44. Reports detailing sudden ignition turn off continued through 2005 and yet another fix was considered but not implemented.¹⁰ G.M. instead, sought to place the burden on customers and, in 2005, G.M. sent dealers a technical service bulletin about the 2005-06 Cobalt warning about a stalling problem related to heavy key rings. At that time, a G.M. executive explained, “in rare cases when a combination of factors is present, a Chevrolet Cobalt driver can cut power to the engine by inadvertently bumping the ignition key to the accessory or off position while the car is running. Service advisers are telling customers they can virtually

⁹ Christopher Jensen, *In G.M. Recalls Inaction and Trails of Fatal Crashes*, N.Y. Times, (Mar. 12, 2014), <http://www.nytimes.com/2014/03/03/business/in-general-motors-recalls-inaction-and-trail-of-fatal-crashes.html>.

¹⁰ *See id.*

eliminate this possibility by taking several steps, including removing nonessential material from their key rings.”¹¹

45. G.M.’s apathy for its customers and public safety became even more apparent when it was revealed on March 12, 2014, by *The New York Times* that G.M. knew since 2001 there were serious safety problems in the Defective Vehicles. According to an expanded chronology submitted to regulators, G.M. admitted that during the development of the Saturn Ion in 2001, it learned that the ignition switch could turn off. While G.M. insisted that the issue was resolved then, a 2003 internal inquiry indicated otherwise.¹²

46. Further, at a May 15, 2009 meeting, G.M. confirmed from the data retrieved from the “black box” of a Cobalt during a post accident examination that the ignition switch in the Defective Vehicle was the cause of the accident.¹³

47. According to the *N.Y. Times*, there is even more additional evidence of knowledge:

Since the engineers’ meeting in May 2009, at least 23 fatal crashes have involved the recalled models, resulting in 26 deaths. G.M. reported the accidents to the government under a system called Early Warning Reporting, which requires automakers to disclose claims they receive blaming vehicle defects for serious injuries or deaths.

A New York Times review of 19 of those accidents – where victims were identified through interviews with survivors, family members, lawyers and law enforcement officials – found that G.M. pushed back against families in at least two of the accidents, and reached settlements that required the victims to keep the discussions confidential.

In one of those cases, the company settled a lawsuit brought by the family of Hasaya Chansuthus, 25, who crashed her 2006 Cobalt in

¹¹ *Id.*

¹² Hilary Stout, Bill Vlasic, Danielle Ivory, and Rebecca R. Ruiz, *Carmaker Misled Grieving Families on a Lethal Flaw*, N.Y. Times (Mar. 25, 2014), <http://www.nytimes.com/2014/03/25/business/carmaker-mislead-grieving-families-on-a-lethal-flaw.html>.

¹³ *Id.*

Murfreesboro, Tenn. After resisting, the company negotiated a deal even though Ms. Chansuthus's blood-alcohol level was more than twice the legal limit. Data from the black box – which records vehicle systems information – showed that the key was in the accessory or off position, according to court documents, and the air bags did not deploy. (The accessory position turns off the car, disabling the air bags, but allows certain electronics, like the radio, to run.) The terms of the settlement are confidential.

In other instances, G.M. ignored repeated calls, families said. “We did call G.M.,” said Leslie Dueno, whose 18-year-old son, Christopher Hamberg, was killed on June 12, 2009 – not quite a month after the critical May 15 meeting of G.M. engineers about the ignition data – driving his 2007 Cobalt home before dawn in Houston. He lost control at 45 miles per hour and hit a curb, then a tree, the police report said. “Nobody ever called me. They never followed up. Ever.”¹⁴

48. As explained above, the evidence that G.M. knew there was a link between the defective ignition switches and accidents came in the form of electronically captured data retrieved from sensing modules removed from wrecked cars. Premised upon a review of this information, the *New York Times* stated that by the end of 2007, G.M. recognized for certain the “link between a faulty switch and deactivated air bags”:

Consumer complaints and claims came to the company in a variety of ways – through lawsuits, calls, letters and emails, warranty claims, or insurance claims. G.M.'s legal staff was the recipient of lawsuits, insurance information, accident reports and any other litigation-related paperwork. But warranty claims and customer calls were routed through the sales and service division – a vast bureaucracy that occupies most of one tower at G.M.'s headquarters in Detroit. Because the legal staff reports to the chief executive, and the sales department to the head of G.M. North America, it is unclear whether they share information related to a specific car, like the Cobalt.

And an even bigger communication gap on the Cobalt appeared to exist between the engineers in Warren, Mich., and the company lawyers in downtown Detroit. The most glaring example was that G.M. officials meeting with federal regulators in March 2007 did not know about a fatal Cobalt wreck in 2005 – even though G.M.'s legal department had had an open file on the case for almost two years.

Within the product development system was an isolated, subgroup of engineers assigned to Cobalt safety tests. According to the

¹⁴ *Id.*

chronology G.M. has submitted to federal safety regulators, an unknown number of engineers were involved in opening – and closing – four separate inquiries on the Cobalt between 2004 and 2009. Engineers also performed four other analyses.

By the end of 2007, G.M. had examined data from nine “sensing and diagnostic modules” of crashed vehicles. In four cases, the ignition was in the accessory position. But it was not until May 15, 2009, that G.M. engineers verified the data. That day, they met with officials from its supplier Continental, which manufactured the Cobalt’s diagnostic modules, or black boxes. By then G.M. had recovered 14 modules, and according to Continental, the ignition was in the accessory position on seven of the 14 cases. This appears to be the first proven link between a faulty switch and deactivated air bags.¹⁵

49. Despite knowing full well that the Defective Vehicles’ defective ignition switch was linked to horrific accidents including fatalities, G.M. vehemently denied its culpability until just hours before the first recall. Indeed, it employed a harsh litigation strategy when dealing with the claims brought by the many who were harmed and the families of the deceased. According to *The New York Times*, “in one case, G.M. threatened to come after the family of an accident victim for reimbursement of legal fees if the family did not withdraw its lawsuit. In another instance, it dismissed a family with a terse, formulaic letter, saying there was no basis for claims.”¹⁶

50. G.M. also threatened injured parties with retaliatory lawsuits and asserted that the earlier bankruptcy barred these people from pursuing claims. As reported in the *Times*:

That same month, lawyers representing G.M. wrote to the lawyer in another wrongful-death case demanding that the lawsuit be withdrawn. The family of Allen Ray Floyd had sued G.M. after Mr. Floyd lost control of a 2006 Cobalt in daylight near Loris, S.C. Two weeks earlier, his sister had lost control of the same vehicle on the same road; she had it towed. The company contended the suit was “frivolous” because the accident occurred on July 3, 2009, a week before the company’s bankruptcy agreement took effect, which meant G.M. was not liable for damages.

¹⁵ *Id.*

¹⁶ *Id.*

“They sent us a letter in September telling us to drop our case or else they’d come after us,” said William Jordan, the family’s lawyer. “They were going to come after me for sanctions, to pay their attorneys’ fees.”

Mr. Jordan added: “We looked at the prospect of going into bankruptcy court and duking it out with them and looking at the language of the bankruptcy legislation, and it just seemed to be such a big undertaking. We decided to capitulate.”

51. Finally, G.M.’s conduct and effort to avoid liability by hiding behind Old G.M.’s bankruptcy, has federal authorities investigating whether the automaker committed fraud by not disclosing defects that could lead to expensive future liabilities. The issue is whether Old G.M. knew about the ignition defect at the time it filed for bankruptcy in 2009, and failed to fully disclose the problem. The record is quite clear, however, that Old G.M. and G.M. knew the defect existed in the Defective Vehicles as early as 2001, and clearly by 2002.

52. G.M. and its predecessor were at all times under an affirmative duty to advise customers about known defects. Specifically, under the Transportation Recall Enhancement, Accountability and Documentation Act (“TREAD Act”) and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defects. If it is determined that the vehicle is defective, the manufacturer must notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. This duty existed throughout the Class Period.

53. On March 28, 2014, G.M. announced it was expanding the recall to cover ignition switches in all model years of its Chevrolet Cobalt, HHR, Pontiac G5, Solstice and Saturn Ion and Sky in the United States since defective ignition switches may have been used in those vehicles.

VI. SUCCESSOR LIABILITY

54. G.M. was incorporated in 2009 and on July 10, 2009 acquired substantially all assets and assumed certain liabilities of G.M. Corp through a Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code. Bankruptcy does not immunize G.M. from liability here. Specifically, G.M. expressly assumed certain obligations under, *inter alia*, the TREAD Act, and is liable for its non-disclosure of the ignition switch defects from the date of its formation on July 10, 2009, and appears to have committed bankruptcy fraud in connection with the Section 363 sale.

55. G.M. also expressly assumed liability for warranty claims in the Master Sale and Purchase Agreement of June 26, 2009, and this assumption of liability includes the claims of the Class.

56. Moreover, G.M. has successor liability for Old G.M.'s acts and omissions in the marketing and sale of the Defective Vehicles during the Class Period because G.M. has continued the business enterprise of Old G.M., for the following reasons:

- G.M. admits that it knew of the ignition system defects from the very date of its formation;
- G.M. has continued in the business of designing, manufacturing, and marketing vehicles, including at least some of the same vehicles as Old G.M.;
- G.M. retained the bulk of the employees of Old G.M.;
- G.M. acquired owned and leased real property of Old G.M., including all machinery, equipment, tools, information technology, product inventory, and intellectual property;
- GM acquired the contracts, books, and records of Old G.M. Corp; and
- G.M. acquired all goodwill and other intangible personal property of Old G.M.

57. G.M. and Old G.M. did not report information within their knowledge to the Bankruptcy Court, federal authorities (NHTSA or the Auto Task Force of the United States Department of the Treasury) or consumers, nor would a reasonable and diligent investigation have disclosed that G.M. and Old G.M. had information in their possession about the existence and dangerousness of the defect and opted to conceal that information until shortly before this action was filed.

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

59. Because of the active concealment by G.M. and Old G.M., any and all limitations periods otherwise applicable to Plaintiff's claims have been tolled.

VII. CLASS ACTION ALLEGATIONS

60. Plaintiff brings this action pursuant to Rules 23(a), (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Classes:

- a. All persons and entities that purchased or leased Defective Vehicles in the United States between 2002 and the present (the "Class Period") (the "Nationwide Class").
- b. All persons and entities that purchased or leased Defective Vehicles during the Class Period in the State of New York (the "New York State Class").

61. Together, the Nationwide and New York State Classes shall be collectively referred to hereinafter as the "Class." The Class excludes G.M. and any entity in which G.M. has a controlling interest, and its officers, directors, legal representatives, successors and assigns.

The Class also excludes any entity in which G.M. has or had a controlling interest, and its officers, directors, legal representatives, successors and assigns.

62. The Class is so numerous that joinder of all members is impracticable.

63. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

64. Plaintiff's claims are typical of the claims of the Class. As alleged herein, Plaintiff and members of the Class all sustained damages arising out of the G.M.'s same course of unlawful conduct.

65. There are questions of law and fact common to the Class, including but not limited to:

- Whether G.M. and its predecessor had knowledge of the defect prior to its issuance of the current safety recall;
- Whether G.M. and its predecessor concealed defects affecting the Defective Vehicles;
- Whether G.M. and its predecessor misrepresented the safety of the Defective Vehicles;
- Whether G.M. and its predecessor's misrepresentations and omissions regarding the safety and quality of its vehicles were likely to deceive a reasonable person;
- Whether a reasonable customer would pay less for a car that had the ignition defect;
- Whether a reasonable customer would pay less for a vehicle that did not conform to G.M. and its predecessor's assurances of quality;
- Whether G.M. and its predecessor breached its applicable warranties;
- Whether G.M. bears successor liability for Defective Vehicles that Class Members purchased or leased before July 10, 2009, the date G.M. acquired substantially all of the assets of its predecessor;
- Whether G.M. bears liability for Defective Vehicles that Class Members purchased or leased after July 10, 2009;

- Whether G.M. committed bankruptcy fraud in connection with the Section 363 sale or otherwise;
- Whether damages, restitution, equitable, injunctive, compulsory, or other relief is warranted; and
- Whether injunctive relief enjoining the reoccurrence of G.M.'s conduct and/or declaratory relief that such conduct is unlawful, is warranted.

66. The interest of Class Members in individually controlling the prosecution of separate actions is theoretical and not practical. The members of the Class have a high degree of similarity and are cohesive. Plaintiff anticipates no difficulty in the management of this matter as a class action.

67. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(2) because G.M. has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

68. Class action status is also warranted under Federal Rules of Civil Procedure 23(b)(3) because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

VIII. CAUSES OF ACTION

COUNT I

VIOLATIONS OF MAGNUSON-MOSS FEDERAL WARRANTY ACT

15 U.S.C. § 2301, *et seq.*

(On Behalf of Plaintiff and the Nationwide Class)

69. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

70. This claim is brought on behalf of Plaintiff and the Nationwide Class (the “Class” for purposes of this Count).

71. This Court has jurisdiction to decide claims brought under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (the “Act”), by virtue of 28 U.S.C. §§ 1332 (a)-(d).

72. The Defective Vehicles constitute “consumer products,” as defined in 15 U.S.C. § 2301.

73. Plaintiff and the other members of the Class are “consumers,” as defined in 15 U.S.C. § 2301.

74. Old G.M. and G.M. are “suppliers” and a “warrantors” of the Defective Vehicles as defined in 15 U.S.C. § 2301.

75. The Defective Vehicles are “consumer products” within the meaning of the Act, pursuant to 15 U.S.C. § 2301(1).

76. Old G.M. supplied a “written warranty” regarding the Defective Vehicles, as defined in 15 U.S.C. § 2301(6).

77. The Defective Vehicles were designed with defective ignition switches that can cause the Defective Vehicles’ engine and electrical system to shut down without warning, exposing vehicle occupants to serious risks of accidents, injuries and potentially death. G.M.

issued a recall with respect to the Defective Vehicles, thus, admitting that the ignition switches are defective.

78. As more fully described above, G.M. breached its express and implied warranties to Plaintiff and the members of the Class by, among other things: selling and/or leasing the Defective Vehicles in an unmerchantable condition; selling and/or leasing the Defective Vehicles when they were not fit for the ordinary purposes for which vehicles are used, and which were not fully operational, safe or reliable; and not repairing or curing defects and nonconformities in the Defective Vehicles as they were identified.

79. Plaintiff and each member of the Class had sufficient direct dealings with old G.M., G.M. or their agents (dealerships) to establish privity of contract between G.M. and each member of the Class. Privity, however, is not required here because Plaintiff and each member of the Class are intended third-party beneficiaries of contracts between G.M. and its dealers, and specifically, they are intended beneficiaries of G.M.'s express and implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Additionally, privity is not required because the Defective Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

80. G.M. has successor liability for the acts of Old G.M. as described above.

81. Requiring an informal dispute settlement procedure or affording G.M. a reasonable opportunity to cure its breach of warranties would be unnecessary and futile. At the time of sale or lease of each the Defective Vehicles, G.M. knew, should have known, or was reckless in not knowing of its misrepresentations concerning the Defective Vehicles' inability to

perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement – under the Act or otherwise – that Plaintiff resort to an informal dispute resolution procedure and/or afford G.M. a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

82. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the claims under the Act, whether premised upon express or implied warranty, is procedurally and substantively unconscionable under federal law and the applicable state common law.

83. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the claims in this Count is tolled under equitable doctrines. Plaintiff and the other Class members sustained injuries and damages as a proximate result of G.M.'s violation of their written and/or implied warranties and are entitled to legal and equitable relief against G.M., including economic damages, rescission or other relief as appropriate.

84. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

85. Plaintiff, individually and on behalf of each member of the Class, seeks all damages permitted by law, including diminution in value of their Defective Vehicles, in an amount to be proven at trial.

COUNT II

FRAUDULENT CONCEALMENT (On behalf of Plaintiff and the Nationwide Class)

86. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

87. This claim is brought on behalf of Plaintiff and the Nationwide Class (the "Class" for purposes of this Count).

88. Old G.M. and G.M. concealed material facts about the defect in the ignition switches of the Defective Vehicles and the safety of such vehicles.

89. G.M. has successor liability for the acts of concealment of Old G.M. as described above.

90. G.M. had a duty to disclose these safety, quality, dependability, and reliability issues because G.M. consistently marketed the Defective Vehicles as safe.

91. Once G.M. made representations to the public about the safety, quality, dependability and reliability of the Defective Vehicles, G.M. was under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts that materially qualify those facts stated. A manufacturer that volunteers information about its product must be truthful, and the telling of a half-truth calculated to deceive is fraud.

92. In addition, G.M. had a duty to disclose omitted facts with respect to the defects in the ignition switches of the Defective Vehicles because they were known and/or accessible only to G.M., which has superior knowledge and exclusive access to the facts, and G.M. knew they were not known to or discoverable by Plaintiff and the other Class members.

93. These omitted facts were material because they concern the safety and reliability of the Defective Vehicles. That a defect existed in the ignition switches of the Defective

Vehicles which could cause the vehicles' engine and electrical system to shut down without warning, and disable the vehicles' safety systems, are material facts to consumers.

94. G.M. actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and the other members of the Class to purchase Defective Vehicles at a higher price for the Defective Vehicles, which did not match Defective Vehicles' true value.

95. G.M. still has not made full and adequate disclosure and continues to defraud Plaintiff and the other members of the Class by concealing material information regarding the defects in the Defective Vehicles and other G.M. vehicles.

96. Plaintiff and the other members of the Class reasonably relied on G.M.'s statements in its marketing and advertising that the Defective Vehicles were safe, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did.

97. As a result of the concealment and/or suppression of the facts, Plaintiff and the other members of the Class sustained damages. For those Class members who elect to affirm the sale, damages include the difference between the actual value of that for which Class members paid and the actual value of what they received, together with additional damages arising from the sales transaction. Those Class members who want to rescind their purchase are entitled to restitution and consequential damages.

98. G.M.'s acts were done maliciously, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the other Class members' rights and well-being, and to enrich itself. G.M.'s conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

COUNT III

**VIOLATIONS OF NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS
AND PRACTICES, N.Y. Gen. Bus. L. § 349
(On Behalf of Plaintiff and the New York State Class)**

99. Plaintiff and the New York State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

100. This claim is brought on behalf of Plaintiff and the New York State Class (the “Class” for purposes of this Count) pursuant to section 349 of the New York General Business Law.

101. Section 349 makes unlawful deceptive acts or practices in the conduct of any business, trade or commerce.

102. Under the TREAD Act, a manufacturer of a vehicle has a legal duty to notify NHTSA, as well as the owners, purchasers and dealers of the vehicle, if the manufacturer learns that the vehicle contains a defect related to motor vehicle safety or the vehicle does not comply with an applicable motor vehicle safety standard. 49 U.S.C. § 30118(c).

103. Plaintiff and the members of the Class were deceived by G.M.’s failure to disclose the defect in the ignition switches of the Defective Vehicles.

104. Old G.M. had knowledge of the ignition switch defects since 2001, however, never disclosed the existence of such defects. GM admitted the existence of the ignition switch defects in the Defective Vehicles in connection with the issuing of the recall in February 2014.

105. G.M. admits that the defect in the ignition switches of the Defective Vehicles has been linked to at least 12 accident related fatalities.

106. In acquiring Old G.M., G.M. assumed the obligations to make all required disclosures under the TREAD Act.

107. G.M. also has successor liability for the unfair or deceptive acts or practices of Old G.M.

108. By failing to disclose and consciously concealing the ignition switch defects in the Defective Vehicles, in violation of the TREAD Act, Old G.M. and G.M. engaged in deceptive acts or practices prohibited under section 349 of the New York General Business Law.

109. Indeed, for more than a decade, Old G.M. and G.M. failed to disclose to NHTSA the known defects in the ignition switches in the Defective Vehicles. As a result, consumers, including Plaintiff and the member of the Class received no notice of the defect that could shut down engine power without warning, disable power steering and brakes, and cause airbags not to deploy in an accident.

110. Old G.M. and G.M. knew that the defects in the ignition switches in the Defective Vehicles rendered such vehicle unreasonably dangerous to consumers, however, failed to disclose the danger to NHTSA, Plaintiff, other members of the Class or the public – despite having a duty to do so.

111. Instead, Old G.M. and G.M. allowed consumers to continue to believe the representations made about the Defective Vehicles in its marketing and advertising that such vehicles were safe. Old G.M. and G.M. engaged in deceptive acts or practices when it failed to disclose material information concerning the Defective Vehicles that was known to G.M. at the time of sale or lease.

112. Old G.M.'s and G.M.'s deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the safety and reliability of the Defective Vehicles.

113. Plaintiff and the other members of the Class have suffered injuries resulting from G.M.'s material omission regarding the Defective Vehicles because they paid an inflated purchase price for such vehicles. If Old G.M. and G.M. had timely disclosed the defect, Plaintiff and the members of the Class would not have purchased the Defective Vehicles at all, or would have paid less.

114. Because Old G.M.'s and G.M.'s unlawful conduct takes place in the context of automobile safety, their deceptive acts or practices affect a public interest. Old G.M.'s and G.M.'s unlawful conduct constitutes acts or practices that have the capacity to deceive consumers, do deceive consumers and have a broad impact on the public at large.

115. Plaintiff and the members of the Class suffered injuries caused by Old G.M.'s and G.M.'s failure to disclose material information. Plaintiff and the other members of the Class overpaid to purchase or lease the Defective Vehicles and did not receive the benefit of their bargain. The value of the Defective Vehicles has diminished now that the G.M. admitted knowledge of the safety issue.

116. Pursuant to section 349 of the New York General Business Law, Plaintiff and the other members of the Class are entitled to recover the greater of their actual damages or \$50.00. Because Old G.M. and G.M. acted willfully and knowingly, Plaintiff and the other members of the Class are entitled to recover three times actual damages, up to \$1000.00.

COUNT IV

VIOLATIONS OF NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS AND PRACTICES, N.Y. Gen. Bus. L. § 350 (On Behalf of Plaintiff and the New York State Class)

117. Plaintiff and the New York State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

118. This claim is brought on behalf of Plaintiff and the New York State Class (the "Class" for purposes of this Count) pursuant to section 350 of the New York General Business Law.

119. Section 350 makes unlawful false advertising in the conduct of any business, trade or commerce. False advertising means "advertising, including labeling, of a commodity ...

if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity” N.Y. Gen. Bus. L. § 350-a.

120. Old G.M. and G.M. caused to be made or disseminated in New York, through advertising, marketing and other publications, statements regarding the quality, safety and reliability of the Defective Vehicles that were untrue or misleading.

121. By persistently and repeatedly engaging in the acts described above, including the misrepresentations and/or omission of material facts regarding the quality, safety and reliability of the Defective Vehicles, Old G.M. and G.M. engaged in false advertising in violation of section 350 of the New York General Business Law.

122. Old G.M. and G.M. violated section 350 of the N.Y. General Business Law by engaging in conduct that was likely to deceive reasonable consumer, owners and purchaser into believing that the Defective Vehicles were safe and reliable.

123. Old G.M. and G.M. willfully and knowingly engaged in the conduct described above.

124. G.M. has successor liability for the unlawful, unfair and fraudulent acts or practices of Old G.M.

125. Plaintiff and the other members of the Class reasonably relied on Old G.M.’s and G.M.’s statements in its marketing and advertising that the Defective Vehicles were safe and reliable, and would not have purchased or leased the Defective Vehicles had they known of the defects in the ignition switches, or would not have paid as much as they did.

126. Plaintiff and the members of the Class have suffered injuries, including the loss of money or property, because of Old G.M.'s and G.M.'s false advertising. In purchasing or leasing their Defective Vehicles, Plaintiff and the other members of the Class relied on the misrepresentations and/or omission of Old G.M. and G.M. with respect to the quality, safety and reliability of the Defective Vehicles.

127. Plaintiff and the other members of the Class overpaid for the purchase or lease of the Defective Vehicles and did not receive the benefit of their bargain. The value of the Defective Vehicles has diminished now that the G.M. admitted knowledge of the safety issue.

128. Plaintiff, individually and on behalf of the other members of the Class, requests that this Court enter such orders and judgments as may be necessary to enjoin G.M from continuing such false advertisements. Pursuant to section 350 of the New York General Business Law, Plaintiff and the other members of the Class are entitled to recover the greater of their actual damages or \$500.00 as well as treble damages up to \$10,000.

COUNT V

BREACH OF EXPRESS WARRANTY OF MERCHANTABILITY, N.Y. U.C.C. § 2-213 (On Behalf of Plaintiff and the New York State Class)

129. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

130. This claim is brought on behalf of Plaintiff and the New York State Class (the "Class" for purposes of this Count).

131. Old G.M. and G.M. were, at all relevant times, merchants with respect to motor vehicles under N.Y. U.C.C. § 2-213.

132. In the course of selling the Defective Vehicles, Old G.M. and G.M. expressly warranted to repair and adjust to correct defects in materials and workmanship of any part

supplied by Old G.M. and G.M. G.M. has not repaired or adjusted, and has been unable to repair or adjust the Defective Vehicles' materials and workmanship defects described herein.

133. These warranties were made, *inter alia*, in advertisements and in uniform statements made by G.M. to the public and consumers of the Defective Vehicles. These affirmations and promises were part of the basis of the bargain between Old G.M. and G.M., on the one hand, and Plaintiff and the other Class members, on the other.

134. Old G.M. and G.M. did not provide at the time of sale, and G.M. has not provided since then, G.M. Vehicles conforming to these express warranties.

135. G.M. expressly assumed all liabilities arising under the written warranties of Old G.M.

136. Furthermore, the limited warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and the other Class Members whole.

137. Recovery by Plaintiff and the other Class Members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiff, individually and on behalf of the other Class Members, seeks all remedies as allowed by law.

138. Moreover, at the time that Old G.M. and G.M. warranted, sold and leased the Defective Vehicles, it knew that the Defective Vehicles did not conform to the warranties and were inherently defective, and wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Defective Vehicles.

139. Plaintiff and the other Class Members were induced to purchase the Defective Vehicles under false and/or fraudulent pretenses and without the benefit of full disclosure of the problems described herein.

140. Many of the damages flowing from the Defective Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as those incidental and consequential damages have already been suffered due to Old G.M.'s and G.M.'s conduct as alleged herein, and due to G.M.'s failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and the other Class Members' remedies would be insufficient to make Plaintiff and the other Class Members whole.

141. As a direct and proximate result of the breach of express warranties, Plaintiff and the other members of the Class have been damaged in an amount to be determined at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of the other members of the Nationwide and New York State Classes he seeks to represent, respectfully request that the Court enter judgment in their favor and against G.M. as follows:

A. Declaring that this action is a proper class action and certifying the Nationwide and New York State Classes requested herein, designating Plaintiff as a Nationwide and New York State Class Representative, and appointing Plaintiff's attorneys as Class Counsel;

B. Enjoining G.M. from continuing the unfair or deceptive acts or practices alleged in this Complaint and requiring G.M. to repair the Defective Vehicles;

C. Ordering G.M. to pay actual, compensatory and statutory damages to Plaintiff and the other members of the Nationwide and New York State Classes;

D. Alternatively, if elected, ordering G.M. to repair the defective ignition switches or provide a comparable vehicle that does not have ignition switch defects;

E. Ordering G.M. to pay punitive damages to Plaintiff and the other members of the Nationwide and New York State Classes;

F. Ordering G.M. to pay pre- and post-judgment interest on any amounts awarded;

G. Ordering G.M. to pay the costs of suit, including Plaintiff's and the other Class Members' reasonable attorneys' fees; and

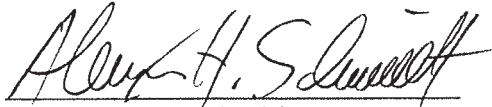
H. Granting such other and further equitable relief as this Court may deem just and proper.

X. JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury as to all claims in this action.

DATED: April 16, 2014


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UNITED STATES DISTRICT COURT

15

SOUTHERN DISTRICT OF CALIFORNIA

16

Case No. **'14CV0713 JM BGS**

17 ELIZABETH Y. GRUMET; ABC

FLOORING, INC.; MARCUS

18 SULLIVAN; KATELYN SAXSON;

AMY C. CLINTON; and ALLISON C.

19 CLINTON, On Behalf of Themselves, and

All Others Similarly Situated,

20

Plaintiffs,

21

v.

22

GENERAL MOTORS LLC,

23

Defendant.

24

25

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27

28

Class Action

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Elizabeth Y. Grumet, ABC Flooring, Inc., Marcus Sullivan,
2 Katelyn Saxson, Amy C. Clinton, and Allison C. Clinton ("Plaintiffs") on behalf of
3 themselves individually and as class representatives on behalf of all similarly
4 situated persons and the general public, bring this action against Defendant
5 General Motors LLC ("G.M.") and allege as follows:

6 **INTRODUCTION**

7 1. Faced with the real possibility that its conduct rises to criminality,
8 Alan Batey, president of G.M. North America, stated that G.M.'s near decade-long
9 investigation of a defective ignition switch design "was not as robust as it should
10 have been." This comment is wholly inexcusable in light of G.M.'s nationwide
11 recall of more than 1.6 million vehicles due to a defect in the ignition switch
12 system that is linked to a least 12 crash related deaths.

13 2. G.M. marketed and advertised that these vehicles, though equipped
14 with defective ignition switches, were safe and reliable. The vehicles were,
15 however, anything but safe and reliable. In fact, since 2004 (and quite possible as
16 early as 2001), G.M. knew that the defective design of the ignition switches in
17 these vehicles presented serious safety issues. Instead of disclosing the defect and
18 its disabling impact upon other safety systems in these vehicles – including that the
19 defect could shut down the engine and electrical system without warning, and
20 prevent airbags from being deployed in the case of a collision – G.M. consciously
21 chose to conceal it and not address the problem.

22 3. The efforts by G.M. to conceal the existence of the defectively
23 designed ignition switches in its vehicles, even after it was aware that the defect
24 was linked to several accident related fatalities, displays a wanton degree of
25 corporate greed. Indeed, it appears G.M. may have gone so far as to commit
26 bankruptcy fraud in order to avoid disclosure of the problems with the ignition
27 switch, while, at the same time, taking taxpayer money to salvage a failing
28 business model.

1 4. G.M. now has grudgingly admitted that it knew millions of its
2 vehicles were equipped with defective ignition switches dating back to as early as
3 2001 – three years earlier than it initially reported – and has yet to determine the
4 full scope of the problem. Moreover, based on statements by the maker of the
5 ignition component in G.M. cars subject to the 1.6 million-vehicle recall, it would
6 have only cost “a few dollars to produce and minutes to install” a fix.¹

7 5. As detailed herein, G.M. has violated federal law, various state
8 statutes, and common law duties between 2002 and the present (the “Class
9 Period”). Plaintiffs bring this action on behalf of themselves and other Class
10 members, each of whom own, owned, lease or leased one or more of the following
11 vehicles: 2005-2007 Chevrolet Cobalt; 2005-2007 Pontiac G5; 2003-2007 Saturn
12 Ion; 2006-2007 Chevrolet HHR; 2005-2006 Pontiac Pursuit (Canada); 2006-2007
13 Pontiac Solstice; and 2007 Saturn Sky (the “Defective Vehicles”).

14 6. Plaintiffs believe that there are additional G.M. vehicles that have the
15 same or similar defect in their ignition switch systems as the Defective Vehicles.
16 Plaintiffs will supplement the definition of Defective Vehicles to include these
17 additional vehicles with defective ignition switch systems as they are identified.

18 JURISDICTION AND VENUE

19 7. This Court has diversity jurisdiction over this action under 28 U.S.C.
20 § 1332(a) and (d) because the amount in controversy for the Class exceeds
21 \$5,000,000, and Plaintiffs and other Class members are citizens of a different state
22 than Defendant.

23 8. The Court has subject-matter jurisdiction over this action pursuant to
24 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory
25 and other relief arising under the Magnuson-Moss Federal Warranty Act, 15

26 ¹ Jeff Bennett, *GM Now Says It Detected Ignition Switch Problem Back in 2001*, Wall St. J., (Mar.
27 12, 2014, 10:35 p.m.), [http://online.wsj.com/news/articles/SB1000142405270230491490](http://online.wsj.com/news/articles/SB10001424052702304914904579435171004763740?KEYWORDS=gm&mg=reno64-wsj)
28 [4579435171004763740 ?KEYWORDS=gm &mg=reno64-wsj](http://online.wsj.com/news/articles/SB10001424052702304914904579435171004763740?KEYWORDS=gm&mg=reno64-wsj).

1 U.S.C. §§ 2301 *et seq.*, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367
2 over the entire case or controversy.

3 9. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
4 submit to the Court's jurisdiction. This Court has personal jurisdiction over G.M.
5 because G.M. conducts substantial business in this District, and some of the actions
6 giving rise to the complaint took place in this District.

7 10. Venue is proper in this District under 28 U.S.C. § 1391 because G.M.,
8 as a corporation, is deemed to reside in any judicial district in which it is subject to
9 personal jurisdiction. Additionally, G.M. transacts business within the District, and
10 some of the events establishing the claims arose in this District.

11 PARTIES

12 11. Plaintiff and proposed California State Class Representative Elizabeth
13 Y. Grumet ("Grumet") is a resident and citizen of the State of California. Grumet
14 owned a 2004 Saturn Ion and a 2006 Saturn Ion II, both of which were purchased
15 from an authorized G.M. dealer in San Jose, California. Grumet chose the Saturn
16 Ion and Ion II in part because she wanted a safely designed and manufactured
17 vehicle.

18 12. Grumet saw advertisements for G.M. vehicles before she purchased
19 the cars and, although she does not recall the specifics of the advertisements, she
20 does recall that safety and quality were consistent themes across the advertisements
21 she saw before making the purchase of the 2004 Saturn Ion at the G.M./Saturn
22 dealer in San Jose, California in 2004. These representations about safety and
23 quality influenced Grumet's decision to purchase the Saturn Ion and Ion II. Grumet
24 did not learn of the ignition switch defects until about March 2104. Had G.M.
25 disclosed the ignition switch defects, she would not have purchased either vehicle,
26 or would have paid less than she did.

27 13. On at least three different occasions, Grumet experienced engine shut
28 down in her 2004 Saturn Ion. On the first occasion, Grumet experienced an engine

1 shut down incident while driving at 65 m.p.h. on the freeway. She was ultimately
2 able to get the vehicle to the freeway shoulder and later took it to the G.M. dealer
3 who kept the vehicle for several days, and claimed, however, to be unable to
4 replicate the engine shut down. On the second occasion, Grumet experienced an
5 engine shut down incident in a residential neighborhood and, again, took the
6 vehicle in for service to correct the problem. After Grumet experienced an engine
7 shut down incident for a third time, she traded the vehicle in for a 2006 Saturn Ion
8 II at the G.M./Saturn dealer in San Jose, California in 2006.

9 14. Plaintiff and proposed Florida State Class Representative ABC
10 Flooring, Inc. ("ABC"), is a Florida corporation. ABC owns a 2007 Chevrolet
11 HHR which was purchased from an authorized G.M. dealer in Florida. Frank
12 Borzen ("Borzen"), acting on behalf of ABC, chose the 2007 Chevrolet HHR, in
13 part, because he wanted a safely designed and manufactured vehicle for his
14 business.

15 15. Borzen, acting on behalf of ABC, saw advertisements for G.M.
16 vehicles before he purchased the 2007 Chevrolet HHR, and, although he does not
17 recall the specifics of the advertisements, he does recall that safety and quality
18 were consistent themes across the advertisements he saw before making the
19 purchase. These representations about safety and quality influenced Borzen's
20 decision to purchase the 2007 Chevrolet HHR. Borzen did not learn of the ignition
21 switch defects until about March 2104. Had G.M. disclosed the ignition switch
22 defects, he would not have purchased the vehicle, or would have paid less than he
23 did.

24 16. Plaintiff and proposed Illinois State Class Representative, Marcus
25 Sullivan ("Sullivan"), is a resident and citizen of the State of Illinois, who owns a
26 2007 Saturn Ion, which he purchased from an authorized G.M./Saturn dealer in
27 Chicago, Illinois. Sullivan chose the 2007 Saturn Ion, in part, because he wanted a
28 safely designed and manufactured vehicle.

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1 17. Sullivan saw advertisements for G.M. vehicles before he purchased
2 the 2007 Saturn Ion, and, although he does not recall the specifics of the
3 advertisements, he does recall that safety and quality were consistent themes across
4 the advertisements he saw before making the purchase. These representations
5 about safety and quality influenced his decision to purchase the 2007 Saturn Ion.
6 Sullivan did not learn of the ignition switch defects until about March 2014. Had
7 G.M. disclosed the ignition switch defects, he would not have purchased the 2007
8 Saturn Ion, or would have paid less than he did.

9 18. Plaintiff and proposed Michigan State Class Representative, Katelyn
10 Saxson ("Saxson"), is a resident and citizen of the State of Michigan. Saxson
11 owns a 2006 Chevrolet Cobalt which was purchased from an authorized G.M.
12 dealer in Lansing, Michigan in August 2006. Saxson chose the 2006 Chevrolet
13 Cobalt, in part, because he wanted a safely designed and manufactured vehicle.

14 19. Saxson saw advertisements for G.M. vehicles before she purchased
15 the 2006 Chevrolet Cobalt, and, although she does not recall the specifics of the
16 advertisements, she does recall that safety and quality were consistent themes
17 across the advertisements he saw before making the purchase. These
18 representations about safety and quality influenced her decision to purchase the
19 2006 Chevrolet Cobalt. Saxson did not learn of the ignition switch defect until
20 about March 2014. Had G.M. disclosed the ignition switch defect, she would not
21 have purchased the vehicle, or would have paid less than she did.

22 20. Plaintiff and proposed Illinois State Class Representative, Amy C.
23 Clinton ("Amy Clinton"), is a resident and citizen of the State of Illinois, owns a
24 2007 Chevrolet Cobalt which was purchased new from an authorized G.M dealer
25 in Illinois. Amy Clinton chose the 2007 Chevrolet Cobalt, in part, because she
26 wanted a safely designed and manufactured vehicle.

27 21. Amy Clinton saw advertisements for G.M. vehicles before she
28 purchased the 2007 Chevrolet Cobalt, and, although she does not recall the

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1 specifics of the advertisements, she does recall that safety and quality were
2 consistent themes across the advertisements she saw before making the purchase.
3 These representations about safety and quality influenced her decision to purchase
4 the 2007 Chevrolet Cobalt. Amy Clinton did not learn of the ignition switch
5 defects until about March 2014. Had G.M. disclosed the ignition switch defects,
6 she would not have purchased the 2007 Chevrolet Cobalt, or would have paid less
7 than she did.

8 22. Plaintiff and proposed Illinois State Class Representative, Allison C.
9 Clinton ("Allison Clinton"), is a resident and citizen of the State of Illinois, owns a
10 2007 Chevrolet Cobalt which was purchased new from an authorized G.M dealer
11 in Illinois. Allison Clinton chose the 2007 Chevrolet Cobalt, in part, because she
12 wanted a safely designed and manufactured vehicle.

13 23. Allison Clinton saw advertisements for G.M. vehicles before she
14 purchased the 2007 Chevrolet Cobalt, and, although she does not recall the
15 specifics of the advertisements, she does recall that safety and quality were
16 consistent themes across the advertisements she saw before making the purchase.
17 These representations about safety and quality influenced her decision to purchase
18 the 2007 Chevrolet Cobalt. Allison Clinton did not learn of the ignition switch
19 defects until about March 2014. Had G.M. disclosed the ignition switch defects,
20 she would not have purchased the 2007 Chevrolet Cobalt, or would have paid less
21 than she did. She has experienced issues with the ignition switch during the Class
22 Period.

23 24. Defendant General Motors LLC is a foreign limited liability company
24 formed under the laws of Delaware with its principal place of business located at
25 300 Renaissance Center, Detroit, Michigan. G.M. was incorporated in 2009 and,
26 on July 10, 2009, acquired substantially all assets and assumed certain liabilities of
27 General Motors Corporation ("Old G.M.") through a Section 363 sale under
28 Chapter 11 of the U.S. Bankruptcy Code.

1 25. Among the liabilities and obligations expressly retained by G.M. after
2 the bankruptcy are the following:

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

7 26. G.M. also expressly assumed:

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

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

17 **TOLLING OF STATUTES OF LIMITATION**

18 **A. Discovery Rule Tolling**

19 28. Any applicable statute(s) of limitations has been tolled by G.M.'s
20 knowing and active concealment and denial of the facts alleged herein.

21 29. Plaintiffs and the other members of the Classes could not have
22 discovered through the exercise of reasonable diligence that their Defective
23 Vehicles were defective within the time period for the applicable statutes of
24 limitation. Indeed, Plaintiffs and members of the Classes could not have
25 reasonably discovered the true nature of the defect in the ignition switches in their
26 Defective vehicles until shortly before this class action litigation was commenced.

B. Fraudulent Concealment Tolling

30. At all relevant times to this action G.M. affirmatively concealed from Plaintiffs and other members of the Classes the defects in the Defective Vehicles. G.M. withheld from Plaintiffs and other members of the Class information essential to the pursuit of their claims and, as a direct consequence, Plaintiffs and other members of the Classes could not have discovered the defects upon the exercise of reasonable diligence.

31. As set forth below, G.M. was aware of the design defect in the ignition switches as early as 2001 and despite such knowledge continued to manufacture, market, advertise, sell, lease and warrant such vehicles without disclosing the defects to Plaintiffs and other members of the Classes.

32. G.M. has repeatedly denied the existence of defects in the Defective Vehicles to Plaintiffs and other members of the Class. Such denials concealed G.M.'s knowledge of the defects, as well as the attendant risks, from Plaintiffs and other members of the Classes.

33. The running of all applicable statutes of limitation have been suspended with respect to any claims that Plaintiffs and other members of the Classes have in connection with the defects in their Defective Vehicles, pursuant to the fraudulent concealment doctrine.

C. Estoppel

34. G.M. had a continuous duty to disclose to Plaintiffs and members of the Classes true character, quality and nature of the Defective Vehicles, that this defect is based on a poor design and/or substandard materials, and that it will require repairs, poses a safety concern, and diminishes the resale value of the Defective Vehicles.

35. G.M. knowingly, affirmatively and consciously concealed the true nature, quality and character of the Defective Vehicles from consumers.

1 36. As a result, G.M. is estopped from relying on any and all statutes of
2 limitation in defense of this action.

3 **SUBSTANTIVE ALLEGATIONS**

4 37. Since 2002, G.M. has sold millions of Defective Vehicles throughout
5 the world including within the United States knowing that they were prone to a
6 very dangerous safety defect namely that the ignition switch could unintentionally
7 move from the run position to "off" or "accessory" resulting in a loss of power,
8 loss of braking, and a failure to deploy airbags in the event of a collision.

9 38. Upon information and belief, G.M. installed these defective ignition
10 switches in its cars from 2002 to 2007. During this period, G.M. received
11 hundreds of complaints that the Defective Vehicles were prone to sudden shut-off
12 even though it concomitantly touted the Defective Vehicles as highly reliable and
13 safe.

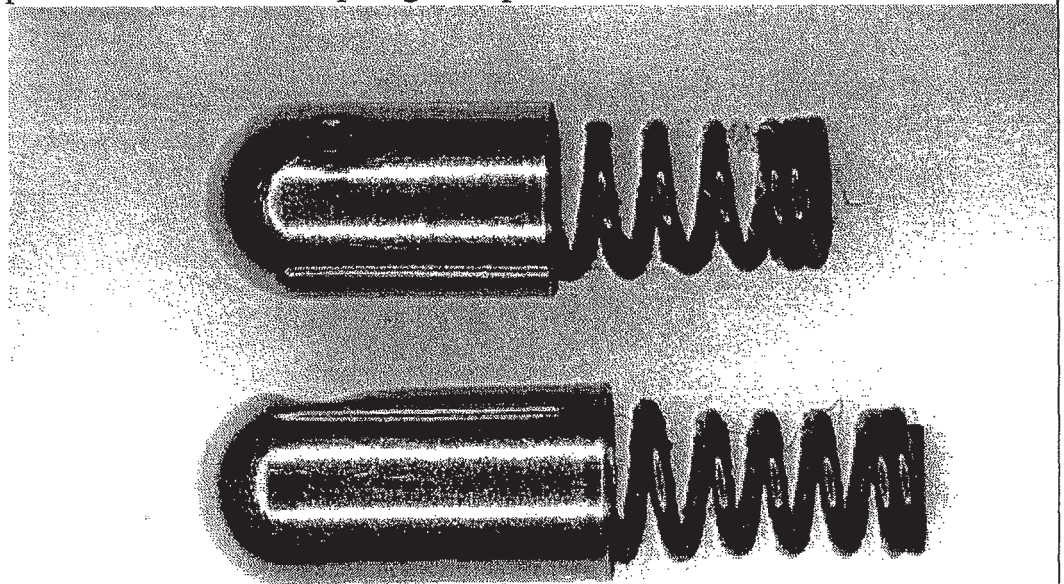
14 39. The issues surrounding the Defective Vehicles include the period
15 when Old G.M. designed and manufactured the vehicles with defective ignition
16 switches, and failed to disclose the existence of the defect even after Old G.M.
17 became aware that it had caused fatalities. G.M. is liable for Old G.M.'s unfair
18 and deceptive acts and/or omissions by virtue of the statutory obligations it
19 assumed. G.M. also has successor liability for the conduct of Old G.M. because
20 G.M. has continued to operate the franchise of Old G.M knowing full well that the
21 ignition switches were defectively designed.

22 40. Upon information and belief, Delphi Automotive PLC ("Delphi")
23 manufactured the defective ignition switches. Delphi was a former subsidiary of
24 Old G.M until it was spun off in 1999 and became an independent company. Upon
25 information and belief, Delphi knew the switches were defective at all relevant
26 times and was in a position to manufacture a corrective device or other fix for a
27 minimal amount of money, possibly from \$2 to \$5 per vehicle.
28

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1 41. The Defective Vehicles are inherently dangerous because the
2 defective ignition switches renders them vulnerable to inadvertent engine shut off
3 during normal operation. The ignition switches can, during normal driving
4 conditions, shut off the engine and electrical system in Defective Vehicles without
5 warning. Once the engine and electrical system is shut down, power steering and
6 power brakes fail raising a substantial risk that the vehicle will be involved in an
7 accident. Moreover, with the electrical system down, the vehicle's airbags are
8 disengaged, thus, leaving passengers vulnerable to serious bodily injury or even
9 death in the event of an accident.

10 42. It has now been disclosed that the defect stems from a small,
11 inexpensive part called the "detent plunger" reproduced below:



2

2

See id.

1 43. After years of denying the existence of any problem with the
2 Defective Vehicles, on February 14, 2014, G.M. finally disclosed in a report posted
3 on the National Highway Traffic Safety Administration's ("NHTSA") website,
4 dated February 7, 2014, that it would recall 619,000 cars in the United States
5 because either a heavy key ring or a "jarring event" such as running off the road
6 could cause the ignition to shut off and possibly prevent the air bags from
7 deploying in a crash. The vehicles affected by the initial recall were the 2007
8 Pontiac G5 and 2005-07 Chevrolet Cobalt. In addition to the vehicles being
9 recalled in the United States, another 153,000 in Canada and 6,100 in Mexico were
10 to be recalled. In a separate news release, G.M. said it knew of at least six deaths
11 in five crashes in which the front air bags did not deploy. Commenting on the
12 events, a G.M. spokesman said "all of these crashes occurred off-road and at high
13 speeds, where the probability of serious or fatal injuries was high regardless of air
14 bag deployment."³

15 44. The February 7, 2014 G.M. letter to the NHTSA, further detailed the
16 problem as follows:

17 The ignition switch torque performance may not meet General
18 Motors' specification. If the torque performance is not to specification,
19 and the key ring is carrying added weight or the vehicle goes off road
20 or experiences some other jarring event, the ignition switch may
21 inadvertently be moved out of the "run" position. The timing of the
22 key movement out of the "run" position, relative to the activation of
23 the sensing algorithm of the crash event, may result in the airbags not
24 deploying, increasing the potential for occupant injury in certain kinds
25 of crashes. Until this correction is performed, customers should
26 remove non-essential items from their key ring.

27 Dealers are to replace the ignition switch.⁴

28
³ Christopher Jenson, *General Motors Recalls 778,000 Small Cars for Ignition Switch Problems*, N.Y. Times, (Feb. 13, 2014), <http://www.nytimes.com/2014/02/14/automobiles/general-motors-recalls-778000-small-cars-for-ignition-switch-problem.html>.

⁴ Letter from General Motors LLC to Nancy Lewis, Assoc. Admin. for Enforcement, Nat'l Hwy. Traffic Safety Admin., Recall Management Division (NVS-215), (Feb. 7, 2014), <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450012/RCDNN-14V047-1347P.pdf>.

1 45. At the center of the recall is the above-mentioned Chevrolet Cobalt.
2 Engineered more than a decade ago, executives at G.M. touted it as the beginning
3 of a new era and the replacement for the poorly received Chevrolet Cavalier. As
4 reported in *The New York Times* on March 17, 2014, the Cobalt “would not only
5 replace the aging and undistinguished Chevrolet Cavalier, but it would also prove
6 that G.M.’s engineering and manufacturing skills had matured to the point that –
7 like the Japanese automakers – it could build a world-class small car.”⁵ The
8 Cobalt’s “mechanical underpinnings” were first developed in the 2003 Saturn Ion
9 and included the flawed ignition switch. *Id.* G.M. knew this flaw existed from the
10 moment the car hit dealers’ floors even though it touted the car as “safe and sound”
11 in an advertisement for a 2007 Saturn Ion.

12 46. The advertisement states, “The Ion’s designers accounted for almost
13 everything but compromise. It’s nimble, yet strong. Modern, but inviting. Sporty,
14 yet safe and sound. Featuring the U.S. Government’s highest possible front crash-
15 test rating-five stars.”

16 47. G.M. promotional materials include the following claims of safety and
17 reliability:

18 2003 Saturn Ion: “The ION sedan and quad coupe are designed to
19 carry on the tradition of being at the top of the class when it comes
20 to safety and security.”

21 2006 and 2007 Saturn Ion: “Like all Saturns, the Ion was designed
22 with an emphasis on safety and security.”

23 2006 Pontiac G5: “The 2006 Pontiac G5 Pursuit offers a host of
24 features for safety-minded consumers.”

25 2006 Chevrolet HHR: “HHR is designed to protect occupants in the
26 event of a crash.”

27 2007 Saturn Sky: “Sky has a host of safety features ... including dual
28 stage frontal air bags ... that use the latest sensing technology to
turn the front passenger air bag on or off.”

⁵ Christopher Jensen, *G.M. Saw Cobalt as Its Entry Into a Better Small-Car Market*, N.Y. Times, (Mar. 17, 2014), <http://www.nytimes.com/2014/03/18/business/gm-saw-cobalt-as-its-entry-into-the-upscale-small-car-market.html?ref=generalmotorscorporation.html>.

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1 2005 - 2007 Chevrolet Cobalt: "Safety was a priority in the
2 development of the Cobalt." Cobalt's "rigid body structure ...
3 reinforces occupant safety." "The rigid body structure ...
4 reinforces its safety [and] load carrying capability for crash
5 protection."

6 48. Accordingly, purchasers of the Defective Vehicles were lead to
7 believe that the cars were safe and reliable. This proved to be untrue.

8 49. On February 25, 2014, G.M. announced it would double the size of
9 the recall stemming from an ignition switch defect in the Defective Vehicles.
10 G.M. said in the release that it was now aware of the deaths of at least 12 front-seat
11 occupants in crashes where the front air bags did not deploy. While G.M. had
12 previously recalled 619,000 vehicles in the United States, including Chevrolet
13 Cobalts from the 2005-7 model years and 2007 Pontiac G5 models, G.M. added
14 2003-7 Saturn Ions, 2006-7 Chevrolet HHRs and 2006-7 Pontiac Solstice and
15 Saturn Sky models.⁶

16 50. On February 26, 2014, *The Associated Press* reported that NHTSA
17 was investigating whether G.M. acted quickly enough to recall 1.6 million older-
18 model small cars in a case linked to 12 deaths. According to the *AP*, the agency has
19 the authority to fine G.M. as much as \$35 million under legislation that went into
20 effect late last year. Automakers must report evidence of safety defects within five
21 days. G.M. filed documents with the safety agency recently however that showed it
22 knew of the problem as early as 2004.⁷

23 51. The recall follows years of warnings and mounting evidence that the
24 Defective Vehicles were prone to potentially dangerous operational shutdown that
25 rendered the airbags inoperative. It has been reported by *The New York Times* on
26

27 ⁶ Christopher Jenson, *G.M. to Expand Small Car Recall to 1.4 Million Vehicles*, N.Y. Times (Feb.
28 25, 2014), <http://www.nytimes.com/2014/02/26/automobiles/gm-to-expand-small-car-recall-to-1-4-million-vehicles.html>.

⁷ Tom Krisher, *U.S. Safety Agency Likely is investigating G.M. for Slow Response to Small Car Recall*, A.P. (Feb. 26, 2014), <http://www.usnews.com/news/business/articles/2014/02/26/us-safety-agency-likely-probing-gm-recall-response.html>.

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1 March 2, 2014, that shortly after the Cobalts left their Lordstown, Ohio assembly
2 plant, G.M. learned that there was a problem with the ignition system.⁸

3 52. For example, engineers determined as early as 2004 that a defect in
4 the ignition switch meant a key could be unintentionally jostled out of the "Run"
5 position to the "Accessory" or "Off" position by a heavy key ring or by a nudge
6 from a driver's leg. With the ignition switch in the "Accessory" or "Off" position,
7 it would cause the car to stall and shut down power. The powering down of the
8 engine and electrical system would also disable the airbags so that any accident
9 ensuing from the sudden and unexpected stall would not deploy the airbag safety
10 devices and leave the vehicle's occupants exposed.

11 53. In 2004, engineers, having identified the problem, proposed a fix.
12 G.M. executives, however, decided, based among other things, that cost was
13 prohibitive and declined to take remedial action. It has been reported that the 2004
14 proposed fix was actually less than \$12.

15 54. Reports detailing sudden ignition turn off continued through 2005 and
16 yet another fix was considered but not implemented.⁹ G.M. instead, sought to
17 place the burden on customers and, in 2005, G.M. sent dealers a technical service
18 bulletin about the 2005-06 Cobalt warning about a stalling problem related to
19 heavy key rings. At that time, a G.M. executive explained, "in rare cases when a
20 combination of factors is present, a Chevrolet Cobalt driver can cut power to the
21 engine by inadvertently bumping the ignition key to the accessory or off position
22 while the car is running. Service advisers are telling customers they can virtually
23 eliminate this possibility by taking several steps, including removing nonessential
24 material from their key rings."¹⁰

24 ⁸ Christopher Jensen, *In G.M. Recalls Inaction and Trails of Fatal Crashes*, N.Y. Times, (Mar. 12,
25 2014), <http://www.nytimes.com/2014/03/03/business/in-general-motors-recalls-inaction-and-trail-of-fatal-crashes.html>.

26 ⁹ *See id.*

27 ¹⁰ *Id.*

1 55. G.M.'s apathy for customers and public safety became even more
2 apparent when it was revealed on March 12, 2014, by *The New York Times* that
3 G.M. knew since 2001 there were serious safety problems in the Defective
4 Vehicles. According to an expanded chronology submitted to regulators, G.M.
5 admitted that during the development of the Saturn Ion in 2001, it learned that the
6 ignition switch could turn off. While G.M. insisted that the issue was resolved
7 then, a 2003 internal inquiry indicated otherwise.¹¹

8 56. Further, at a May 15, 2009 meeting, G.M. confirmed from the data
9 retrieved from the "black box" of a Cobalt during a post accident examination that
10 the ignition switch in the Defective Vehicle was the cause of the accident.¹²

11 57. According to the *N.Y. Times*, there is even more additional evidence
12 of knowledge:

13 Since the engineers' meeting in May 2009, at least 23 fatal crashes
14 have involved the recalled models, resulting in 26 deaths. G.M.
15 reported the accidents to the government under a system called Early
16 Warning Reporting, which requires automakers to disclose claims
17 they receive blaming vehicle defects for serious injuries or deaths.

18 A New York Times review of 19 of those accidents – where victims
19 were identified through interviews with survivors, family members,
20 lawyers and law enforcement officials – found that G.M. pushed back
21 against families in at least two of the accidents, and reached
22 settlements that required the victims to keep the discussions
23 confidential.

24 In one of those cases, the company settled a lawsuit brought by the
25 family of Hasaya Chansuthus, 25, who crashed her 2006 Cobalt in
26 Murfreesboro, Tenn. After resisting, the company negotiated a deal
27 even though Ms. Chansuthus's blood-alcohol level was more than
28 twice the legal limit. Data from the black box – which records vehicle
systems information – showed that the key was in the accessory or off
position, according to court documents, and the air bags did not
deploy. (The accessory position turns off the car, disabling the air
bags, but allows certain electronics, like the radio, to run.) The terms
of the settlement are confidential.

In other instances, G.M. ignored repeated calls, families said. "We did
call G.M.," said Leslie Dueno, whose 18-year-old son, Christopher

¹¹ Hilary Stout, Bill Vlasic, Danielle Ivory, and Rebecca R. Ruiz, *Carmaker Misled Grieving Families on a Lethal Flaw*, N.Y. Times (Mar. 25, 2014), <http://www.nytimes.com/2014/03/25/business/carmaker-mislead-grieving-families-on-a-lethal-flaw.html>.

¹² *Id.*

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1 Hamberg, was killed on June 12, 2009 – not quite a month after the
2 critical May 15 meeting of G.M. engineers about the ignition data –
3 driving his 2007 Cobalt home before dawn in Houston. He lost control
4 at 45 miles per hour and hit a curb, then a tree, the police report said.
5 “Nobody ever called me. They never followed up. Ever.”¹³

6 58. As explained above, the evidence that G.M. knew there was a link
7 between the defective ignition switches and accidents came in the form of
8 electronically captured data retrieved from sensing modules removed from
9 wrecked cars. Premised upon a review of this information, the *New York Times*
10 stated that by the end of 2007, G.M. recognized for certain the “link between a
11 faulty switch and deactivated air bags”:

12 Consumer complaints and claims came to the company in a variety
13 of ways – through lawsuits, calls, letters and emails, warranty claims,
14 or insurance claims. G.M.’s legal staff was the recipient of lawsuits,
15 insurance information, accident reports and any other litigation-
16 related paperwork. But warranty claims and customer calls were
17 routed through the sales and service division – a vast bureaucracy that
18 occupies most of one tower at G.M.’s headquarters in Detroit.
19 Because the legal staff reports to the chief executive, and the sales
20 department to the head of G.M. North America, it is unclear whether
21 they share information related to a specific car, like the Cobalt.

22 And an even bigger communication gap on the Cobalt appeared to
23 exist between the engineers in Warren, Mich., and the company
24 lawyers in downtown Detroit. The most glaring example was that
25 G.M. officials meeting with federal regulators in March 2007 did not
26 know about a fatal Cobalt wreck in 2005 – even though G.M.’s legal
27 department had had an open file on the case for almost two years.

28 Within the product development system was an isolated, subgroup of
engineers assigned to Cobalt safety tests. According to the
chronology G.M. has submitted to federal safety regulators, an
unknown number of engineers were involved in opening – and
closing – four separate inquiries on the Cobalt between 2004 and
2009. Engineers also performed four other analyses.

By the end of 2007, G.M. had examined data from nine “sensing and
diagnostic modules” of crashed vehicles. In four cases, the ignition
was in the accessory position. But it was not until May 15, 2009, that
G.M. engineers verified the data. That day, they met with officials
from its supplier Continental, which manufactured the Cobalt’s
diagnostic modules, or black boxes. By then G.M. had recovered 14
modules, and according to Continental, the ignition was in the
accessory position on seven of the 14 cases. This appears to be the
first proven link between a faulty switch and deactivated air bags.¹⁴

¹³ *Id.*

¹⁴ *Id.*

1 59. Despite knowing full well that the Defective Vehicles' defective
2 ignition switch was linked to horrific accidents including fatalities, G.M.
3 vehemently denied its culpability until just hours before the first recall. Indeed, it
4 employed a harsh litigation strategy when dealing with the claims brought by the
5 many who were harmed and the families of the deceased. According to *The New*
6 *York Times*, "in one case, G.M. threatened to come after the family of an accident
7 victim for reimbursement of legal fees if the family did not withdraw its lawsuit.
8 In another instance, it dismissed a family with a terse, formulaic letter, saying
9 there was no basis for claims."¹⁵

10 60. G.M. also threatened injured parties with retaliatory lawsuits and
11 asserted that the earlier bankruptcy barred these people from pursuing claims. As
12 reported in the *Times*:

13 That same month, lawyers representing G.M. wrote to the lawyer in
14 another wrongful-death case demanding that the lawsuit be
15 withdrawn. The family of Allen Ray Floyd had sued G.M. after Mr.
16 Floyd lost control of a 2006 Cobalt in daylight near Loris, S.C. Two
17 weeks earlier, his sister had lost control of the same vehicle on the
18 same road; she had it towed. The company contended the suit was
19 "frivolous" because the accident occurred on July 3, 2009, a week
20 before the company's bankruptcy agreement took effect, which
21 meant G.M. was not liable for damages.

22 "They sent us a letter in September telling us to drop our case or else
23 they'd come after us," said William Jordan, the family's lawyer.
24 "They were going to come after me for sanctions, to pay their
25 attorneys' fees."

26 Mr. Jordan added: "We looked at the prospect of going into
27 bankruptcy court and duking it out with them and looking at the
28 language of the bankruptcy legislation, and it just seemed to be such a
big undertaking. We decided to capitulate."

29 61. Finally, G.M.'s conduct and effort to avoid liability by hiding behind
30 Old G.M.'s bankruptcy, has federal authorities investigating whether the
31 automaker committed fraud by not disclosing defects that could lead to expensive
32 future liabilities. The issue is whether Old G.M. knew about the ignition defect at

33 ¹⁵ *Id.*

1 the time it filed for bankruptcy in 2009, and failed to fully disclose the problem.
2 The record is quite clear, however, that Old G.M. and G.M. knew the defect
3 existed in the Defective Vehicles as early as 2001, and clearly by 2002.

4 62. G.M. and its predecessor were at all times under an affirmative duty to
5 advise customers about known defects. Specifically, under the Transportation
6 Recall Enhancement, Accountability and Documentation Act ("TREAD Act")
7 and its accompanying regulations, when a manufacturer learns that a vehicle
8 contains a safety defect, the manufacturer must promptly disclose the defects. If it
9 is determined that the vehicle is defective, the manufacturer must notify vehicle
10 owners, purchasers, and dealers of the defect and must remedy the defect. This
11 duty existed throughout the Class Period.

12 **SUCCESSOR LIABILITY**

13 63. G.M. was incorporated in 2009 and on July 10, 2009 acquired
14 substantially all assets and assumed certain liabilities of G.M. Corp through a
15 Section 363 sale under Chapter 11 of the U.S. Bankruptcy Code. Bankruptcy does
16 not immunize G.M. from liability here. Specifically, G.M. expressly assumed
17 certain obligations under, inter alia, the TREAD Act, and is liable for its non-
18 disclosure of the ignition switch defects from the date of its formation on July 10,
19 2009.

20 64. G.M. also expressly assumed liability for warranty claims in the
21 Master Sale and Purchase Agreement of June 26, 2009, and this assumption of
22 liability includes the claims of the Class.

23 65. Moreover, G.M. has successor liability for Old G.M.'s acts and
24 omissions in the marketing and sale of the Defective Vehicles during the Class
25 Period because G.M. has continued the business enterprise of Old G.M., for the
26 following reasons:

- 27 • G.M. admits that it knew of the ignition system defects
28 from the very date of its formation;

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- 1 • G.M. has continued in the business of designing,
2 manufacturing, and marketing vehicles, including at
3 least some of the same vehicles as Old G.M.;
- 4 • G.M. retained the bulk of the employees of Old
5 G.M.;
- 6 • G.M. acquired owned and leased real property of Old
7 G.M., including all machinery, equipment, tools,
8 information technology, product inventory, and
9 intellectual property;
- 10 • GM acquired the contracts, books, and records of Old
11 G.M. Corp; and
- 12 • G.M. acquired all goodwill and other intangible
13 personal property of Old G.M.

14 66. G.M. and Old G.M. did not report information within their
15 knowledge to federal authorities (NHTSA) or consumers, nor would a reasonable
16 and diligent investigation have disclosed that G.M. and Old G.M. had
17 information in their possession about the existence and dangerousness of the
18 defect and opted to conceal that information until shortly before this action was
19 filed.

20 67. G.M. and Old G.M. were, and G.M. remains, under a continuing duty
21 to disclose to NHTSA, Plaintiffs and the Classes the true character, quality, and
22 nature of the Defective Vehicles; that this defect is based on dangerous,
23 inadequate, and defective design and/or substandard materials; and that it will
24 require repair, poses a severe safety concern, and diminishes the value of the
25 Defective Vehicles.

26 68. Because of the active concealment by G.M. and Old G.M., any and all
27 limitations periods otherwise applicable to Plaintiffs' claims have been tolled.

28 **CLASS ACTION ALLEGATIONS**

29 69. Plaintiffs brings this action pursuant to Rules 23(a), (b)(2) and/or
30 (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Classes:

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- 1 a. All persons and entities that purchased or leased Defective
2 Vehicles in the United States between 2002 and the present (the
3 “Class Period”) (the “Nationwide Class”).
- 4 b. All persons and entities that purchased or leased Defective
5 Vehicles during the Class Period in the State of California (the
6 “California State Class”).
- 7 c. All persons and entities that purchased or leased Defective
8 Vehicles during the Class Period in the State of Florida (the
9 “Florida State Class”).
- 10 d. All persons and entities that purchased or leased Defective
11 Vehicles during the Class Period in the State of Illinois (the
12 “Illinois State Class”).
- 13 e. All persons and entities that purchased or leased Defective
14 Vehicles during the Class Period in the State of Michigan (the
15 “Michigan State Class”).

16 70. Together, the Nationwide, California, Florida, Illinois, and
17 Michigan State Classes shall be collectively referred to hereinafter as the
18 “Class.” The Class excludes G.M. and any entity in which G.M. has a controlling
19 interest, and its officers, directors, legal representatives, successors and assigns.
20 The Class also excludes any entity in which G.M. has or had a controlling interest,
21 and its officers, directors, legal representatives, successors and assigns.

22 71. The Class is so numerous that joinder of all members is impracticable.

23 72. A class action is superior to all other available methods for the fair
24 and efficient adjudication of this controversy.

25 73. Plaintiff’s claims are typical of the claims of the Class. As alleged
26 herein, Plaintiffs and members of the Class all sustained damages arising out of the
27 G.M.’s same course of unlawful conduct.
28

1 74. There are questions of law and fact common to the Class, including
2 but not limited to:

- 3 • Whether G.M. and its predecessor had knowledge of the
4 defect prior to its issuance of the current safety recall;
- 5 • Whether G.M. and its predecessor concealed defects
6 affecting the Defective Vehicles;
- 7 • Whether G.M. and its predecessor misrepresented the
8 safety of the Defective Vehicles;
- 9 • Whether G.M. and its predecessor's misrepresentations
10 and omissions regarding the safety and quality of its
11 vehicles were likely to deceive a reasonable person;
- 12 • Whether a reasonable customer would pay less for a car
13 that had the ignition defect;
- 14 • Whether a reasonable customer would pay less for a
15 vehicle that did not conform to G.M. and its
16 predecessor's assurances of quality;
- 17 • Whether G.M. and its predecessor breached its
18 applicable warranties;
- 19 • Whether damages, restitution, equitable, injunctive,
20 compulsory, or other relief is warranted; and
- 21 • Whether injunctive relief enjoining the reoccurrence of
22 Defendant's conduct and/or declaratory relief that such
23 conduct is unlawful, is warranted.

24 75. The interest of Class members in individually controlling the
25 prosecution of separate actions is theoretical and not practical. The members of the
26 Class have a high degree of similarity and are cohesive. Plaintiffs anticipate no
27 difficulty in the management of this matter as a class action.

28 76. Class action status is also warranted under Federal Rules of Civil
Procedure 23(b)(2) because G.M. has acted or refused to act on grounds generally
applicable to the Class, thereby making appropriate final injunctive relief or
corresponding declaratory relief with respect to the Class as a whole.

1 77. Class action status is also warranted under Federal Rules of Civil
2 Procedure 23(b)(3) because questions of law or fact common to the members of the
3 Class predominate over any questions affecting only individual members, and a
4 class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy.

6 **CAUSES OF ACTION**

7 **COUNT I**

8 **VIOLATIONS OF MAGNUSON-MOSS FEDERAL WARRANTY ACT**

9 **15 U.S.C. § 2301, *et seq.***

10 **(On Behalf of Plaintiffs and the Nationwide Class)**

11 78. Plaintiffs and the Class incorporate by reference each preceding and
12 succeeding paragraph as though fully set forth at length herein.

13 79. This claim is brought on behalf of the Nationwide Class (the "Class"
14 for purposes of this Count).

15 80. This Court has jurisdiction to decide claims brought under the
16 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (the "Act"), by virtue of
17 28 U.S.C. §§ 1332 (a)-(d).

18 81. The Defective Vehicles constitute "consumer products," as defined in
19 15 U.S.C. § 2301.

20 82. Plaintiffs and the other members of the Class are "consumers," as
21 defined in 15 U.S.C. § 2301.

22 83. Old G.M. and G.M. are "suppliers" and a "warrantors" of the
23 Defective Vehicles as defined in 15 U.S.C. § 2301.

24 84. The Defective Vehicles are "consumer products" within the meaning
25 of the Act, pursuant to 15 U.S.C. § 2301(1).

26 85. Old G.M. supplied a "written warranty" regarding the Defective
27 Vehicles, as defined in 15 U.S.C. § 2301(6).
28

1 86. As suppliers and in connection with the sale of the Defective
2 Vehicles, Old G.M. made "implied warranties" arising under State law regarding
3 the Defective Vehicles, as defined in 15 U.S.C. § 2301(7).

4 87. The Defective Vehicles were designed with defective ignition
5 switches that can cause the Defective Vehicles' engine and electrical system to
6 shut down without warning, exposing vehicle occupants to serious risks of
7 accidents, injuries and potentially death. G.M. issued a recall with respect to the
8 Defective Vehicles, thus, admitting that the ignition switches are defective.

9 88. As more fully described above, G.M. breached its express and implied
10 warranties to Plaintiffs and the members of the Class by, among other things:
11 selling and/or leasing the Defective Vehicles in an unmerchantable condition;
12 selling and/or leasing the Defective Vehicles when they were not fit for the
13 ordinary purposes for which vehicles are used, and which were not fully
14 operational, safe or reliable; and not repairing or curing defects and
15 nonconformities in the Defective Vehicles as they were identified.

16 89. Plaintiffs and each member of the Class had sufficient direct dealings
17 with old G.M., G.M. or their agents (dealerships) to establish privity of contract
18 between G.M. and each member of the Class. Privity, however, is not required
19 here because Plaintiffs and each member of the Class are intended third-party
20 beneficiaries of contracts between G.M. and its dealers, and specifically, they are
21 intended beneficiaries of G.M.'s express and implied warranties. The dealers were
22 not intended to be the ultimate consumers of the Defective Vehicles and have no
23 rights under the warranty agreements provided with the Defective Vehicles; the
24 warranty agreements were designed for and intended to benefit the ultimate
25 consumers only. Additionally, privity is not required because the Defective
26 Vehicles are dangerous instrumentalities due to the aforementioned defects and
27 nonconformities.
28

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1 90. G.M. has successor liability for the acts of Old G.M. as described
2 above.

3 91. Requiring an informal dispute settlement procedure or affording G.M.
4 a reasonable opportunity to cure its breach of warranties would be unnecessary and
5 futile. At the time of sale or lease of each the Defective Vehicles, G.M. knew,
6 should have known, or was reckless in not knowing of its misrepresentations
7 concerning the Defective Vehicles' inability to perform as warranted, but
8 nonetheless failed to rectify the situation and/or disclose the defective design.
9 Under the circumstances, the remedies available under any informal settlement
10 procedure would be inadequate and any requirement – under the Act or otherwise –
11 that Plaintiffs resort to an informal dispute resolution procedure and/or afford G.M.
12 a reasonable opportunity to cure its breach of warranties is excused and thereby
13 deemed satisfied.

14 92. Based on the facts alleged herein, any durational limitation to the
15 warranties that would otherwise bar the claims under the Act, whether premised
16 upon express or implied warranty, is procedurally and substantively
17 unconscionable under federal law and the applicable state common law.

18 93. Based on the facts alleged herein, any durational limitation to the
19 warranties that would otherwise bar the claims in this Count is tolled under
20 equitable doctrines. Plaintiffs and the other Class members sustained injuries
21 and damages as a proximate result of G.M.'s violation of their written and/or
22 implied warranties and are entitled to legal and equitable relief against G.M.,
23 including economic damages, rescission or other relief as appropriate.

24 94. The amount in controversy of Plaintiffs' individual claims meets or
25 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
26 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to
27 be determined in this lawsuit.
28

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1 103. These omitted facts were material because they concern the safety and
2 reliability of the Defective Vehicles. That a defect existed in the ignition switches
3 of the Defective Vehicles which could cause the vehicles' engine and electrical
4 system to shut down without warning, and disable the vehicles' safety systems, are
5 material facts to consumers.

6 104. G.M. actively concealed and/or suppressed these material facts, in
7 whole or in part, with the intent to induce Plaintiffs and the other Class members to
8 purchase Defective Vehicles at a higher price for the Defective Vehicles, which did
9 not match Defective Vehicles' true value.

10 105. G.M. still has not made full and adequate disclosure and continues to
11 defraud Plaintiffs and the other members of the Class by concealing material
12 information regarding the defects in the Defective Vehicles and other G.M.
13 vehicles.

14 106. Plaintiffs and the other members of the Class reasonably relied on
15 G.M.'s statements in its marketing and advertising that the Defective Vehicles
16 were safe, and would not have purchased or leased the Defective Vehicles had they
17 known of the defects in the ignition switches, or would not have paid as much as
18 they did.

19 107. As a result of the concealment and/or suppression of the facts,
20 Plaintiffs and the other members of the Class sustained damages. For those Class
21 members who elect to affirm the sale, damages include the difference between the
22 actual value of that for which Class members paid and the actual value of what
23 they received, together with additional damages arising from the sales transaction.
24 Those Class members who want to rescind their purchase are entitled to restitution
25 and consequential damages.

26 108. G.M.'s acts were done maliciously, deliberately, with intent to
27 defraud, and in reckless disregard of Plaintiffs' and the other Class members'
28

1 rights and well-being, and to enrich itself. G.M.'s conduct warrants an assessment
2 of punitive damages in an amount sufficient to deter such conduct in the future.

3 **COUNT III**
4 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT,**
5 **CAL. CIV. CODE § 1750, *et seq.***
6 **(On Behalf of Plaintiff Grumet and the California State Class)**

7 109. Plaintiff Grumet and the California State Class incorporate by reference
8 each preceding and succeeding paragraph as though fully set forth at length herein.

9 110. This claim is brought on behalf of Plaintiff Grumet and the California
10 State Class (the "Class" for purposes of this Count) pursuant to the Consumers
11 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* ("CLRA") and is limited
12 solely to injunctive relief at this time.

13 111. G.M. is a "person" within the meaning of California Civil Code §
14 1761(c).

15 112. Plaintiff Grumet and the members of the Class are "consumers" as
16 defined by California Civil Code § 1761(d).

17 113. The Defective Vehicles are "goods" within the meaning of California
18 Civil Code § 1761(a).

19 114. Under the TREAD Act, a manufacturer of a vehicle is required to
20 notify NHTSA, as well as the owners, purchasers and dealers of the vehicle, if the
21 manufacturer learns that the vehicle contains a defect related to motor vehicle
22 safety or the vehicle does not comply with an applicable motor vehicle safety
23 standard. 49 U.S.C. § 30118(c).

24 115. Plaintiff Grumet and the members of the Class were deceived by
25 G.M.'s failure to disclose the defect in the ignition switches of the Defective
26 Vehicles.

27 116. Old G.M. had knowledge of the ignition switch defects since 2001,
28 however, never disclosed the existence of such defects. GM admitted the existence

1 of the ignition switch defects in the Defective Vehicles in connection with the
2 issuing of the recall in February 2014.

3 117. G.M. admits that the defect in the ignition switches of the Defective
4 Vehicles has been linked to at least 12 accident related fatalities.

5 118. In acquiring Old G.M., G.M. assumed the obligations to make all
6 required disclosures under the TREAD Act.

7 119. G.M. also has successor liability for the unfair or deceptive acts or
8 practices of Old G.M.

9 120. By failing to disclose and consciously concealing the ignition switch
10 defects in the Defective Vehicles, in violation of the TREAD Act, Old G.M. and G.M.
11 engaged in unfair or deceptive acts or practices prohibited by the CLRA, including in
12 the following respects:

13 (a) in violation of § 1770(a)(5), which prohibits “[r]epresenting that
14 goods or services have sponsorship, approval, characteristics,
15 ingredients, uses, benefits, or quantities which they do not have or that
16 a person has a sponsorship, approval, status, affiliation, or connection
17 which he or she does not have.”

18 (b) in violation of § 1770(a)(7), which prohibits “[r]epresenting that
19 goods or services are of a particular standard, quality, or grade, or that
20 goods are of a particular style or model, if they are of another.”

21 (c) in violation of § 1770(a)(9), which prohibits “[a]dvertising goods
22 or services with intent not to sell them as advertised.”

23 (d) in violation of § 1770(a)(16), which prohibits “[r]epresenting that
24 the subject of a transaction has been supplied in accordance with a
25 previous representation when it has not.”

26 121. For more than a decade, Old G.M. and G.M. failed to disclose to NHTSA
27 the known defects in the ignition switches in the Defective Vehicles. As a result,
28 consumers, including Plaintiff Grumet and the member of the Class received no notice

1 of the defect that could shut down engine power without warning, disable power steering
2 and brakes, and cause airbags not to deploy in an accident.

3 122. Old G.M. and G.M. knew that the defects in the ignition switches in the
4 Defective Vehicles rendered such vehicle unreasonably dangerous to consumers,
5 however, failed to disclose the danger to NHTSA, Plaintiff Grumet or the public –
6 despite having a duty to do so.

7 123. Instead, Old G.M. and G.M. allowed consumers to continue to believe the
8 representations made about the Defective Vehicles in its marketing and advertising that
9 such vehicles were safe.

10 124. Old G.M.'s and G.M.'s unfair or deceptive acts or practices were likely to
11 and did in fact deceive reasonable consumers, including Plaintiff, about the safety and
12 reliability of the Defective Vehicles.

13 125. Plaintiff Grumet and the other members of the Class have suffered injuries
14 resulting from G.M.'s material omission regarding the Defective Vehicles because they
15 paid an inflated purchase price for such vehicles. If Old G.M. and G.M. had timely
16 disclosed the defect, Plaintiff Grumet and the members of the Class would not have
17 purchased the Defective Vehicles at all, or would have paid less. Plaintiff Grumet and the
18 members of the Class did not receive the benefit of their bargain for a vehicle to provide
19 safe and reliable transportation.

20 126. G.M.'s acts and omissions in violation of the CLRA present a
21 continuing risk to Plaintiff and the general public.

22 127. Plaintiff Grumet and the members of the Class reserve any claims for
23 damages under the CLRA and currently seek only injunctive relief against G.M.

24 128. Pursuant to § 1782 of the CLRA, by letter dated March 27, 2014,
25 Plaintiff notified G.M. in writing by certified mail of the particular violations of §
26 1770 of the CLRA, and demanded that G.M. cease its unlawful practices as
27 described herein, and give notice to all affected customers of G.M.'s intent to so
28 act. A copy of that letter is attached hereto as Exhibit A.

1 129. Plaintiff Grumet includes as Exhibit B hereto, an affidavit with this
2 Complaint that shows that venue in this District is proper, to the extent such an
3 affidavit is required by Cal. Civ. Code § 1780(d).

4 **COUNT IV**

5 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**
6 **CAL. BUS. & PROF. CODE § 17200, *et seq.***
7 **(On Behalf of Plaintiff Grumet and the California State Class)**

8 130. Plaintiff Grumet and the California State Class incorporate by reference
9 each preceding and succeeding paragraph as though fully set forth at length herein.

10 131. This claim is brought on behalf of the California State Class (the
11 “Class” for purposes of this Count).

12 132. Plaintiff Grumet and the Class assert this claim for violations of
13 California’s Unfair Competition Law (“UCL”), Business & Professional Code
14 §§ 17200, *et seq.*

15 133. California Business and Professions Code § 17200 prohibits any
16 unlawful, unfair, or fraudulent business act or practices.

17 134. Old G.M. and G.M. violated the unlawful prong of § 17200 by its
18 violations of the CLRA, as set forth above.

19 135. Old G.M. and G.M. also violated the unlawful prong of § 17200
20 because it engaged in unfair or deceptive acts or practices in violation of the
21 TREAD Act. Old G.M. and G.M. violated the TREAD Act by failing to timely to
22 inform NHTSA of the ignition switch defects and allowed the Defective Vehicles
23 to be sold with such defects.

24 136. Old G.M. and G.M. violated the unfair and fraudulent prong of §
25 17200 because, in omitting to inform NHTSA about a defect affecting the safety
26 and reliability of its vehicles, they engaged in conduct that was likely to deceive
27 reasonable consumer, owners and purchaser into believing that the Defective
28 Vehicles were safe and reliable. Furthermore, Old G.M. and G.M. misrepresented

1 and/or omitted to state material facts regarding the quality, safety and reliability of
2 the Defective Vehicles.

3 137. Old G.M. and G.M. also violated the unfair and fraudulent prong of §
4 17200 because the acts and practices set forth in this Complaint offend established
5 public policy, as the harm caused to consumers greatly outweighs any benefits
6 associated with those practices.

7 138. G.M. has successor liability for the unlawful, unfair and fraudulent
8 acts or practices of Old G.M.

9 139. Plaintiff Grumet and the other members of the Class reasonably relied
10 on Old G.M.'s and G.M.'s statements in its marketing and advertising that the
11 Defective Vehicles were safe, and would not have purchased or leased the
12 Defective Vehicles had they known of the defects in the ignition switches, or
13 would not have paid as much as they did.

14 140. Plaintiff Grumet and the members of the Class have suffered injuries,
15 including the loss of money or property, because of Old G.M.'s and G.M.'s unfair,
16 unlawful and/or deceptive practices. Old G.M. and G.M. failed to inform NHTSA,
17 as well as owners, purchasers and consumers, that the Defective Vehicles were
18 inherently dangerous because they had a defective ignition switch that could shut
19 the vehicles' engines down without warning, leaving the vehicles' occupants
20 vulnerable to accidents, serious injury and potentially death.

21 141. All of the wrongful conduct alleged herein occurred, and continues to
22 occur, in the conduct of G.M.'s business. G.M.'s wrongful conduct is part of a
23 pattern or generalized course of conduct that is still perpetuated in California and
24 nationwide.

25 142. Plaintiff Grumet requests that this Court enter such orders or
26 judgments as may be necessary, including a declaratory judgment that G.M. has
27 violated the UCL; an order enjoining G.M. from continuing its unfair, unlawful,
28 and/or deceptive practices; an order and judgment restoring to Class members any

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1 money lost as the result of G.M.'s unfair, unlawful and deceptive trade practices,
2 including restitution and disgorgement of any profits GM received as a result of its
3 unfair, unlawful and/or deceptive practices, as provided in California Business &
4 Professional Code § 17203, California Code of Civil Procedure § 384, and
5 California Civil Code § 3345.

COUNT V

6
7 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT**
8 **(CALIFORNIA "LEMON LAW") FOR BREACH OF EXPRESS**
9 **WARRANTY OF MERCHANTABILITY, CAL. CIV. CODE §§ 1790 *et seq.***
10 **(On Behalf of Plaintiff Grumet and the California State Class)**

11 143. Plaintiff Grumet and the California State Class incorporate by reference
12 each preceding and succeeding paragraph as though fully set forth at length herein.

13 144. This claim is brought on behalf of Plaintiff Grumet and the California
14 State Class (the "Class" for purposes of this Count).

15 145. Plaintiff Grumet and the members of the Class who purchased or
16 leased the Defective Vehicles in California are "buyers" within the meaning of
17 California Civil Code § 1791(b).

18 146. The Defective Vehicles are "consumer goods" within the meaning of
19 California Civil Code § 1791(a).

20 147. Old G.M. was a "manufacturer" of the Defective Vehicles within the
21 meaning of California Civil Code § 1791(j).

22 148. G.M. expressly assumed responsibility for payment of Old G.M.'s
23 liabilities arising under Lemon Law.

24 149. Old G.M. and G.M. expressly warranted to Plaintiff Grumet and the
25 members of the Class that its Defective Vehicles were "merchantable" within the
26 meaning of California Civil Code §§ 1791.2 & 1793, in its warranty, marketing
27 and advertising materials.

28 150. The Defective Vehicles are defective insofar as they were designed
with ignition switches that can cause the Defective Vehicles to inadvertently shut

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1 down during ordinary driving conditions without warning, leading to an
2 unreasonable likelihood of accident and that such accidents would cause serious
3 bodily harm or death to the vehicles' occupants.

4 151. Because of the defective ignition switches, the Defective Vehicles are
5 not safe to drive and thus not fit for ordinary purposes.

6 152. The Defective Vehicles are covered by Old G.M.'s and G.M.'s
7 express warranties.

8 153. Old G.M. and G.M. were provided with notice and opportunity to
9 correct the defect in the Defective Vehicles, however, failed to do so. Old G.M.
10 and G.M. have also been on notice of the ignition switch defects through
11 complaints filed in court, with NHTSA and themselves, and have failed to correct
12 the same.

13 154. As a result of Old G.M.'s and G.M.'s breach of its express warranties,
14 Plaintiff and members of the Class received goods whose dangerous condition
15 substantially impairs their value. Plaintiff Grumet and the members of the Class
16 have been damaged by the diminished value of G.M.'s products, the product's
17 malfunctioning, and the nonuse of their Defective Vehicles.

18 155. Under California Civil Code §§ 1791.1(d) & 1794, Plaintiff Grumet
19 and the members of the Class are entitled to damages and other legal and equitable
20 relief including, at their election, the purchase price of their Defective Vehicles, or
21 the overpayment or diminution in value of the Defective Vehicles.

22 156. Pursuant to California Civil Code § 1794, Plaintiff Grumet and the
23 members of the Class members are entitled to costs and attorneys' fees.

24 **COUNT VI**

25 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT**
26 **(CALIFORNIA "LEMON LAW") FOR BREACH OF IMPLIED**
27 **WARRANTY OF MERCHANTABILITY, CAL. CIV. CODE §§ 1790 *et seq.***
28 **(On Behalf of Plaintiff Grumet and the California State Class)**

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1 157. Plaintiff Grumet and the California State Class incorporate by reference
2 each preceding and succeeding paragraph as though fully set forth at length herein.

3 158. This claim is brought on behalf of Plaintiff Grumet and the California
4 State Class (the "Class" for purposes of this Count).

5 159. Plaintiff Grumet and the members of the Class members who
6 purchased or leased the Defective Vehicles in California are "buyers" within the
7 meaning of California Civil Code § 1791(b).

8 160. The Defective Vehicles are "consumer goods" within the meaning of
9 California Civil Code § 1791(a).

10 161. Old G.M. was a "manufacturer" of the Defective Vehicles within the
11 meaning of California Civil Code § 1791(j).

12 162. G.M. expressly assumed responsibility for payment of Old G.M.'s
13 liabilities arising under Lemon Law.

14 163. Old G.M. and G.M. impliedly warranted to Plaintiff Grumet and the
15 members of the Class that its Defective Vehicles were "merchantable" within the
16 meaning of California Civil Code §§ 1791.1(a) & 1792; however, the Defective
17 Vehicles do not have the quality that a buyer would reasonably expect, and were
18 therefore not merchantable.

19 164. California Civil Code § 1791.1(a) provides:

20 "Implied warranty of merchantability" or "implied warranty that
21 goods are merchantable" means that the consumer goods meet
22 each of the following:

23 (1) Pass without objection in the trade under the contract
24 description.

25 (2) Are fit for the ordinary purposes for which such goods are
26 used.

27 (3) Are adequately contained, packaged, and labeled.

28 (4) Conform to the promises or affirmations of fact made on
the container or label.

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1 165. The Defective Vehicles would not pass without objection in the
2 automotive trade because of the defective ignition switches that cause the
3 Defective Vehicles to inadvertently shut down during ordinary driving conditions
4 without warning, leading to an unreasonable likelihood of accident and that such
5 accidents would cause serious bodily harm or death to the vehicles' occupants.

6 166. Because of the defective ignition switches, the Defective Vehicles are
7 not safe to drive and thus not fit for ordinary purposes.

8 167. The Defective Vehicles are not adequately labeled because the
9 labeling fails to disclose the ignition switch defect and does not advise Class
10 members to avoid attaching anything to their vehicle key rings. Old G.M. and
11 G.M. failed to warn about the dangerous safety defects in the Defective Vehicles.

12 168. Old G.M. and G.M. breached the implied warranty of merchantability
13 by manufacturing and selling the Defective Vehicles with defective ignition switch
14 systems. These defects have deprived Plaintiff and the members of the Class of the
15 benefit of their bargain and have caused the Defective Vehicles to depreciate in
16 value.

17 169. As a direct and proximate result of Old G.M.'s and G.M.'s breach of
18 its duties under California's Lemon Law, Plaintiff Grumet and members of the
19 Class received goods whose dangerous condition substantially impairs their value.
20 Plaintiff Grumet and the members of the Class have been damaged by the
21 diminished value of G.M.'s products, the product's malfunctioning, and the nonuse
22 of their Defective Vehicles.

23 170. Under California Civil Code §§ 1791.1(d) & 1794, Plaintiff Grumet
24 and the members of the Class are entitled to damages and other legal and equitable
25 relief including, at their election, the purchase price of their Defective Vehicles, or
26 the overpayment or diminution in value of the Defective Vehicles.

27 171. Pursuant to California Civil Code § 1794, Plaintiff Grumet and the
28 members of the Class are entitled to costs and attorneys' fees.

COUNT VII

**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE
PRACTICES ACT, FLA. STAT. § 501.201, *et seq.*
(On Behalf of Plaintiff ABC and the Florida State Class)**

172. Plaintiff ABC and the Florida State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

173. This claim is brought on behalf of Plaintiff ABC and the Florida State Class (the "Class" for purposes of this Count).

174. The conduct of Old G.M. and G.M. as set forth herein constitutes unfair or deceptive acts or practices, in violation of the provisions of Florida Statutes Chapter 501, Part II. The prohibited conduct includes, but is not limited to Old G.M.'s manufacture and sale of the Defective Vehicles, Old G.M.'s and G.M.'s failure to disclose and remedy the defective ignition switches in the Defective Vehicles, and their misrepresentations and/or omissions regarding the safety and reliability of the Defective Vehicles.

175. Old G.M.'s and G.M.'s actions as set forth above occurred in the conduct of trade or commerce.

176. G.M. has successor liability for the deceptive or unfair acts or practices of Old G.M.

177. G.M.'s actions impact the public interest because Plaintiff and the other Class members were injured in exactly the same way as millions of others purchasing and/or leasing the Defective Vehicles as a result of G.M.'s generalized course of deception.

178. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of G.M.'s business.

179. Plaintiff ABC and the other Class members suffered ascertainable loss as a result of Old G.M.'s and G.M.'s conduct. Plaintiff ABC and the other Class members were injured and suffered economic damages as a result of such conduct.

1 180. Plaintiff ABC and the other Class members overpaid for their
2 Defective Vehicles and did not receive the benefit of their bargain, and the
3 Defective Vehicles have suffered a diminution in value as a result of the conduct
4 described herein.

5 181. Old G.M.'s and G.M.'s conduct proximately caused the injuries to
6 Plaintiff and the other Class members.

7 182. G.M. is liable to Plaintiff ABC and the other Class members for
8 damages in amounts to be proven at trial, including attorneys' fees recoverable
9 pursuant to Florida Statute § 501.2105, costs, and treble damages. Pursuant to
10 Florida Statute § 501.208, Plaintiff ABC will serve the Florida Attorney General
11 with a copy of this complaint as Plaintiff ABC, individually and on behalf of the
12 other Class members, seeks injunctive relief.

13 **COUNT VIII**

14 **BREACH OF EXPRESS WARRANTY, Fla. Stat. § 672.313**
15 **(On behalf of Plaintiff ABC and the Florida State Class)**

16 183. Plaintiff ABC and the Class incorporate by reference each preceding and
17 succeeding paragraph as though fully set forth at length herein.

18 184. This claim is brought on behalf of Plaintiff ABC and the Florida State
19 Class (the "Class" for purposes of this Count).

20 185. Old G.M. was, at all relevant times, a merchant with respect to motor
21 vehicles.

22 186. In the course of selling the Defective Vehicles, Old G.M. expressly
23 warranted to repair and adjust to correct defects in materials and workmanship of
24 any part supplied by G.M. G.M. has not repaired or adjusted, and has been unable
25 to repair or adjust the Defective Vehicles' materials and workmanship defects
26 described herein.

27 187. These warranties were made, *inter alia*, in advertisements and in
28 uniform statements made by Old G.M. and G.M. to the public and consumers of

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1 the Defective Vehicles. These affirmations and promises were part of the basis of
2 the bargain between Old G.M., on the one hand, and Plaintiff ABC and the other
3 Class members, on the other.

4 188. Old G.M. did not provide at the time of sale, and G.M. has not
5 provided since then, G.M. Vehicles conforming to these express warranties.

6 189. G.M. expressly assumed all liabilities arising under the written
7 warranties of Old G.M.

8 190. Furthermore, the limited warranty of repair and/or adjustments to
9 defective parts fails in its essential purpose because the contractual remedy is
10 insufficient to make the Plaintiff ABC and the other Class members whole.

11 191. Accordingly, recovery by Plaintiff ABC and the other Class members
12 is not limited to the limited warranty of repair or adjustments to parts defective in
13 materials or workmanship, and Plaintiff, individually and on behalf of the other
14 Class members, seeks all remedies as allowed by law.

15 192. Moreover, at the time that Old G.M. warranted and sold the Defective
16 Vehicles, it knew that the Defective Vehicles did not conform to the warranties and
17 were inherently defective, and wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding the Defective Vehicles.

19 193. Plaintiff ABC and the other Class members were induced to purchase
20 the Defective Vehicles under false and/or fraudulent pretenses and without the
21 benefit of full disclosure of the problems described herein.

22 194. Many of the damages flowing from the Defective Vehicles cannot be
23 resolved through the limited remedy of "replacement or adjustments," as those
24 incidental and consequential damages have already been suffered due to Old
25 G.M.'s conduct as alleged herein, and due to G.M.'s failure and/or continued
26 failure to provide such limited remedy within a reasonable time, and any limitation
27 on ABC's and the other Class members' remedies would be insufficient to make
28 Plaintiff ABC and the other Class members whole.

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1 195. As a direct and proximate result of the breach of express warranties,
2 Plaintiff ABC and the other Class members have been damaged in an amount to be
3 determined at trial.

4
5
6 **COUNT IX**

7 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE**
8 **BUSINESS PRACTICES ACT**

9 **815 Ill. Comp. Stat. 505/1, et seq.**

10 **(On Behalf of Plaintiffs Sullivan, Allison Clinton, and Amy Clinton and the**
11 **Illinois State Class)**

12 196. Plaintiffs Sullivan, Amy Clinton, Allison Clinton (the "Plaintiffs" for this
13 Count), and the Illinois State Class incorporate by reference each preceding and
14 succeeding paragraph as though fully set forth at length herein.

15 197. This claim is brought on behalf of Plaintiffs and the Illinois State
16 Class (the "Class" for purposes of this Count).

17 198. The Illinois Consumer Fraud and Deceptive Business Practices Act
18 prohibits unfair or deceptive acts or practices in connection with any trade or
19 commerce, including, among other things, "the use or employment of any
20 deception, fraud, false pretense, false promise, misrepresentation or the
21 concealment, suppression or omission of any material fact, ... whether any person
22 has in fact been misled, deceived, or damaged thereby." The Act also prohibits
23 suppliers from representing that their goods are of a particular quality or grade they
24 are not.

25 199. The conduct of Old G.M. and G.M. as set forth herein constitutes
26 unfair or deceptive acts or practices in violation of 815 Ill. Comp. Stat. 505/2. The
27 prohibited conduct includes, but is not limited to their manufacture and sale of the
28 Defective Vehicles, failure to disclose and remedy the defective ignition switches

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1 in the Defective Vehicles, and misrepresentations and omissions regarding the
2 safety and reliability of the Defective Vehicles.

3 200. Old G.M. and G.M.'s actions as set forth above occurred in the
4 conduct of trade or commerce.

5 201. G.M. has successor liability for the deceptive or unfair acts or
6 practices of Old G.M.

7 202. G.M.'s actions impact the public interest because Plaintiffs and the
8 other Class members were injured in exactly the same way as millions of others
9 purchasing and/or leasing the Defective Vehicles as a result of G.M.'s generalized
10 course of deception.

11 203. All of the wrongful conduct alleged herein occurred, and continues to
12 occur, in the conduct of G.M.'s business.

13 204. Plaintiffs and the other Class members suffered ascertainable loss as a
14 result of Old G.M.'s and G.M.'s conduct. Plaintiffs and the other Class members
15 were injured and suffered economic damages as a result of such conduct.

16 205. Plaintiffs and the other Class members overpaid for their Defective
17 Vehicles and did not receive the benefit of their bargain, and the Defective
18 Vehicles have suffered a diminution in value as a result of the conduct described
19 herein.

20 206. Old G.M.'s and G.M.'s conduct proximately caused the injuries to
21 Plaintiffs and the other Class members.

22 207. G.M. is liable to Plaintiffs and the other Class members for damages
23 in amounts to be proven at trial, including attorneys' fees recoverable pursuant to
24 815 Ill. Comp. Stat. 505/1, *et seq.*

25 208. Plaintiffs and the members of the Class also seek punitive damages
26 against G.M. because its conduct was wanton, willful and malicious.
27
28

209. Pursuant to 815 Ill. Comp. Stat. 505/7, Plaintiffs request that this Court enter an order enjoining G.M. from continuing its unfair and/or deceptive practices as alleged herein.

COUNT X

**VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE TRADE
PRACTICES ACT, 815 Ill. Comp. Stat. 510/1, *et seq.*
(On Behalf of Plaintiffs Sullivan, Allison Clinton, and Amy Clinton and the
Illinois State Class)**

210. Plaintiffs Sullivan, Amy Clinton, Allison Clinton (the “Plaintiffs” in this Count), and the Illinois State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

211. This claim is brought on behalf of Plaintiffs and the Illinois State Class (the “Class” for purposes of this Count).

212. The Illinois Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2(a) sets forth that:

A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person; ... causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; ... represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have; ... represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; ... advertises goods or services with intent not to sell them as advertised; ... [or] engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

213. As described above, the Defective Vehicles sold or leased to Plaintiffs and the other members of the Class were not of the particular standard, quality, grade or characteristic represented by Old G.M. and G.M.

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1 221. Old G.M. did not provide at the time of sale, and G.M. has not
2 provided since then, G.M. Vehicles conforming to these express warranties.

3 222. G.M. expressly assumed all liabilities arising under the written
4 warranties of Old G.M.

5 223. Furthermore, the limited warranty of repair and/or adjustments to
6 defective parts fails in its essential purpose because the contractual remedy is
7 insufficient to make the Plaintiffs and the other Class members whole.

8 224. Accordingly, recovery by Plaintiffs and the other Class members is
9 not limited to the limited warranty of repair or adjustments to parts defective in
10 materials or workmanship, and Plaintiffs, individually and on behalf of other Class
11 members, seeks all remedies as allowed by law.

12 225. Moreover, at the time that Old G.M. warranted and sold the Defective
13 Vehicles, it knew that the Defective Vehicles did not conform to the warranties and
14 were inherently defective, and wrongfully and fraudulently misrepresented and/or
15 concealed material facts regarding the Defective Vehicles.

16 226. Plaintiffs and the other Class members were induced to purchase the
17 Defective Vehicles under false and/or fraudulent pretenses and without the benefit
18 of full disclosure of the problems described herein.

19 227. Many of the damages flowing from the Defective Vehicles cannot be
20 resolved through the limited remedy of "replacement or adjustments," as those
21 incidental and consequential damages have already been suffered due to Old
22 G.M.'s conduct as alleged herein, and due to G.M.'s failure and/or continued
23 failure to provide such limited remedy within a reasonable time, and any limitation
24 on Plaintiffs' and the other Class members' remedies would be insufficient to
25 make Plaintiffs and the other Class members whole.

26 228. As a direct and proximate result of the breach of express warranties,
27 Plaintiffs and the other Class members have been damaged in an amount to be
28 determined at trial.

COUNT XII

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

Mich. Compl. L. Ann. §§ 445.901, *et seq.*

(On Behalf of Plaintiff Saxson and the Michigan State Class)

229. Plaintiff Saxson and the Michigan State Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

230. This claim is brought on behalf of Plaintiff Saxson and the Michigan State Class (the "Class" for purposes of this Count).

231. The Michigan Consumer Protection Act ("MCPA") makes unlawful any unfair, unconscionable or deceptive methods, acts or practices in the conduct of trade or commerce. MCPA § 445.903(1).

232. Old G.M., G.M. and Plaintiff are each "persons" within the meaning of MCPA § 445.902(d).

233. The sale of the Defective Vehicles to Plaintiff Saxson and the members of the Class occurred within the conduct of "trade or commerce" as defined by MCPA § 445.902(g).

234. The conduct of Old G.M. and G.M., as set forth herein, constitutes unfair, unconscionable or deceptive methods, acts or practices in violation of the MCPA.

235. G.M. has successor liability for the unfair, unconscionable or deceptive methods, acts or practices of Old G.M.

236. Old G.M. and G.M. violated the MCPA by 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. MCPA § 445.903(s). Old G.M. and G.M. violated the MCPA by making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is. MCPA § 445.903(bb). Old G.M. and G.M. also violated the MCPA by failing to reveal

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1 facts that are material to the transaction in light of representations of fact made in a
2 positive manner. MCPA § 445.903(cc).

3 237. The acts of Old G.M. and G.M. which constitute unfair,
4 unconscionable or deceptive methods, acts or practices in violation of the MCPA
5 include, but are not limited to, their manufacture and sale of the Defective
6 Vehicles, their manufacture and sale of the Defective Vehicles, their failure to
7 disclose and remedy the defective ignition switches in the Defective Vehicles, and
8 their misrepresentations and/or omissions regarding the safety and reliability of the
9 Defective Vehicles.

10 238. The actions of Old G.M. and G.M. impact the public interest because
11 Plaintiff Saxson and the other Class members were injured in exactly the same way
12 as thousands of others purchasing and/or leasing the Defective Vehicles as a result
13 of Old G.M.'s and G.M.'s generalized course of conduct.

14 239. All of the wrongful acts or practices alleged herein occurred, and
15 continues to occur, in the conduct of G.M.'s business.

16 240. Plaintiff Saxson and the other Class members suffered ascertainable
17 loss as a result of Old G.M.'s and G.M.'s conduct. Plaintiff Saxson and the other
18 Class members were injured and suffered economic damages as a result of G.M.'s
19 conduct.

20 241. Plaintiff Saxson and the other Class members overpaid for their
21 Defective Vehicles and did not receive the benefit of their bargain, and the
22 Defective Vehicles have suffered a diminution in value as a result of the conduct
23 described herein.

24 242. Old G.M.'s and G.M.'s conduct proximately caused the injuries to
25 Plaintiff Saxson and the other Class members.

26 243. G.M. is liable to Plaintiff Saxson and the other Class members for
27 damages in amounts to be proven at trial.
28

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1 244. Old G.M.'s and G.M.'s actions as set forth above occurred in the
2 conduct of trade or commerce.

3 245. G.M.'s actions impact the public interest because Plaintiff Saxson and
4 the other members of the Class were injured in exactly the same way as millions of
5 others purchasing and/or leasing Defective Vehicles as a result of G.M.'s
6 generalized course of deception.

7 246. All of the wrongful conduct alleged herein occurred, and continues to
8 occur, in the conduct of G.M.'s business.

9 247. Plaintiff Saxson and the other Class members suffered ascertainable
10 loss as a result of Old G.M.'s and G.M.'s conduct. Plaintiff Saxson and the other
11 members of the Class overpaid for their Defective Vehicles and did not receive the
12 benefit of their bargain, and their Defective Vehicles have suffered a diminution in
13 value.

14 248. Old G.M.'s and G.M.'s conduct proximately caused the injuries to
15 Plaintiff Saxson and the other members of the Class.

16 249. G.M. is liable to Plaintiff Saxson and the other members of the Class
17 for damages in amounts to be proven at trial, including attorneys' fees, costs, and
18 treble damages.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiffs, individually, and on behalf of the other members
21 of the Nationwide, California, Florida, Illinois, and Michigan State and Statewide
22 Classes (collectively hereafter "Statewide Classes") they respectively seek to
23 represent, respectfully request that the Court enter judgment in their favor and
24 against G.M. as follows:

25 A. Declaring that this action is a proper class action and certifying the
26 Nationwide and Statewide Classes requested herein, designating Plaintiffs as
27 Nationwide and Statewide Class Representatives, and appointing Plaintiffs'
28 attorneys as Class Counsel;

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1 B. Enjoining G.M. from continuing the unfair or deceptive acts or
2 practices alleged in this Complaint and requiring G.M. to repair the Defective
3 Vehicles;

4 C. Ordering G.M. to pay actual, compensatory and statutory damages to
5 Plaintiffs and the other members of the Nationwide and Statewide Classes;

6 D. Alternatively, if elected, ordering G.M. to repair the defective ignition
7 switches or provide a comparable vehicle that does not have ignition switch
8 defects;

9 E. Ordering G.M. to pay punitive damages to Plaintiffs and the other
10 members of the Nationwide and Statewide Classes;

11 F. Ordering G.M. to pay pre- and post-judgment interest on any amounts
12 awarded;

13 G. Ordering G.M. to pay the costs of suit, including Plaintiffs' and the
14 other Class members' reasonable attorneys' fees; and

15 H. Granting such other and further equitable relief as this Court may
16 deem just and proper.

17 JURY TRIAL DEMAND

18 Plaintiffs pray for a jury trial on all triable issues and in all proceedings so
19 triable.

20 DATED: March 27, 2014

Respectfully submitted,

21 WOLF HALDENSTEIN ADLER
22 FREEMAN & HERZ LLP

23 By: /s/Betsy C. Manifold
24 BETSY C. MANIFOLD
25 Email: manifold@whafh.com
26
27
28

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March 27, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

General Motors Company Advanced Tech.
422 Portage Ave.
Palo Alto, CA 94306

General Motors Co.
9150 Hermosa Ave.
Rancho Cucamonga, CA 91730

Re: *Elizabeth Y. Grumet, et al., v. General Motors LLC*
Notice of Violation of the California Consumers Legal Remedies Act

Dear Sir or Madam:

We send this letter on behalf of our client, Elizabeth Y. Grumet, a resident of California, as well as on behalf of a proposed class of all consumers who own, owned, lease or leased those vehicles currently identified as defective by General Motors LLC ("GM"), including: 2005-2007 Chevrolet Cobalt, 2005-2007 Pontiac G5; 2003-2007 Saturn Ion, 2006-2007 Chevrolet HHR, 2005-2006 Pontiac Pursuit (Canada), 2006-2007 Pontiac Solstice, and 2007 Saturn Sky ("Defective Vehicles"), in California from 2002 to the present. We write to advise you that GM has violated and continues to violate the Consumers Legal Remedies Act ("CLRA"), California Civil Code section 1750, *et seq.* We hereby ask that GM remedy such violations within thirty (30) days.

GM is engaging in unfair competition and unfair or deceptive acts or practices with regard to the manner in which GM failed to disclose and consciously concealed the ignition switch defects in the Defective Vehicles in violation of the Transportation Recall Enhancement, Accountability and Documentation Act to the National Highway Traffic Safety Administration or the public.

These activities are prohibited by California Civil Code section 1770(a), in particular by:

- representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;
- representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

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WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

General Motors LLC

March 27, 2014

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- advertising goods and services with the intent not to sell them as advertised; and
- representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

California Civil Code § 1770(a)(5), (7), (9) and (16).

Our client has filed a complaint seeking injunctive relief simultaneous with this letter, and will amend such complaint to seek monetary relief under the CLRA unless, within thirty (30) days, GM corrects, repairs, or otherwise rectifies the violations specified above.

If GM fails to comply with this request within thirty (30) days, GM may be liable for the following monetary amounts under the Consumers Legal Remedies Act:

- Actual damages suffered;
- Punitive damages;
- Costs and attorney's fees related to suit; and
- Penalties of up to \$5,000.00 for each incident where senior citizens have suffered substantial physical, emotional or economic damage resulting from GM's conduct.

It is our hope that GM will choose to correct these unlawful practices promptly. A failure to act within thirty (30) days will be considered a denial of this claim and our client will act accordingly. If you would like to discuss the matter, please do not hesitate to call us at (619) 239-4599. Otherwise, we look forward to GM immediately changing its practices and compensating Ms. Grumet and the other members of the proposed class identified above.

Sincerely,



Betsy C. Manifold

BCM/meb
Enclosures

7012 1640 0002 3442 8093

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PS Form 3800, August 2006

See Reverse for Instructions

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Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

1 I, Elizabeth Y. Grumet, hereby declare and state:

2 1. I have personal knowledge of the facts stated herein and could
3 competently testify thereto if called upon to do so.

4 2. I am currently a resident of San Diego County and a Plaintiff in the
5 above-entitled action.

6 3. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support
7 of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code §
8 1780(a).

9 4. This action for relief under Cal. Civ. Code § 1780(a) has been
10 commenced in a county that is a proper place for trial of this action because
11 Defendants do business in this District (the Southern District of California) and
12 throughout the state of California.

13 5. The Complaint filed in this matter contains causes of action for
14 violations the Consumers Legal Remedies Act against General Motors LLC ("GM"),
15 a Delaware limited liability company doing business nationwide, including
16 California.

17 6. I owned a 2004 Saturn Ion, which was originally purchased at Saturn of
18 Capitol Expressway in San Jose, California in or around 2004, and I also owned a
19 2006 Saturn Ion, which was originally purchased at Saturn of Capitol Expressway in
20 San Jose, California in or around 2006.

21 I declare under penalty of perjury under the laws of the State of California that
22 the foregoing Declaration is true and correct, and was executed by me in the city of
23 San Jose, California on March 26, 2014.

24
25 

26 Elizabeth Y. Grumet

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH Y. GRUMET, et al.

vs.

GENERAL MOTORS LLC

Case No. **'14CV0713 JM BGS**

DECLARATION OF SERVICE

Person Served:

State of Florida Attorney General

Date Served:

03/27/14

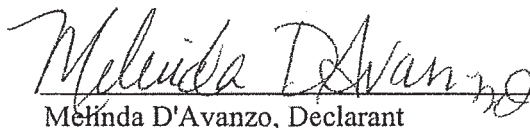
I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above named person the following documents:

CLASS ACTION COMPLAINT

in the following manner: (check one)

- 1) By personally delivering copies to the person served.
- 2) By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to their person served at the place where the copies were left.
- 3) By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 4) ☒ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at San Diego
California on March 27, 2014
Office of Attorney General, State of Florida
The Capitol PL-01, Tallahassee, FL 32399-1050

Executed on March 27, 2014 at San Diego, California


Melinda D'Avanzo, Declarant