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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	Case No.: 09-50026 (MG)
	:	
Debtors.	:	(Jointly Administered)

REPLY BRIEF BY GENERAL MOTORS LLC ON THE 2016 THRESHOLD ISSUES SET FORTH IN THE ORDER TO SHOW CAUSE, DATED DECEMBER 13, 2016 (EXCEPT FOR THE LATE PROOF OF CLAIM ISSUE)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

STATUTES AND RULES

OTHER AUTHORITIES

INTRODUCTION[1]

In its Opening Brief, New GM provided thorough legal arguments, complete with record support, showing that its positions on the 2016 Threshold Issues are compelled by the law and history of these proceedings. Plaintiffs' briefs on the 2016 Threshold Issues, in contrast, improperly ignore the controlling rulings in the final December 2015 Judgment in favor of a distorted interpretation of the Second Circuit's Opinion. Plaintiffs' arguments are needlessly complicated by references to irrelevant issues, and provide no basis for reaching conclusions on the 2016 Threshold Issues other than the position asserted by New GM.

In summary, New GM's position on the four 2016 Threshold Issues is as follows:

***Threshold Issue 1*:** All parties except for the Pillars plaintiff agree on the definitions of "Ignition Switch Plaintiffs" and "Non-Ignition Switch Plaintiffs."[2] Pillars disagrees with the application of those definitions to his particular situation, but fails to explain why the definitions used uniformly in previous Rulings and agreed to by every other party in the case should not be binding on him. In short, Pillars is a Non-Ignition Switch Pre-Closing Accident Plaintiff.

***Threshold Issue 2*:** There is no dispute that Judge Gerber held in paragraph 14 of his December 2015 Judgment that both economic loss and post-closing accident plaintiffs who own Old GM vehicles without the Ignition Switch Defect, *including all plaintiffs represented by*

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Opening Brief By General Motors LLC On The 2016 Threshold Issues Set Forth In The Order To Show Cause, Dated December 13, 2016 (Except For The Late Proof Of Claim Issue)*, dated February 27, 2017 [ECF No. 13865] ("**New GM's Opening Brief**").

[2] Designated Counsel anticipated that New GM would make a definitional argument that New GM did not make. *See* Designated Counsel Opening Brief, at 15-16. New GM is not asserting that the term "Non-Ignition Switch Plaintiffs" includes Post-Closing Accident Plaintiffs without the Ignition Switch Defect. Thus, New GM and Designated Counsel are in agreement as to the relevant definitions.

Designated Counsel,[3] "have attempted to assert an Independent Claim against New GM in a pre-existing lawsuit with respect to an Old GM vehicle . . . [and] such claims are proscribed . . . ."

While acknowledging this Ruling and that they chose not to appeal it, plaintiffs[4] instead argue a litany of reasons why *res judicata* should not apply to them, including mandate/wipe-out/Rule 60 theories, and due process/lack of subject matter jurisdiction arguments.[5] None of these explanations have merit. The mandate/wipe out/Rule 60 theories are all variations of the same argument, and fail for the following reasons: (1) the Second Circuit Opinion is consistent with the December 2015 Judgment; (2) the December 2015 Judgment was not reviewed by the Second Circuit—that Judgment made separate rulings which were never appealed; (3) unlike the Second Circuit, the Bankruptcy Court, as part of the marked pleadings process, reviewed plaintiffs' claims and, as part of the December 2015 Judgment, determined that they were not valid Independent Claims; (4) Designated Counsel admitted in pleadings filed with the Supreme Court that the Second Circuit Opinion did not affect the rights of any plaintiff group other than those asserting the Ignition Switch Defect; and (5) Non-Ignition Switch Plaintiffs represented by Designated Counsel, and Post-Closing Accident Plaintiffs, were not before the Second Circuit and its Opinion did not adjudicate their rights with respect to Independent Claims; in contrast,

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[3] "Designated Counsel" was defined by the Bankruptcy Court as "the law firms Brown Rudnick, LLP; Caplin & Drysdale, Chartered; and Stutzman, Bromberg, Esserman & Plifka, PC[.]" *Supplemental Scheduling Order Regarding (I) Motion Of General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Court's July 5, 2009 Sale Order And Injunction, (II) Objection Filed By Certain Plaintiffs In Respect Thereto, And (III) Adversary Proceeding No. 14-01929*, dated July 11, 2014 [ECF No. 12770], at 2 n.2. Caplin & Drysdale, Chartered thereafter ceased being a Designated Counsel. Goodwin Procter LLP represents Pre-Closing Accident Plaintiffs and Post-Closing Accident Plaintiffs. Brown Rudnick, LLP, Stutzman, Bromberg, Esserman & Plifka, PC, and Goodwin Procter LLP are, collectively, the Designated Counsel as that term is used herein.

[4] In discussing Threshold Issue 2, when the term "plaintiffs" is used, it is shorthand for Old GM vehicle owners without the Ignition Switch Defect. The term "Old GM vehicle owners without the Ignition Switch Defect" means Non-Ignition Switch Plaintiffs (*i.e.*, plaintiffs with Old GM vehicles without the Ignition Switch Defect seeking economic losses) and Post-Closing Accident Plaintiffs in Old GM vehicles without the Ignition Switch Defect.

[5] *See Plaintiffs' Joint Opening Brief On The 2016 Threshold Issues*, dated February 27, 2017 [ECF No. 13866] ("**Designated Counsel's Opening Brief**"), at 27-29.

the December 2015 Judgment determined that they (as well as the Peller Plaintiffs) had not asserted valid Independent Claims.

Plaintiffs' due process/subject matter jurisdiction arguments are based on a theoretical concern which no longer is relevant. It does not matter any longer whether the Bankruptcy Court can, as an abstract proposition, bar Independent Claims based on a failure to prove a due process violation relating to the Sale Order. Rather, the Bankruptcy Court unquestionably had (and has) jurisdiction to determine whether plaintiffs asserted valid Independent Claims against New GM, or disguised successor liability claims that were barred by the Sale Order. Plaintiffs, through the marked pleading process, had adequate notice of—and in many cases actively litigated—Bankruptcy Court determinations about whether purported Independent Claims were barred by the Sale Order. Following a detailed review of those pleadings, the December 2015 Judgment made a final ruling that plaintiffs without the Ignition Switch Defect did not assert valid Independent Claims. Plaintiffs' failure to appeal that ruling meant that they waived any due process/subject matter jurisdiction defense (assuming they had one) with regard to the Independent Claims ruling. The Bankruptcy Court's final determination of the Independent Claims issue is *res judicata* as to them.

With regard to the second part of Threshold Issue 2, Plaintiffs implausibly assert that numerous non-bankruptcy trial and appellate courts are better suited to decide whether purported Independent Claims are allowed by the Sale Order. In fact, however, these are quintessential bankruptcy issues. As explained below, the Bankruptcy Court has repeatedly interpreted and enforced the Sale Order with regard to claims alleged against New GM. It is critical that this Court maintain its traditional gatekeeper function to consistently and efficiently enforce the Sale Order (and prior rulings) against, among others, plaintiffs who have improperly brought proscribed claims against New GM.

***Threshold Issue 3*:** There can be no reasonable dispute that the term "Used Car Purchasers," as defined by the Second Circuit, is limited to the subset of Ignition Switch Plaintiffs that purchased used Old GM vehicles after the 363 Sale. *See In re Matter of Motors Liquidation Co*., 829 F.3d 135, 151 (2d Cir. 2016). Plaintiffs try to expand that definition by arguing that the ruling applies to all owners who purchased used Old GM vehicles after the 363 Sale, even though the ruling on its face does *not* apply to Non-Ignition Switch Plaintiffs, Pre-Closing Accident Plaintiffs, or all other plaintiffs that purchased Old GM vehicles before the 363 Sale.

In making their arguments, plaintiffs ignore well settled law recognized by the Bankruptcy Court that a used car owner's rights against New GM as *acquired from the seller* are limited by the seller's rights against New GM at the time of the used car sale. Thus, if a seller could not assert a Retained Liability/successor liability claim against New GM because of the Sale Order, the used car buyer also is barred from asserting such claim.[6] The Second Circuit never questioned or changed that established legal doctrine, so it remains the law of the case.

***Threshold Issue 4*:** Designated Counsel briefed a different issue from that identified by the Court. This Threshold Issue is not about whether future creditors are bound by a 363 sale order; rather it concerns whether Post-Closing Accident Plaintiffs can seek punitive damages against New GM assuming they have established a successor liability claim. Paragraph 6 of the December 2015 Judgment finally decided that issue against Post-Closing Accident Plaintiffs in holding that New GM is not "liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM."

[6] It is noteworthy that Designated Counsel tacitly acknowledged this point as they did not make a successor liability claim for Used Car Purchasers when they amended their complaint in MDL 2543 after the Second Circuit Opinion.

ARGUMENT

I.

First Threshold Issue: All Parties Except for Pillars Agree How the Different Categories of Plaintiffs Should Be Defined

New GM and Designated Counsel agree that "Ignition Switch Plaintiffs" are "those plaintiffs asserting economic losses in connection with Old GM vehicles included in Recall No. 14V-047."[7] New GM and Designated Counsel also agree that "Non-Ignition Switch Plaintiffs" means Old GM vehicles owners who were *not* the subject of Recall No. 14V-047, and who are asserting economic loss claims against New GM.[8]

Finally, New GM and Designated Counsel agree that Pre-Closing Accident Plaintiffs are divided into two categories: (i) Old GM vehicles that were the subject of Recall No. 14V-047 (Ignition Switch Pre-Closing Accident Plaintiffs); and (ii) Old GM vehicles that were not the subject of Recall No. 14V-047 (Non-Ignition Switch Pre-Closing Accident Plaintiffs).

The only disagreement for this Threshold Issue is between plaintiff Pillars and New GM. Pillars argues that if he is considered a Pre-Closing Accident Plaintiff, he should be viewed as an Ignition Switch Pre-Closing Accident Plaintiff rather than a Non-Ignition Switch Pre-Closing Accident Plaintiff. However, Pillars' vehicle was a Pontiac Grand Am which is not part of Recall No. 14V-047. Therefore, application of the definitions in the Key Court Rulings (to which everyone but Pillars agrees) results in Pillars being classified as a Non-Ignition Switch Pre-Closing Accident Plaintiff who remains bound by the Sale Order's prohibition against

[7] Designated Counsel's Opening Brief, at 1 n.1. The Peller Plaintiffs are in accord with Designated Counsel with respect to the definitions of the various groups of plaintiffs. *See The Elliott, Sesay and Bledsoe Plaintiffs' Supplemental Opening Brief Regarding the 2016 Threshold Issues*, dated February 27, 2017 [ECF No. 13861], at 7 (agreeing "with the treatment of this issue in the Plaintiffs' Opening Brief").

[8] *See* New GM's Opening Brief, at 2 n.6; Designated Counsel's Opening Brief, at 1 n.1; *see also* footnote 2, *supra*.

successor liability claims.[9] Pillars proffers no logical reason why the standard definitions should not apply to him, and there is none.

II.

***Second Threshold Issue (Part One)*: Old GM Vehicle Owners Without the Ignition Switch Defect Failed to Appeal the December 2015 Judgment; Therefore, They are Prohibited from Bringing Independent Claims Barred by that Judgment**

A. The December 2015 Judgment Ruled that Old GM Vehicle Owners Without the Ignition Switch Defect Did Not Allege Valid Independent Claims

In determining whether the December 2015 Judgment should be given *res judicata* effect, it is important to examine how and why Judge Gerber rejected the purported Independent Claims of Old GM vehicle owners without the Ignition Switch Defect. Much of that history was set forth in New GM's Opening Brief, but certain facts are noteworthy in light of plaintiffs' position that there is a conflict between the Second Circuit Opinion and the December 2015 Judgment. The facts highlighted below, which plaintiffs overlook, demonstrate that Judge Gerber had a separate basis for his Independent Claims ruling which was unrelated to due process issues.[10]

As mandated by the September 2015 Scheduling Order, New GM submitted various "marked pleadings" from Ignition Switch and Non-Ignition Switch litigations, all of which, in New GM's view violated the Sale Order, including many that contained so-called "Independent Claims" that were actually "dressed up" successor liability claims.[11] Consequently, the Bankruptcy Court reviewed a variety of claims, including (i) marked bellwether complaints filed

[9] *See* Section V.A for additional arguments relating to the Pillars Lawsuit.

[10] In the November 2015 Decision, Judge Gerber held that whether a Non-Ignition Switch Plaintiff can state an Independent Claim depends, in part, on whether that Plaintiff proved a due process violation by Old GM. It is not New GM's position that a due process violation is necessary for plaintiffs to state a valid Independent Claim against New GM. But, the reality is that what many plaintiffs refer to as "Independent Claims" are not such claims. They do not satisfy Judge Gerber's definition of Independent Claims or the Second Circuit's consistent definition of Independent Claims.

[11] *See* ECF Nos. 13456 (marked bellwether complaints); 13469 (marked MDL complaint); 13470 (marked complaints by governmental plaintiffs).

by Post-Closing Accident Plaintiffs with the Ignition Switch Defect [ECF No. 13456]; (ii) the marked Second Amended Consolidated Complaint filed in MDL 2543 [ECF No. 13469]; and (iii) certain complaints filed by state government plaintiffs seeking economic losses or statutory penalties [ECF No. 13470]. New GM also filed a letter with the Bankruptcy Court, attaching "other complaints" that contained representative claims barred by the Sale Order.[12] Many of the "other complaints" involved Old GM vehicles without the Ignition Switch Defect.[13] New GM further contested the provisions in complaints filed by the Peller Plaintiffs.[14]

A number of deficiencies existed with plaintiffs' alleged Independent Claims reviewed by Judge Gerber. For example, the *Moore v. Ross* complaint improperly alleged that New GM had a duty to plaintiffs to recall or retrofit Old GM vehicles; any such duty, however, was retained by Old GM.[15] The *Moore* plaintiffs incorrectly asserted that the recall covenant in the Sale Agreement was the basis of an Independent Claim against New GM. That was wrong because the Sale Agreement contains a no-third party beneficiary clause and the recall covenant was not as Assumed Liability.[16] Both the Second Circuit and the Bankruptcy Court concur that

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[12] Attached as **Exhibit "A"** hereto is New GM's letter filed with the Bankruptcy Court [ECF No. 13466] with "other complaints" attached thereto.

[13] The Court reviewed five relevant complaints: four from Post Closing Accident Plaintiffs without an Ignition-Switch Defect and one Non-Ignition Switch Pre-Sale Accident Plaintiff. MDL counsel filed the Second Amended Consolidated Complaint, which included claims on behalf of Non-Ignition Switch Plaintiffs. Other Old GM vehicle owners without the Ignition Switch Defect had an opportunity to raise specific claims for the Court's review; they did not do so.

[14] Attached as **Exhibit "B"** hereto is New GM's letter filed with the Bankruptcy Court [ECF No. 13523] with respect to the complaints filed by the Peller Plaintiffs.

[15] *See* Exhibit "A", at 2 ("These claims allege that New GM had a duty to recall or retrofit Old GM vehicles. But such claims, if they exist as a matter of law at all, are Retained Liabilities. Once New GM purchased Old GM's assets free and clear of claims and obligations relating to Old GM vehicles, New GM (an entity that did not manufacture or sell the Old GM vehicles at issue) did not have any ongoing duties to Old GM vehicle owners (other than specific Assumed Liabilities).").

[16] *See* Exhibit "A", at 2 ("Although New GM had obligations under the Motor Vehicle Safety Act and to the U.S. Government based on a covenant in the Sale Agreement ("Recall Covenant"), this covenant was not an Assumed Liability. Vehicle owners were not third party beneficiaries under the Sale Agreement, and did not have a private right of action relating to any breach of the Recall Covenant."); *see also id.*, Exh. A at 5-6; *see also* Sale Agreement, ¶ 9.11 ("nothing express or implied in this Agreement is intended or shall be construed to

an Independent Claim must be predicated on a new duty incurred by New GM to the Old GM vehicle owner after the 363 Sale that is unrelated to the 363 Sale transaction, and that is not based on Old GM conduct.[17]

Likewise, in *Benbow v. Medeiros Williams, Inc.*, the complaint alleged that New GM had negligently failed to identify defects or respond to notice of a defect. That is a Retained Liability for the same reason: Old GM owed plaintiffs the duty to identify defects in the vehicles it sold, not New GM.[18]

Similarly, in *Rickard v. Walsh Const. Co.*, plaintiff alleged that New GM was liable for purportedly misrepresenting material facts to the public related to a vehicle that Old GM had sold.[19] Like others, the *Rickards* plaintiff was dressing up a "point of vehicle sale" claim against Old GM as an improper Independent Claim against New GM.[20]

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confer upon or give to any Person [*e.g.*, plaintiffs] other than the Parties, their Affiliates and their respective permitted successors or assigns, any legal or equitable Claims, benefits, rights or remedies of any nature whatsoever under or by reason of this Agreement"); *In re Motors Liquidation Co.*, 541 B.R. 104, 130 n.67 (Bankr. S.D.N.Y. 2015) ("New GM notes, properly, that this [recall] covenant was not an Assumed Liability; and that vehicle owners were not third party beneficiaries of the Sale Agreement.").

[17] *Motors Liquidation Co.*, 829 F.3d at 157 ("Independent Claims are claims based on New GM's own post-closing wrongful conduct . . . These sorts of claims are based on New GM's post-petition conduct, and are not claims that are based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct"); *December 2015 Judgment*, at 2 n.3 ("Independent Claim shall mean a claim or cause of action asserted against New GM that is based solely on New GM's own independent post-Closing acts or conduct. Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities."). The term "Liabilities" was defined in the Sale Agreement as including any obligation under Law, Contract, or otherwise. *See* Sale Agreement, at 11. Thus, any obligation under Law that Old GM had, that was not an Assumed Liability, was a Retained Liability which stayed behind with Old GM.

[18] *See* Exhibit "A", at 2 ("These claims purport to allege that New GM should have identified the defect earlier and taken some sort of action in response. These are Retained Liabilities for the same reasons as the claims based on an alleged failure to recall or retrofit Old GM vehicles. Such duties with respect to Old GM vehicles remained with Old GM.").

[19] *See* Exhibit "A", at 3; *id.* at Exh. E at 34.

[20] The Bankruptcy Court found that the "Section 402B-Misrepresentation by Seller" asserted by *Rickard* was an assumed Product Liability Claim, but not an Independent Claim. *See* December 2015 Judgment, ¶ 35.

Also, New GM marked up the Peller Plaintiffs' complaints, arguing, among other things, that the Peller Non-Ignition Switch Plaintiffs had not asserted Independent Claims because claims based on Old GM conduct were barred by the Sale Order.[21]

After reviewing these marked pleadings and other complaints, and considering the parties' arguments, the Bankruptcy Court ruled in the December 2015 Judgment: "[t]o the extent such Plaintiffs *have attempted to assert* Independent Claims against New GM *in a pre-existing lawsuit* with respect to an Old GM vehicle, such claims are proscribed by the Sale Order, April Decision and the June [2015 Judgment]." December 2015 Judgment, ¶ 14 (emphasis added). Plaintiffs overlook the explicit language in this dispositive ruling. The plain language in paragraph 14—including the phrases "*attempted to assert*" and "*in a pre-existing lawsuit*"—confirm that the Independent Claims ruling was made in the context of having reviewed specific marked pleadings and other complaints, and having determined that the claims pled were not valid Independent Claims. There is no mention of due process in this ruling.

This conclusion regarding the specific analysis performed for alleged Independent Claims is also confirmed by the fact that New GM originally proposed that the Independent Claims ruling be included in the punitive damages section of the December 2015 Judgment.[22] The Bankruptcy Court disagreed, and placed the Independent Claims ruling in the "Particular Allegations, Claims and Causes of Action in Complaints" section of the December 2015 Judgment (which was the marked pleading section of the Judgment). That placement underscores that the Court's Independent Claims ruling was predicated on an analysis of the

[21] *See* Exhibit "B," at 1-3.

[22] *See* ECF No. 13559-1, ¶ 9.

particular pleadings using the definition of Independent Claims in the December 2015 Judgment. Notably, the Second Circuit used a consistent definition of Independent Claims in its Opinion.[23]

Finally, that the Bankruptcy Court rejected certain Independent Claims for reasons other than due process is supported by the fact that when New GM proposed language for the December 2015 Judgment that linked the due process issue to Independent Claims (*i.e.*, no due process issue, no Independent Claims), the Bankruptcy Court rejected that language. *See* ECF No. 13559, at 3 & Exh. A, ¶ 9. In sum, Judge Gerber evaluated plaintiffs' alleged Independent Claims and made his ruling based on whether they satisfied the definition of Independent Claims, and without regard to whether plaintiffs could (or could not) establish a due process violation involving the Sale Order.

Following his review of the Peller Plaintiffs' complaints, Judge Gerber also ruled that the Peller Plaintiffs who were Non-Ignition Switch Plaintiffs had not asserted valid Independent Claims: "Peller Complaints shall remain stayed unless and until they are amended (i) to remove claims that rely on Old GM conduct as the predicate for claims against New GM, (ii) to comply with the applicable provisions of the Decision and this Judgment (including those with respect to claims that fail to distinguish between Old GM and New GM), and (iii) to strike any purported Independent Claims by Non-Ignition Switch Plaintiffs." *Id.*, ¶ 28. Thus, while the Second Circuit arguably found that the Peller Plaintiffs should be permitted to *assert* Independent Claims,[24] the Bankruptcy Court ruled in a separate Judgment, following a review of actual allegations, that the Peller Plaintiffs had not asserted *valid* Independent Claims under a test that

[23] *See* footnote 17, *supra*.

[24] The precise ruling by the Second Circuit is "we affirm the bankruptcy court's decision not to enjoin independent claims . . . ." *Motors Liquidation Co.*, 829 F.3d at 158. While the June 2015 Judgment never authorized the Peller Plaintiffs to file Independent Claims and, therefore, an affirmance of the Judgment should only apply to Ignition Switch Plaintiffs and not them, we assumed for purposes of making this Threshold Issue argument that the Second Circuit authorized the Peller Plaintiffs to assert Independent Claims.

was consistent with the Second Circuit's Independent Claims definition. That final and separate December 2015 ruling is therefore binding on the Peller Plaintiffs.

Plaintiffs ignore these binding rulings on Independent Claims as part of the marked pleading process and, instead, focus on the interplay of the June 2015 Judgment and the resulting effect of the Second Circuit's review of that Judgment. But the April 2015 Decision explicitly stated that the Bankruptcy Court had deferred ruling on issues related to Non-Ignition Switch Plaintiffs (*see In re Motors Liquidation Co.*, 529 B.R. 510, 523 (Bankr. S.D.N.Y. 2015)), and the June 2015 Judgment (as well as the Second Circuit Opinion) did not involve the marked pleadings upon which Judge Gerber made his dispositive Independent Claims rulings in the December 2015 Judgment.

In sum, the rights of Non-Ignition Switch Plaintiffs and Post-Closing Accident Plaintiffs without the Ignition Switch Defect were determined by the December 2015 Judgment, which contained final rulings about whether such plaintiffs had asserted valid claims using an Independent Claims definition that matched the test later prescribed by the Second Circuit. Designated Counsel on behalf of Old GM vehicles owners without the Ignition Switch Defect (and the Peller Plaintiffs) decided not to appeal the December 2015 Judgment barring them from asserting their alleged Independent Claims, even though they did appeal other issues adjudicated by the December 2015 Judgment.[25] In these circumstances, the law is clear: issues not appealed from the December 2015 Judgment are *res judicata* to the parties bound by that Judgment. *See Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 600 F.3d 190, 195 (2d Cir. 2010); *Giannone v. York Tape & Label, Inc.*, 548 F.3d 191, 194 (2d Cir. 2008).

[25] *See* ECF Nos. 13576, 13578, 13579 (statements of issues on appeal with respect to the December 2015 Judgment).

B. The Bankruptcy Court Did Not Exceed Its Jurisdiction In Making the Independent Claims Ruling in the December 2015 Judgment

Plaintiffs incorrectly argue that Judge Gerber exceeded his jurisdiction when he barred them from asserting Independent Claims. But the December 2015 Judgment does not link the viability of Independent Claims to the establishment of a due process violation relating to the Sale Order. Rather, the Independent Claims bar was based on the Bankruptcy Court's review of marked pleadings and the Court having determined that such claims did not satisfy the Bankruptcy Court's definition of Independent Claims.[26]

Moreover, even if the Bankruptcy Court exceeded its jurisdiction in making its Independent Claims ruling in the December 2015 Judgment, plaintiffs waived that defense when they did not appeal that ruling. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 148 (2009) ("whether the Bankruptcy Court had jurisdiction and authority to enter the injunction in 1986 was not properly before the Court of Appeals in 2008 and is not properly before us"); *see also In re Johns-Manville Corp.*, 600 F.3d 135, 147 (2d Cir. 2010) ("*Manville IV*"). These binding precedents hold that the law's interest in the finality of a judgment is paramount to an untimely raised jurisdictional defense. *See Travelers*, 557 U.S. at 154 ("It is just as important that there should be a place to end as that there should be a place to begin litigation, and the need for finality forbids a court called upon to enforce a final order to tunnel back . . . for the purpose of reassessing prior jurisdiction de novo." (internal quotation marks and citations omitted; alteration in original)).

[26] *See* December 2015 Judgment, at 2 n.3 & ¶ 14; *see also* June 2015 Judgment, ¶ 4 (defining Independent Claims as "claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct").

Designated Counsel's citations to the *Manville* line of cases[27] do not support their argument. In *Manville IV*, the Second Circuit held that certain claimants' due process rights were violated by an over-broad bankruptcy order that had extinguished their claims. *See Manville IV*, 600 F.3d at 157-58. But the court expressly recognized that parties who had "fail[ed] to raise [that argument]" in their appeals from the district court decision had "forfeited [it]." *Id.* at 147.

Put simply, plaintiffs, represented by their sophisticated counsel, waived all objections to paragraph 14 of the December 2015 Judgment when they chose not to appeal that ruling. That tactical decision is now outcome-determinative against their Independent Claims argument. While plaintiffs offer three reasons why this Court should vacate paragraph 14 of the December 2015 Judgment (the mandate rule, the "wipe out" doctrine, and Rule 60(b) of the Federal Rules of Civil Procedure), they all have common flaws and, as discussed below, none have merit.

1. The "Mandate Rule" Does Not Relieve Old GM Vehicle Owners Without the Ignition Switch Defect of The Consequences of Their Failure to Appeal the December 2015 Judgment

Designated Counsel contend that the Second Circuit's mandate rule requires this Court to not enjoin Independent Claims.[28] The mandate rule certainly requires lower courts to follow the instructions of the appellate court. *See Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry. Co.*, 762 F.3d 165, 175 (2d Cir. 2014). The mandate rule is a feature of the law-of-the-case doctrine. However, it only "forecloses re-litigation of issues expressly or impliedly decided by the appellate court." *U.S. v. Ben Zvi*, 242 F.3d 89, 95 (2d Cir. 2001) (quoting *U.S. v. Bell*, 5 F.3d 64, 66 (4th Cir. 1993)). Moreover, the mandate rule must also be applied consistent with a parallel principle: "a decision made at a previous stage of litigation, which could have been challenged in

[27] *See* Designated Counsel's Opening Brief, at 25-26.

[28] *See id.*, at 19-20.

the ensuing appeal but was not, becomes the law of the case; the parties are deemed to have waived the right to challenge that decision . . . ." *Cty. of Suffolk v. Stone & Webster Eng'g Corp*., 106 F.3d 1112, 1117 (2d Cir. 1997); *see also Ricci v. DeStefano*, Civil No. 3:04cv1109 (JBA), 2011 WL 677263, at *1 (D. Conn. Jan. 21, 2011) ("Upon reconsideration, the Court concludes that because Plaintiffs failed to advance an argument with respect to their Section 1985 claim on appeal before the Second Circuit, they waived any challenge to this Court's ruling on that claim, and the original judgment for Defendants on that claim remains the law of the case.") (citing *County of Suffolk*)).

Non-Ignition Switch Plaintiffs cannot rely on the mandate rule for at least three independent reasons.

First, the mandate rule has no application where the Second Circuit's decision is *consistent* with the December 2015 Judgment. Both the Second Circuit Opinion and the December 2015 Judgment use a similar definition of Independent Claims: such a claim must be based solely on New GM conduct with respect to a new duty incurred by New GM to the Old GM vehicle owner after the 363 Sale.[29] The proceedings leading to the December 2015 Judgment assumed that plaintiffs could *assert* Independent Claims, but applied the Independent Claims definition to the specific claims alleged by plaintiffs. The Bankruptcy Court then ruled that plaintiffs had not asserted *valid* Independent Claims. There is nothing inconsistent between what the Bankruptcy Court did as part of the marked pleading process relating to the December 2015 Judgment, and what the Second Circuit did in discussing as a matter of jurisdiction whether the Sale Order could bar valid Independent Claims.[30]

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[29] Indeed, as plaintiffs also recognize, the Second Circuit, like the Bankruptcy Court, found that a proper Independent Claim had to be disconnected from the Sale Order or Old GM's conduct. *See* Designated Counsel's Opening Brief, at 17.

[30] The Second Circuit clearly held that the Bankruptcy Court had jurisdiction to interpret the Sale Order to determine whether the alleged Independent Claims asserted by plaintiffs violated the Sale Order. *See Motors*

Second, while the Second Circuit ruling resulted from the appeal of the June 2015 Judgment, the relevant portions of the December 2015 Judgment were never appealed. The mandate rule does not allow this Court to revisit long-final decisions that were not separately appealed. Rather, those decisions are final and become the law of the case. *See Cty. of Suffolk v. Stone & Webster Eng'g Corp.*, 106 F.3d 1112, 1117 (2d Cir. 1997).

Third, the Second Circuit Opinion never dealt with the rights of Non-Ignition Switch Plaintiffs represented by Designated Counsel since they did not appeal the June 2015 Judgment.[31] Nor did the Opinion address Post-Closing Accident Plaintiffs because those plaintiffs were not part of the June 2015 Judgment reviewed by the Second Circuit. Thus, the mandate directive could never apply to these plaintiffs, who were unquestionably the subject of the December 2015 Judgment.

For all of these reasons, the Second Circuit's mandate does not apply to the Independent Claims ruling for Old GM vehicle owners without the Ignition Switch Defect in the December 2015 Judgment.

2. The So-Called "Wipe-Out" Rule Does Not Apply

Non-Ignition Switch Plaintiffs fare no better with their argument that they should benefit from the Second Circuit Opinion because it "wipes out" this Court's Independent Claims ruling in the December 2015 Judgment.[32]

Liquidation Co., 829 F.3d at 153-54. That is what the Bankruptcy Court did as part of the December 2015 Judgment.

[31] The term "Non-Ignition Switch Plaintiffs," as defined in the Second Circuit Opinion, is limited to the Peller Plaintiffs only, and not the group represented by Designated Counsel. *See Motors Liquidation Co.*, 829 F.3d at 152 n.18, 152-154.

[32] *See* Designated Counsel's Opening Brief, at 22-23.

First, as discussed *supra*, the December 2015 Judgment was consistent with the Second Circuit Opinion. Thus, the Second Circuit Opinion could not wipe out the lower court's Independent Claims ruling in the December 2015 Judgment.

Second, the wipe out rule applies when there is "a reversal or modification in favor of an *appealing party*[.]" *Cruickshank & Co., Ltd. v. Dutchess Shipping Co., Ltd.*, 805 F.2d 465, 469 (2d Cir. 1986) (Mansfield, J., concurring) (emphasis added). Here, there is no "appealing party" with respect to the relevant Independent Claims ruling in the December 2015 Judgment.[33]

Third, the December 2015 Judgment rested on independent grounds that were not "wiped out" by the Second Circuit Opinion. In the December 2015 Judgment, the Bankruptcy Court determined that the marked pleadings and other complaints it reviewed did not state valid Independent Claims. *See supra* at 9-11.

Fourth, as noted in New GM's Opening Brief, Designated Counsel, as part of their argument why the Second Circuit Opinion was not significant enough to warrant Supreme Court review, took the position in opposing New GM's *certiorari* petition that the Second Circuit Opinion only impacted approximately 1.7 million Old GM vehicle owners. The 1.7 million vehicles are only those owned by plaintiffs asserting claims based on the Ignition Switch Defect. This admission—that the Second Circuit Opinion did not affect Non-Ignition Switch Plaintiffs—dooms their wipe out argument for Non-Ignition Switch Plaintiffs. The Opinion cannot have a different scope depending on whether the answer is beneficial to plaintiffs' position.

For each of these reasons, the wipe out doctrine does not apply here.

[33] The cases relied upon by Designated Counsel are inapposite for this and other reasons. *See Barnett v. Jaspan*, 124 F.2d 1005 (2d Cir. 1942) (decision by appellate court applied to non-appealing party to an order regarding an assignment to a trustee that was appealed by another party; there was no subsequent order that was not appealed); *Bank of China, N.Y. Branch v. NBM L.L.C.*, No. 01 Civ. 0815(DC), 2004 WL 1907308 (S.D.N.Y. Aug. 26, 2004) (same); *Daniels v. Gilbreath*, 668 F.2d 477 (10th Cir. 1982) (same).

3. Old GM Vehicle Owners Without the Ignition Switch Defect Are Not Entitled to Relief Under Rule 60(b)(5) or Rule 60(b)(6)

Plaintiffs' argument that the December 2015 Judgment should be vacated under Rule 60(b)(5) of the Federal Rules of Civil Procedure[34] likewise fails for several reasons, including the same reasons made in the preceding "wipe-out" section.

As an initial matter, plaintiffs' request for Rule 60(b) relief is procedurally improper and untimely. Old GM vehicle owners without the Ignition Switch Defect never moved for Rule 60(b)(5) relief. The Court should not construe Designated Counsel's briefing on Threshold Issues to make such a belated motion now—especially when plaintiffs have waited nearly *eight months* since the Second Circuit Opinion to even raise the issue. Although plaintiffs argue that delays of 18 months are acceptable for Rule 60(b) motions, those were not Rule 60(b)(5) cases. *See* Designated Counsel's Opening Brief, at 30. In the only two Rule 60(b)(5) cases cited by plaintiffs on timeliness, while one party waited only eleven weeks, the other party waited two years. The two year delay was held to be untimely. *See Werner v. Carbo*, 731 F.2d 204, 207 (4th Cir. 1984) (eleven weeks); *Lightfoot v. Union Carbide Corp.*, No. 92 Civ. 6411(HB), 1997 WL 752357, at *3 (S.D.N.Y. Dec. 2, 1997) (two years). Plaintiffs failed to cite *Tamayo v. Stephens*, 740 F.3d 986, 991 (5th Cir. 2014), where the Fifth Circuit found that a delay of eight months (like here) following a purported change in the law, was an unreasonable amount of time to wait. *Tamayo* was a compelling case to grant Rule 60(b) relief since it literally involved a matter of life and death. In *Tamayo*, a Rule 60(b)(5) motion, based on a Supreme Court decision issued nearly eight months earlier, filed two days before habeas petitioner's scheduled execution, was deemed untimely.

[34] The Rule provides relief from "a final judgment" that is "based on an earlier judgment that has been reversed or vacated . . . ." Fed. R. Civ. P. 60(b)(5). It is a variation of the "wipe out" rule that, as shown above, does not apply.

The Second Circuit made no ruling for parties that were not before it, such as Non-Ignition Switch Plaintiffs represented by Designated Counsel, or Post-Closing Accident Plaintiffs. Moreover, the Second Circuit made no rulings with respect to the December 2015 Judgment. In particular, it made no rulings as to whether the actual claims filed by Non-Ignition Switch Plaintiffs, including the Peller Plaintiffs, were valid Independent Claims. Thus, reliance on the Second Circuit Opinion and its limited ruling on Independent Claims could never be a basis to negate the December 2015 Judgment with respect to the final Independent Claims ruling actually made therein. In short, nothing was "reversed or vacated" by the Second Circuit with respect to the December 2015 Judgment within the meaning of Rule 60(b)(5). *See supra* at 15-16 (discussing the "wipe out" rule).

In any event, Rule 60(b)(5) is not an escape hatch for a party that failed to appeal an adverse judgment, as plaintiffs did here. *See Cruickshank & Co., Ltd.*, 805 F.2d at 467. This rule applies with particular force where, as here, Designated Counsel is highly sophisticated and fully aware of the consequences of their decision not to appeal the relevant ruling in the December 2015 Judgment—*i.e.*, that Designated Counsel forever waived the right to challenge that Judgment. Indeed, Rule 60(b)(5) has "very little application" (*Lowry Dev., L.L.C. v. Groves & Assocs. Ins., Inc.*, 690 F.3d 382, 386 (5th Cir. 2012)), and "is limited to cases in which the present judgment is based on the prior judgment in the sense of claim or issue preclusion" (11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2863 (2d ed. 1995)). *See also In re Davis*, 150 B.R. 633, 639–40 (Bankr. W.D. Pa. 1993). These circumstances are not present in this case.

Contrary to plaintiffs' assertion, the December 2015 Judgment was not based on the June 2015 Judgment. The April 2015 Decision expressly deferred issues relating to Non-Ignition Switch Plaintiffs. *See Motors Liquidation Co.*, 529 B.R. at 523 ("New GM brought still another

motion to enforce the Sale Order with respect to them, though this third motion has been deferred pending the determination of the issues here."). The Peller Plaintiffs nevertheless appealed the June 2015 Judgment raising mostly jurisdiction arguments that were rejected by the Second Circuit. *See Motors Liquidation Co.*, 829 F.3d at 152-54. Attorney Peller also raised the Independent Claims issue for his clients, and the Second Circuit noted that the Sale Order did not bar the assertion of valid Independent Claims. *Id.* at 157. The Second Circuit also defined what a valid Independent Claim would be. *Id.* ("By definition, independent claims are claims based on New GM's own post-closing wrongful conduct. . . . These sorts of claims are based on New GM's *post*-petition conduct, and are not claims that are based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct." (emphasis in original)). Other than to *affirm* the Bankruptcy Court, that is where the Second Circuit ruling on Independent Claims stopped.

The December 2015 Judgment approached the Independent Claims on a more granular level. As noted, its definition of Independent Claims was consistent with the Second Circuit's definition. Unlike the Second Circuit, however, it applied the Independent Claims definition to what actually was asserted by Old GM vehicle owners without the Ignition Switch Defect.[35]

Non-Ignition Switch Plaintiffs also appear to improperly conflate Rule 60(b)(5) and Rule 60(b)(6). The latter, which is a catchall provision, does not apply where a specific circumstance under Rule 60(b) applies. Clause (6) of Rule 60(b) provides that relief may be granted for "any other reason justifying relief from the operation of the judgment." This portion of Rule 60(b) is

[35] To the extent the December 2015 Judgment referenced the June 2015 Judgment, it was because both Judgments used the same definition of Independent Claims. *Compare* June 2015 Judgment, ¶ 4 ("Independent Claims" shall mean claims or causes of action asserted by Ignition Switch Plaintiffs against New GM (whether or not involving Old GM vehicles or parts) that are based solely on New GM's own, independent, post-Closing acts or conduct."), *with* December 2015 Judgment, at 2 n.3 ("Independent Claim" shall mean a claim or cause of action asserted against New GM that is based solely on New GM's own independent post-Closing acts or conduct. Independent Claims do not include (a) Assumed Liabilities, or (b) Retained Liabilities, which are any Liabilities that Old GM had prior to the closing of the 363 Sale that are not Assumed Liabilities.").

properly invoked only when "there are extraordinary circumstances justifying relief, when the judgment may work an extreme and undue hardship, and *when the asserted grounds for relief are not recognized in clauses (1)-(5) of the Rule*." *Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986) (emphasis added). Because the asserted grounds for relief—essentially, a wipe out of a prior judgment—are covered by Rule 60(b)(5), plaintiffs are barred from seeking extraordinary relief under Rule 60(b)(6).

Finally, "courts should not grant relief under Rule 60(b)(6) when the moving party has failed to take the steps necessary to protect its own interests, such as filing an appeal." *Allstate Ins. Co. v. Mich. Carpenters' Council Health & Welfare Fund*, 760 F.Supp. 665, 669 (W.D. Mich. 1991); *see also Jardine, Gill & Duffus, Inc. v. M/V Cassiopeia*, 523 F.Supp. 1076, 1085 (D. Md. 1981) ("Further, relief is generally unavailable under Rule 60(b)(6) when the moving party has failed to take legal steps to protect his interests, such as the prosecution of an appeal."). Given that Designated Counsel could have appealed the December 2015 Judgment to protect plaintiffs' rights, this case does not present extraordinary circumstances that justify relief under Rule 60(b)(6).

C. Designated Counsel's Due Process Argument with Respect to Independent Claims Are Irrelevant

In their Opening Brief, Designated Counsel argue that Non-Ignition Switch Plaintiffs' due process rights would be violated if the Sale Order was enforced to bar Independent Claims.[36] However, this argument is irrelevant in light of the December 2015 Judgment. In the proceedings leading to that Judgment, the Bankruptcy Court undertook the marked pleading process with the assumption that plaintiffs (including the Peller Plaintiffs) could assert Independent Claims against New GM. It then examined the actual claims filed and ruled that

[36] *See* Designated Counsel's Opening Brief, at 23-27.

they were not valid Independent Claims. This claims-specific review was a separate analysis, and was not based on due process issues.

Moreover, the claims-specific analysis was something that was expressly identified in connection with the "marked pleadings" and "other complaints" review set forth in the September 2015 Scheduling Order, subjects about which Designated Counsel were clearly on notice. In fact, Designated Counsel were involved in the drafting of the procedures set forth in the September 2015 Scheduling Order. Designated Counsel, therefore, cannot contend they were unaware that the Bankruptcy Court was going to determine the Independent Claims issue. Thus, there is no due process issue relating to the outcome-determinative December 2015 Judgment which barred their Independent Claims.

Further, Designated Counsel are wrong in asserting that proof of a due process violation is *sufficient* to state an Independent Claim. Indeed, as the Second Circuit held, irrespective of any due process violation, an Independent Claim can only be asserted if the claim is based solely on New GM conduct. *See In re Matter of Motors Liquidation Co.*, 829 F.3d 135, 157 (2d Cir 2016). Here, the Bankruptcy Court, after reviewing the claims actually asserted by plaintiffs, found that such claims were not based solely on New GM conduct, and barred plaintiffs from asserting such Claims against New GM. That determination stands and has nothing to do with due process issues.

To the extent that Designated Counsel is attempting to assert that Non-Ignition Switch Plaintiffs may still seek to establish a due process violation in order to assert *successor liability* claims against New GM, it is too late to do so, as found by the Bankruptcy Court in the November 2015 Judgment. *See Motors Liquidation Co.*, 541 B.R. at 130 n.70. This aspect of

the November 2015 Decision was not appealed by any plaintiff, and thus this ruling is now *res judicata* as to such plaintiffs.[37]

To the extent plaintiffs, including Post-Closing Accident Plaintiffs, are asserting a due process violation now with respect to the December 2015 Judgment, it is far too late. Also, seeking such relief is not permitted when plaintiffs had an opportunity to appeal the issue (*i.e.*, the Independent Claims ruling in the December 2015 Judgment), with knowledge of the issue, and chose not to. *See Allstate Ins. Co., supra*; *Jardine, Gill & Duffus, Inc., supra*.

For all of these reasons, plaintiffs' due process arguments are not relevant for this Threshold Issue.

***Second Threshold Issue (Part Two)*: This Court Should Continue to be the Gatekeeper to Determine if Claims Asserted by Plaintiffs Are Barred by the Bankruptcy Court's Rulings or Can Proceed in Non-Bankruptcy Courts**

The Second Circuit and this Court are now clear that no Old GM vehicle owner may assert Independent Claims "based on a right to payment that arose before the filing of petition or that are based on pre-petition conduct." *See Motors Liquidation Co.*, 829 F.3d at 157. Nonetheless, in seeking to recover punitive damages, plaintiffs have repeatedly sought to dress up successor liability claims as Independent Claims. *See* Section II.A *supra*.[38] For Old GM vehicle owners without the Ignition Switch Defect, this Court should continue its role as the gatekeeper to enforce the Sale Order limitations and bar these disguised successor liability claims, and/or

[37] The due process issues relating to Post-Closing Accident Plaintiffs are discussed herein with respect to Threshold Issue 4.

[38] New GM assumed Product Liabilities and agreed to pay compensatory damages, but not punitive damages, for such claims. Post-Closing Accident Plaintiffs have tried to navigate around that punitive damages restriction by asserting what they call an "Independent Claim," even though their allegations do not satisfy the definition of such Claim. In general, plaintiffs do not assert any affirmative conduct by New GM. Rather, they predicate their claim on New GM's failure to act with respect to a duty that Old GM had to the Old GM vehicle owner, that New GM never assumed. Conspicuously absent in such alleged Independent Claims is the specific reference to a new duty that New GM incurred after the 363 Sale to the specific Old GM vehicle owner.

garden variety Assumed Product Liability Claims (that may not bear punitive damages pursuant to the December 2015 Judgment).

Any determination of whether plaintiffs' claims are Retained Liabilities (that may only be asserted against Old GM) as opposed to Independent Claims (that may be asserted against New GM) requires judicial interpretation of the Sale Order and Sale Agreement. Bankruptcy Courts clearly have "arising in" jurisdiction to interpret and enforce their 363 Sale Orders. *See Motors Liquidation Co.*, 829 F.3d at 154. Moreover, Bankruptcy Courts are best suited to adjudicate issues that, as here, require interpretation of their own prior orders. *See, e.g.*, *In re Texaco Inc*., 182 B.R. 937, 947 (Bankr. S.D.N.Y. 1995) ("A bankruptcy court is undoubtedly the best qualified to interpret and enforce its own orders including those providing for discharge and injunction and, therefore, should not abstain from doing so."); *see also In re Old Carco LLC*, 438 F. App'x 30 (2d Cir. 2011) ("The bankruptcy court that entered the Enforcement Order is the same court that entered the Sale and Rejection Orders. That court is best situated to interpret the Orders."); *Deep v. Copyright Creditors*, 122 F. App'x 530, 532 (2d Cir. 2004) ("The language of the order gave the MDL court sufficient discretion to enforce its own injunction, and there is nothing in the record to suggest that the MDL court exceeded the scope of the June 2002 order. The bankruptcy court . . . was in the best position to interpret its own order."); *In re Casse*, 198 F.3d 327, 333 (2d Cir. 1999) ("As [*Colonial Auto Ctr. v. Tomlin (In re Tomlin),*105 F.3d 933 (4th Cir. 1997)] also holds, if a bankruptcy order of dismissal is ambiguous in this regard, the bankruptcy court's interpretation of its own order 'warrants customary appellate deference. The bankruptcy court was in the best position to interpret its own orders.'"). Here, among the critical Bankruptcy Court orders to be interpreted and enforced is the December 2015 Judgment, in which the Court ruled that Old GM vehicle owners without the Ignition Switch Defect had failed to assert valid Independent Claims.

Since the Sale Order, New GM has sought relief in the Bankruptcy Court with respect to claims that were being improperly asserted against it, and the Bankruptcy Court exercised its exclusive jurisdiction over such matters. *See, e.g.*, New GM's Motion to Enforce the Sale Order, filed on May 17, 2010 [ECF No. 5785] and related June 1, 2010 Hearing Transcript [ECF No. 5961] (seeking to enforce Sale Order with respect to pre-363 Sale accident cases); *In re Motors Liquidation Co.*, 447 B.R. 142 (Bankr. S.D.N.Y. 2011) (finding, in response to a motion to enforce the Sale Order, New GM did not assume liability for death of motorist who passed away after the 363 Sale where the accident occurred prior to the 363 Sale); *Castillo v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–00509, 2012 WL 1339496, at *5 (Bankr. S.D.N.Y. Apr. 17, 2012), *aff'd*, 500 B.R. 333 (S.D.N.Y. 2013), *aff'd*, No. 13-4223-BK, 2014 WL 4653066 (2d Cir. Sept. 19, 2014) (finding that New GM did not assume unconsummated class action settlement agreement regarding economic loss claims as part of the 363 Sale); *Trusky v. Gen. Motors LLC (In re Motors Liquidation Co.)*, Adv. Proc. No. 09–09803, 2013 WL 620281, at *2 (Bankr. S.D.N.Y. Feb. 19, 2013) (finding, among other things, that New GM did not assume claims based on design defects in Old GM vehicles and that "New GM [was] not liable for Old GM's conduct or alleged breaches of warranty"); *see also* New GM's motions to enforce filed in 2014.

Moreover, the history of proceedings in this Court following the December 2015 Judgment demonstrates why it is essential for the Court to maintain an active gatekeeper role. After the December 2015 Judgment, New GM sent out dozens of demand letters to plaintiffs it believed were continuing to violate the Sale Order and the Bankruptcy Court's other rulings. Most of the plaintiffs that received demand letters voluntarily agreed to amend their complaints to address inappropriate allegations, claims and requests for punitive damages, and those

lawsuits thereafter proceeded unencumbered by bankruptcy issues (in certain instances, the lawsuits were settled after receipt of a demand letter).

For those approximately 16 plaintiffs that would not voluntarily agree to amend their complaints to comply with previous Bankruptcy Court rulings, New GM filed motions with this Court to enforce the Sale Order and other rulings, and this Court retained its jurisdiction over them. One of those motions[39]—filed on June 1, 2016—concerned four plaintiffs, each of which were Non-Ignition Switch Post-Closing Accident Plaintiffs. New GM asserted, among other things, that the Independent Claims asserted by them were invalid for the same reasons as determined by the December 2015 Judgment. It also sought to bar their punitive damages request pursuant to the December 2015 Judgment. After the Court held a hearing on the June 1, 2016 Motion to Enforce, one of the plaintiffs (*Fox*) entered into a stipulation with New GM wherein the plaintiff agreed to amend her complaint to comply with the Bankruptcy Court's ruling, specifically agreeing "not to attempt to assert any Independent Claims against New GM . . . and . . . not seek punitive damages against New GM[.]"[40] That hearing repeatedly touched on bankruptcy orders and issues that would have been less familiar to a non-bankruptcy judge.[41]

In addition, this Court entered an Order (the Chapman/Tibbetts Order) with respect to two of the remaining three plaintiffs,[42] directing those plaintiffs to provide New GM with

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[39] *See Motion By General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Courts July 5, 2009 Sale Order And Injunction, and The Rulings in Connection Therewith (Veronica Alaine Fox, Claudia Lemus, Tammie Chapman and Constance Haynes-Tibbetts)*, dated June 1, 2016 [ECF No. 13634] ("**June 1, 2016 Motion to Enforce**").

[40] *Stipulation and Agreed Order Resolving Motion by General Motors LLC Pursuant to 11 U.S.C. Sections 105 and 363 to Enforce the Bankruptcy Court's July 5, 2009 Sale Order and Injunction, and the Rulings in Connection Therewith With Respect to the Fox Plaintiff*, dated July 12, 2016 [ECF No. 13679] ("**Chapman/Tibbetts Order**"), at ¶ 5.

[41] It would not be surprising if Old GM vehicle owners without the Ignition Switch Defect were more brazen in urging a court in their home states to downplay the import of this Court's rulings, especially if the local court does not have the familiarity of what occurred in this Court.

[42] The fourth plaintiff (Lemus) had previously settled her lawsuit with New GM.

"amended complaints that purport to fully comply with the Bankruptcy Court's rulings with respect to allegations in the [] Complaints, (reserving the issues related to Independent Claims and punitive damages, as described below) . . . ."[43] The Chapman/Tibbetts Order further provided:

> ORDERED that the issues raised by the June 1 Motion to Enforce and the State Court Plaintiffs' Objection concerning whether the Chapman and Tibbetts Plaintiffs can assert Independent Claims against New GM and whether the Chapman and Tibbetts Plaintiffs can seek punitive damages against New GM *shall be reserved and taken under advisement by this Court and will be addressed in a subsequent Order* ("Subsequent Order") of this Court, and, until that Subsequent Order is entered by this Court, *the Chapman and Tibbetts Plaintiffs shall be stayed and restrained from further prosecuting any Independent Claims or punitive damages*, provided however, that the Chapman and Tibbetts Plaintiff and New GM may take such actions as set forth in the prior paragraph of this Order with respect to the proposed Chapman and Tibbetts amended complaint[.]

Id. at 3 (emphasis added). This Court also retained "exclusive jurisdiction to hear and determine all matters arising from or related to" the Chapman/Tibbetts Order.[44] *Id.*

As shown by the proceedings concerning the June 1, 2016 Motion to Enforce,[45] this Court is the most capable of efficiently addressing issues in pending lawsuits, including whether claims are appropriate as Independent Claims under the Sale Order and Second Circuit

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[43] *Order Granting Partial Relief in Connection with Motion of General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Courts July 5, 2009 Sale Order And Injunction, and The Rulings in Connection Therewith*, dated July 12, 2016 [ECF No. 13680], at 2.

[44] An amended complaint was filed in the Chapman lawsuit on June 23, 2016, and that lawsuit remains pending. The Tibbetts lawsuit is currently in the discovery phase.

[45] New GM filed additional motions to enforce in 2016 with respect to other lawsuits. Specifically, (i) a motion was filed with respect to the Pilgrim Lawsuit, and that motion has been stayed pending the resolution of New GM's petition for *certiorari* to the United States Supreme Court and the resolution of the 2016 Threshold Issues, (ii) a motion was filed with respect to the *Stevens* Plaintiffs [ECF No. 13664], but the plaintiff agreed to amend her complaint, the case was tried in state court, and the jury returned a verdict in favor of New GM; accordingly, New GM withdrew the motion to enforce; and (iii) a motion was filed with respect to 11 individual lawsuits [ECF No. 13655], three of which have been resolved, and the motion for the rest of the lawsuits remains pending in light of the Second Circuit Opinion, and this Court's December 13, 2016 Order to Show Cause.

precedent.[46] By retaining jurisdiction over these issues, this Court will ensure compliance with its prior rulings, and avoid potential inconsistent rulings on bankruptcy-related issues in multiple courts around the United States.[47]

Plaintiffs cite the December 2015 Judgment for the proposition that this Court should no longer play a gatekeeping role with respect to Independent Claims. However, Designated Counsel overlook the fact that the December 2015 Judgment held that only Ignition Switch Plaintiffs could proceed with respect to their alleged Independent Claims against New GM (essentially in MDL 2543), and that all other plaintiffs had not asserted a valid Independent Claim and were barred from asserting that Claim. The Bankruptcy Court's decision to limit its gatekeeping role with respect to Independent Claims was made in that specific context.

In mid to late 2015, Judge Gerber was keenly focused on issuing rulings prior to the first Ignition Switch Post-Closing Accident bellwether trial scheduled for early 2016. *See* August 31, 2015 Hr'g Tr. [ECF No. 13438], at 5:19-20.[48] He viewed his Ignition Switch Defect-related

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[46] There are dozens of lawsuits pending in myriad courts throughout the Country against New GM involving Old GM vehicles without the Ignition Switch Defect that contain inappropriate allegations, claims and/or requests for damages.

[47] Designated Counsel take the Court's *Trusky v. Gen Motors Co. (In re Motors Liquidation Co.)*, Adv. No. 12-09803 (REG), 2013 WL 620281 (Bankr. S.D.N.Y. Feb. 19, 2013), decision out of context. There, it was only after the Bankruptcy Court had ruled on which claims were assumed by New GM, and which were not, that New GM requested transfer back to the original court. The remaining claim that New GM requested be transferred back to the original court was simply a "garden-variety breach of warranty action" based on the glove box warranties that it had assumed and which had not yet expired. *Id.* at *2, *9. The Bankruptcy Court made clear that "New GM was entitled, at the least, to a determination from me as to what my order covered and didn't cover, which was the essence of its effort to transfer." *Id.* at *9 n.6. This is precisely what New GM requests herein.

Designated Counsel's reliance on *Park Ave. Radiologists, P.C. v. Melnick (In re Park Ave. Radiologists, P.C.)*, 450 B.R. 461, 469 (Bankr. S.D.N.Y. 2011) is also misplaced as that case concerned a dispute between a reorganized debtor and an employee, and the plan did not provide for the retention of jurisdiction over the dispute. In contrast, here, the claims at issue require the Court to interpret and enforce the Sale Order and the Court's previous rulings. As the Second Circuit held, "the bankruptcy court ha[s] jurisdiction to interpret and enforce the Sale Order." *Motors Liquidation Co.*, 829 B.R. at 154.

[48] *See also* August 31, 2015 Hr'g Tr., at 7:13-8:5 ("Now, it seems to me that we have three things that Jesse Furman identified as important to him, and then we have one or two more that I have to worry about as well. Seems to me that highest on the list is determining the issues, vis-a-vis punitive damages. . . . And third is getting the bankruptcy work done that is necessary for the bellwether trial or trials beyond those two issues.").

gatekeeper role primarily in the context of MDL 2543, and focused on supplying Judge Furman with rulings necessary for the bellwether trials. He noted:

> it seems to me that my role in life is as kind of a gatekeeper on pleadings, to ascertain the extent to which certain kinds of claims are or are not permissible under the judgment and under bankruptcy law, after which Jesse Furman would decide whether whatever passes the gatekeeper is or is not actionable as a matter of non-bankruptcy law.

Id. at 14:3-9.

The Ignition Switch Defect cases were then (and remain) generally concentrated in one forum, MDL 2543, before Judge Furman. One of the purposes of MDL 2543 is to make rulings that will help guide judges if and when those cases are sent back to the transferor courts. Judge Gerber and Judge Furman coordinated with respect to the determination of bankruptcy issues so that the MDL could be effectively administered. Thus, in deciding the limits of his gatekeeper function, Judge Gerber deferred to Judge Furman to make Independent Claims rulings in the Ignition Switch MDL consistent with the bankruptcy guideposts set by him.

At the same time he deferred to Judge Furman on Ignition Switch Defect-related issues, Judge Gerber also held that Old GM vehicle owners without the Ignition Switch Defect had failed to state valid Independent Claims based on his review of their pleadings. Judge Gerber never ruled that Old GM vehicle owners without the Ignition Switch Defect could violate the Sale Order or the December 2015 Judgment without answering to the Bankruptcy Court. In fact, paragraph 37 of the December 2015 Judgment provided that the Bankruptcy Court would retain jurisdiction "to the fullest extent permitted under law, to construe or enforce the Sale Order, this Judgment and the Decision on which it was based . . . ." He also held that the December 2015 Judgment could "not be collaterally attacked, or otherwise subjected to review or modification,

in any Court other than this Court or any court exercising appellate authority over this Court. " *Id.*[49]

Finally, the seven and one half year history of the *Old GM* bankruptcy case demonstrates the types of issues New GM would bring to the Bankruptcy Court for interpretation/enforcement of the Sale Order. New GM has not asked the Bankruptcy Court to resolve cases involving Assumed Liabilities (*e.g.*, post-363 Sale accident cases involving assumed Product Liabilities) or based on a new obligation New GM incurred to an Old GM vehicle owner after the 363 Sale (*e.g.*, certified pre-owned-vehicles with a New GM warranty). New GM has consistently sought this Court's review for only those types of claims New GM believes violate the Sale Order.

The Court's retention of jurisdiction to interpret and enforce the Sale Order was an important bargained-for provision. Based on its actual experience with plaintiffs' pleadings, New GM remains justly concerned that plaintiffs will seek to circumvent the Sale Order before local courts less familiar with bankruptcy issues and these bankruptcy proceedings. Moreover, permitting multiple courts to determine the same issue could lead to inconsistent judgments and inequitable results. In sum, this Court, and not a non-bankruptcy court, is in the best position to efficiently and consistently interpret and enforce its prior orders, decisions and judgments.

***Second Threshold Issue (Part Three)*: Designated Counsel's Additional Arguments with Respect to Why Certain Plaintiffs Should Not Be Bound By the December 2015 Judgment Are Without Merit**

Designated Counsel proffers other reasons why Post-Closing Accident Plaintiffs should not be bound by the December 2015 Judgment. None of these arguments have merit.

First, Designated Counsel asserts that the proceedings leading to the December 2015 Judgment only concerned Ignition Switch Post-Closing Accident Plaintiffs. *See* Designated

[49] As noted, the Independent Claims ruling in the December 2015 Judgment was never appealed so it is final and enforceable as against all Old GM vehicle owners without the Ignition Switch Defect.

Counsel's Opening Brief, at 42. Not true. New GM served the September 2015 Scheduling Order on many Non-Ignition Switch Post-Closing Accident Plaintiffs so they would be bound by the Court's ultimate ruling.[50] In addition, the September 2015 Scheduling Order provided that New GM could mark-up representative samples of complaints to demonstrate how certain causes of action violated the Sale Order.[51] Among others, Post-Closing Accident Plaintiffs' complaints filed by *Moore* (1996 GMC Pickup Truck), *Benbow* (2005 Chevrolet Malibu), and *Rickard* (2002 Chevrolet S-10 Pickup Truck) were each marked-up. *Id.* Likewise, the complaints filed by Attorney Peller, who represents certain Non-Ignition Switch Plaintiffs and Non-Ignition Switch Post-Sale Accident Plaintiffs, were also marked up and submitted to Judge Gerber. *See* ECF No. 13523. The Bankruptcy Court issued rulings in connection with Non-Ignition Switch Post-Closing Accident Plaintiffs. *See* December 2015 Judgment, at ¶¶ 14-18, 28. Accordingly, the proceedings leading to the December 2015 Judgment concerned *all* Post-Closing Accident Plaintiffs, not just Ignition Switch Post-Closing Accident Plaintiffs.

Second, Designated Counsel argue that if plaintiffs (they do not mention which ones) did not participate in the briefing leading up to the December 2015 Judgment, they should not be bound to the Judgment.[52] But the September 2015 Scheduling Order expressly provided that, regardless of whether plaintiffs participated in the briefing, they would be bound by the Bankruptcy Court's rulings. The Bankruptcy Court authorized New GM to serve the September 2015 Scheduling Order on plaintiffs with the following Court-approved cover note:

> If you have any objection to the procedures set forth in the Scheduling Order, you must file such objection in writing with the Bankruptcy Court within three (3) business days of receipt of this notice ("Objection"). *Otherwise, you will be*

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[50] *See Certificate of Service*, dated September 10, 2015 [ECF No. 13428].

[51] New GM was not required to mark-up all offending complaints, but could choose representative samples covering all lawsuits. *See* September 2015 Scheduling Order, at 5. New GM did just that.

[52] *See* Designated Counsel's Opening Brief, at 43.

> *bound by the terms of the Scheduling Order and the determinations made pursuant thereto.* If you believe there are issues that should be presented to the Court relating to your lawsuit that will not otherwise be briefed and argued in accordance with the Scheduling Order, you must set forth that position, with specificity in your Objection.

September 2015 Scheduling Order, at 4 (emphasis added). Designated Counsel were involved in the drafting of the consensual form of the September 2015 Scheduling Order. Designated Counsel cannot be heard to complain now about procedures they approved on behalf of plaintiffs they represent in these bankruptcy proceedings.[53]

Third, Designated Counsel argue that the December 2015 Judgment could not bind them with respect to Independent Claims because the September 2015 Scheduling Order did not use that specific phrase.[54] However, the September 2015 Scheduling Order did set forth procedures for New GM to mark up complaints and for plaintiffs to respond to those marked-up complaints. Moreover, in New GM's letter regarding the marked-up Second Amended Consolidated Complaint, it identified the Non-Ignition Switch Plaintiff/Independent Claim issue. New GM also specifically stated that "[t]he issues raised by the Marked MDL Complaint are also found in other complaints filed in lawsuits, some in MDL 2543 and some not. New GM's arguments are equally applicable to such other lawsuits and any rulings by the Court should be binding on all plaintiffs with complaints raising similar issues." *Id.* at 1 n.1. All plaintiffs served with the September 2015 Scheduling Order were also served with the Marked MDL Complaint letter (as

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[53] This Court dealt with this very issue in connection with the December 13, 2016 Order to Show Cause, when Peller made the same argument as that now being advanced by Designated Counsel. The Court overruled Peller's objection to proceeding with the resolution of the 2016 Threshold Issues in the same way as was done with respect to the issues set forth in the September 2015 Scheduling Order. *See* November 16, 2016 Hr'g Tr., at 38:22-42:18. Importantly, Designated Counsel agreed that the 2016 Threshold Issues could be addressed through service of an order, and that the commencement of an adversary proceeding was not required. *See id.*, at 32:1-5 ("THE COURT: I mean, it does seem, to me, to work. When I read the objections that said adversary proceeding, that just is not right. MR. WEINTRAUB: Right. We always thought that it works so long as people actually receive it.").

[54] *See* Designated Counsel's Opening Brief, at 43.

well as all other pleadings filed by New GM).[55] Lead Counsel in MDL 2543 filed a letter with the Bankruptcy Court [ECF No. 13495] in response to New GM's Marked MDL Complaint letter, asserting that New GM's "arguments fail because all of the claims in the SACC arise solely from New GM's independent actionable conduct." In addition, Goodwin Procter (which is counsel for Pre-Closing and Post-Closing Accident Plaintiffs herein) filed a letter with the Bankruptcy Court [ECF No. 13475] in response to New GM's Marked Bellwether Complaints letter, addressing Independent Claims issues. Thus, contrary to Designated Counsel's argument, the Independent Claims issue was raised during the proceedings leading to the December 2015 Judgment, all plaintiffs were on notice of New GM's arguments, and Designated Counsel actively litigated the issue.

In any event, if Designated Counsel or other plaintiffs believed that the Bankruptcy Court's Independent Claims ruling in the December 2015 Judgment was wrong for this or any reason, they should have appealed that Judgment. Having made the decision not to appeal this ruling, they are bound by the ruling.

Fourth, as further demonstrated in the section of this brief responding to the Supplemental Opening Brief filed by Christopher and Gwendolyn Pope ("Pope Supplemental Brief"), *infra*, the letters sent to plaintiffs by New GM were accurate. The reference to Independent Claims in such letters referred to the Independent Claims ruling made in the June 2015 Judgment for Ignition Switch Plaintiffs only. If there was any confusion with respect to the September 2015 Scheduling Order or the cover note served by New GM (which was approved by the Bankruptcy Court in the September 2015 Scheduling Order), other plaintiffs certainly

[55] *See Certificate of Service*, dated September 28, 2015 [ECF 13474]; *see also Certificates of Service* found at ECF Nos. 13440, 13457, 13464, 13467, 13468, 13485.

could have raised those issues with the Bankruptcy Court; they did not.[56] They also could have appealed the Court's Independent Claims ruling. They did not. Certainly Designated Counsel could not have any confusion regarding the cover note or the September 2015 Scheduling Order since they participated in the process which led to their approval by the Bankruptcy Court.

Fifth, Designated Counsel argue that the November 2015 Decision was only an interlocutory order based on a reference in footnote 70 to the May 2015 Form of Judgment Decision. The segment quoted provided background that, as of such date, Non-Ignition Switch Plaintiffs had not yet shown a due process violation relating to the Sale Order, and unless and until they did, the Sale Order would remain in effect. Plaintiffs, however, fail to mention the actual ruling set forth in footnote 70 which held that Non-Ignition Switch Plaintiffs, after having been given a full opportunity, failed to show they incurred a due process violation relating to the Sale Order, and it was now too late for them to do so.[57] That ruling was certainly not interlocutory, and the failure to appeal that final ruling has preclusive consequences to plaintiffs.

Sixth, as explained in New GM's Opening Brief, plaintiffs that commenced their cases after the December 2015 Judgment should still be bound by the "law of the case" doctrine unless they raise new arguments that the Court has not previously considered. *See* New GM's Opening Brief, at 35-37. None have done so.

Finally, any remaining issues with respect to the applicability of the December 2015 Judgment should proceed before this Court on a plaintiff-by-plaintiff basis. The June 2015

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[56] As demonstrated by the Pope Supplemental Opening Brief, these are fact-specific issues and if a plaintiff seeks to raise them, like Pope, they should do so on an individual basis.

[57] The relevant language is as follows: "[Non–Ignition Switch Plaintiffs] could have tried to show the Court that they had "known claims" and were denied due process back in 2009, but they have not done so. The Court ruled on this expressly in the Form of Judgment Decision. . . . That ruling stands. . . . [W]ithout a showing of a denial of due process—and the Non–Ignition Switch Plaintiffs have not shown that they were victims of a denial of due process—the critically important interests of finality (in each of the 2009 Sale Order and the 2015 Form of Judgment Decision and Judgment) and predictability must be respected, especially now, more than 6 years after entry of the Sale Order." *Motors Liquidation Co.*, 541 B.R. at 130 n.70 (citation omitted).

Judgment contained procedures for plaintiffs to file pleadings with the Bankruptcy Court, if they asserted unique issues that would make previous rulings inapplicable to their cases.[58] The Court should fashion similar procedures here, as plaintiffs continue to commence lawsuits against New GM that contain claims and inappropriate requests for punitive damages that violate the Sale Order.[59]

III.

***Third Threshold Issue*:**

A. Designated Counsel Misstates the Definition of Used Car Purchasers, Which is Limited to Ignition Switch Plaintiffs Only

Designated Counsel correctly cites to the Second Circuit's definition of Used Car Purchasers: "The Second Circuit defined Used Car Purchasers as a *subset of Ignition Switch Plaintiffs* 'who had purchased Old GM cars second hand after the §363 sale closed.'" Designated Counsel's Opening Brief, at 47 (emphasis added). In the very next sentence, however, plaintiffs seek to reject the Second Circuit's limited definition of Used Car Purchasers and contend that the term *should* mean all Old GM owners who purchased their vehicles after the 363 Sale, regardless of whether they were Ignition Switch Plaintiffs. *Id*. Designated Counsel are wrong: they cannot expand the Second Circuit's definition of Used Car Purchasers. The Second Circuit dealt with three appellant groups: Ignitions Switch Plaintiffs, Ignition Pre-Closing

[58] *See, e.g.*, June 2015 Judgment, ¶ 8(c) ("If counsel for an Ignition Switch Pre-Closing Accident Plaintiff (including, but not limited to, one identified on Exhibit "A") believes that, notwithstanding the Decision and this Judgment, it has a good faith basis to maintain that its lawsuit against New GM should not be stayed, it shall file a pleading with this Court within 17 business days of this Judgment ("**No Stay Pleading**"). The No Stay Pleading shall not reargue issues that were already decided by the Decision, this Judgment, or any other decision, order, or judgment of this Court. If a No Stay Pleading is timely filed, New GM shall have 17 business days to respond to such pleading. The Court will schedule a hearing thereon if it believes one is necessary.").

[59] Designated Counsel's belated argument that New GM should have filed a motion to enforce relating to the December 2015 Judgment is wrong. *See* Designated Counsel's Opening Brief, at 43. As with the 2016 Threshold Issues, the Bankruptcy Court, with the consent of Designated Counsel, approved the procedures pursuant to which certain issues would be decided by the Bankruptcy Court without the necessity of further motions to enforce being filed by New GM. *See* September 2015 Scheduling Order. Designated Counsel and all other plaintiffs have waived this argument.

Accident Plaintiffs, and Non-Ignition Switch Plaintiffs (the Peller Plaintiffs). The Second Circuit's description of Used Car Purchasers as a subset of only one of the appellate groups (*i.e.*, Ignition Switch Plaintiffs) cannot be disregarded. *See e.g., Piambino v. Bailey*, 757 F.2d 1112, 1119 (11th Cir. 1985) (lower court is bound to follow the appellate court's holdings). In short, the Second Circuit's limited definition of Used Car Purchasers is controlling.

B. Designated Counsel Failed to Address Well Established Law that Used Car Owners Do Not Acquire Derivative Claims Against New GM that are Greater than that Held by their Sellers

Plaintiffs are seeking to expand the effect of the Second Circuit Used Car Purchasers ruling because they want to avoid the well-established rule that a used car owner acquires no rights greater than what its seller had. The Bankruptcy Court ruled:

> [t]he successor in interest to a person or entity cannot acquire greater rights than his, her, or its transferor. That is the principle underlying the *Wagoner* Rule, which, while an amalgam of state and federal law, is firmly embedded in the law in the Second Circuit. And that principle has likewise been applied to creditors seeking better treatment than the assignors of their claims.

Motors Liquidation Co., 529 B.R. at 571-72.

The Bankruptcy Court concluded that if the original seller was barred by the Sale Order from asserting successor liability claims, then the used car owner would also be barred for such acquired claims:

> An owner of an Old GM vehicle should not be able to end-run the applicability of the Sale Order and Injunction by merely selling that vehicle after the closing of the 363 Sale…if the Sale Order and Injunction would have applied to the original owners who purchased the vehicle prior to the 363 Sale, it equally applies to the current owner who purchased the vehicle after the 363 Sale. There is no basis in logic or fairness for a different result.

Id. at 572.

Because this aspect of the April 2015 Decision was not overturned by the Second Circuit Opinion, it remains the law of the case with respect to used car owners' claims against New

GM.[60] *See Cty. of Suffolk v. Stone & Webster Eng'g Corp.*, 106 F.3d 1112, 1117 (2d Cir. 1997) ("[A] decision made at a previous stage of litigation, which could have been challenged in the ensuing appeal but was not, becomes the law of the case; the parties are deemed to have waived the right to challenge that decision . . . .").[61]

Judge Gerber distinguished the *Grumman Olson* "future creditor" precedent because the previous owner of the vehicle had a pre-petition relationship with Old GM, and the economic loss claim being asserted was based on conditions in the Old GM vehicle that existed as of the 363 Sale. *Id.* That rationale is entirely consistent with the Second Circuit Opinion as to which creditors of Old GM could be bound by the Sale Order. *See Motors Liquidation Co.*, 829 F.3d at 156 ("[A] [successor liability] claim must arise from a (1) right to payment (2) that arose before the filing of the petition or resulted from pre-petition conduct fairly giving rise to the claim. Further, there must be some contact or relationship between the debtor and the claimant such that the claimant is identifiable."). Because the original seller would be subject to the Sale Order, the derivative rights of its' assignee (*i.e.*, the used car owner) are limited by what could be transferred to it. For that reason, the Bankruptcy Court properly held Judge Bernstein's *Old Carco*[62] decision to be the controlling precedent for all used car owners.

In its Opening Brief, New GM referred to *Karu* as a representative case where used car owners in vehicles without the Ignition Switch Defect were asserting dressed up successor

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[60] To the extent the seller (*i.e.*, Ignition Switch Plaintiff) is not bound by Sale Order, neither would its assignee.

[61] The "law of the case" doctrine provides that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988); *see also In re Enron Corp.*, Adv. Proc. No. 04–04303 (AJG), 2006 WL 1030413, at *6 (Bankr. S.D.N.Y. Apr. 10, 2006) ("The Examiner chose not to appeal the denial, and the ruling is the law of the case.").

[62] *Burton v. Chrysler Grp., LLC (In re Carco)*, 492 B.R. 392 (Bankr. S.D.N.Y. 2013) (used car owners could not assert claim against the purchaser for a latent defect in vehicles manufactured by the debtor).

liability claims against New GM, disguised as Independent Claims.[63] Another good example is the *Sesay* case filed by Peller.[64] In *Sesay*, the owner of an Old GM vehicle without the Ignition Switch Defect bought his vehicle after the 363 Sale *from a friend*, who was unaffiliated with New GM. *See* Sesay Compl., ¶ 1. Mr. Sesay, as a used car owner, asserted the following economic loss claims against New GM: (a) breach of an implied warranty of merchantability; (b) fraudulent concealment of defects in the Old GM vehicle; (c) breach of state consumer protection statute; and (d) negligence in the design of the Old GM vehicle.[65] All of these claims are based, at least in part, on Old GM conduct, and thus are successor liability claims.[66] Since the original owner of the Old GM vehicle could not assert these claims against New GM because of the Sale Order, neither can Mr. Sesay, the assignee of the seller's rights in the vehicle.

In sum, when the Second Circuit ruled that the limited group of Ignition Switch Used Car Purchasers would not be bound by the "no successor liability" ruling in the Sale Order, that did not change black letter law relied upon by the Bankruptcy Court. The real issue is whether other used car owners can assert a claim against New GM for a Retained Liability that New GM never assumed. Applying well-established laws, such used car owners cannot do so because their original seller could not assert a Retained Liability against New GM. That ruling remains sound even after the Second Circuit's limited ruling applicable to Ignition Switch Used Car Purchasers.

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63 *See* New GM's Opening Brief, at 51.

64 *Sesay et al. v. General Motors LLC*, 1:14-cv-0618 (JMF) (S.D.N.Y.); 1:14-md-02543 (JMF) (S.D.N.Y.). A copy of the complaint ("**Sesay Complaint**") filed in the Sesay Lawsuit is attached hereto as **Exhibit "C."**

65 There was also a punitive damage request which violated the December 2015 Judgment.

66 Section 2.3(b) of the Sale Agreement provides that Retained Liabilities include: (xi) "all Liabilities to third parties for Claims based upon Contract, tort or any other basis"; (xvi) "all Liabilities arising out of, related to or in connection with any (A) implied warranty or other implied obligation arising under statutory or common law without the necessity of an express warranty or (B) allegation, statement or writing attributable to Sellers [Old GM]." *See also* Sale Order, ¶ 56 ("The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials.").

IV.

***Fourth Threshold Issue*: Post-Closing Accident Plaintiffs Cannot Recover Punitive Damages Predicated on Successor Liability**

New GM agreed to pay compensatory damages for Product Liabilities (as defined in the Sale Agreement) arising from post-363 Sale accidents involving Old GM vehicles. Accordingly, the only question under Threshold Issue 4 is whether, as part of a successor liability claim relating to a post-363 Sale Accident, plaintiffs may also seek punitive damages. As explained in New GM's Opening Brief, the answer is no. Plaintiffs cannot dispute that the December 2015 Judgment decided the punitive damages issue against them. Paragraph 6 of the December 2015 Judgment states that New GM is not "liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM." That ruling is dispositive; it was not appealed and *res judicata* bars plaintiffs' attempt to re-litigate the issue now. *See, e.g., Travelers' Indem. Co.*, 557 U.S. at 151; *Duane Reade, Inc.*, 600 F.3d at 195 (*res judicata* precludes parties from re-litigating issues that were or could have been raised in that action); *Giannone v. York Tape & Label, Inc*., 548 F.3d 191, 194 (2d Cir. 2008).

Plaintiffs had the opportunity to establish their rights to punitive damages before the December 2015 Judgment. Paragraph 1 of the September 2015 Scheduling Order expressly identified the punitive damages issue as follows:

> The briefing schedule with respect to the issue ("Punitive Damage Issue") in complaints filed against General Motors LLC ("New GM") that request punitive/special/exemplary damages against New GM based in any way on the conduct of Motors Liquidation Co. (f/k/a General Motors Corporation) ("Old GM") shall be as follows;

September 2015 Scheduling Order, at 1, ¶ 1. The September 2015 Scheduling Order was served on Post-Closing Accident Plaintiffs that had sued New GM. They were a known group in 2015 and were given the right to be heard on this issue before it was decided by the Bankruptcy Court.

Moreover, Designated Counsel actively participated in the process. They submitted substantive briefs on the punitive damage issue [*see* ECF Nos. 13434, 13436][67] for, among others, Post-Closing Accident Plaintiffs. Judge Gerber flatly rejected their arguments, holding that:

> New GM did not contractually assume liability for punitive damages from Old GM. Nor is New GM liable for punitive damages based on Old GM conduct under any other theories, such as by operation of law. Therefore, punitive damages may not be premised on Old GM knowledge or conduct, or anything else that took place at Old GM.

December 2015 Judgment, ¶ 6. This ruling conclusively rejected any Post-Closing Accident Plaintiffs' entitlement to punitive damages under a successor liability theory, given that successor liability claims are necessarily dependent upon Old GM conduct. *Id*.

Designated Counsel relies on *Grumman Olson*, but that case supports New GM's position. There, Judge Bernstein acknowledged that the "future claims" issue he was dealing with would *not* occur in the *Old GM* case since New GM assumed Product Liability claims arising from post-363 Sale accidents of Old GM vehicles:

> The rule does not extend to potential future tort claims of the type now asserted by the Fredericos, and the GM sale order did not grant this relief. To the contrary, the buyer in GM assumed "all product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing of the 363 transaction, *regardless of when the product was purchased*."

In re Grumman Olson Indus., Inc., 445 B.R. 243, 255 (Bankr. S.D.N.Y. 2011) (citations omitted, emphasis in original), *aff'd*, 467 B.R. 694 (S.D.N.Y. 2012).

Even if *Grumman Olson* was applicable (it is not), the case is *sui generis* because the injured party had no dealings with the debtor. Instead, the Grumman Olson plaintiff was not the owner of the debtor's vehicle and had no relationship with the debtor as of the 363 Sale. The plaintiff's only connection was that he was driving the vehicle after the 363 Sale when the

[67] In addition, the *Moore* Plaintiffs, who are Non-Ignition Switch Post-Closing Accident Plaintiffs, also submitted a substantive brief on the punitive damages issue. *See Brief of Plaintiffs Regarding Punitive Damages Issue*, dated September 13, 2015, a copy of which is attached hereto as **Exhibit "D."**

accident occurred. In contrast, the vast majority of Post-Closing Accident Plaintiffs had a direct relationship with Old GM as the purchaser/lessee of an Old GM vehicle or the assignee of such purchaser/lessee (who stands in the shoes of the original purchaser). Their contingent claim arising from an alleged latent defect existed as of the 363 Sale and, therefore, they are not future creditors of Old GM. They were unknown creditors who were bound by the no successor liability ruling in the Sale Order. *See Motors Liquidation Co.*, 829 F.3d at 157.

Judge Gerber's November 2015 Judgment noted with approval New GM's argument that punitive damages are different from compensatory damages because plaintiffs have no property rights to punitive damages. *See, e.g.*, *Motors Liquidation Co.*, 541 B.R. at 121; *Engquist v. Or. Dep't. of Agric.*, 478 F.3d 985, 1002 (9th Cir. 2007). As the Ninth Circuit stated: "punitive damages do not follow compensatory damages, as interest follows principal." *Id*. at 1003. Punitive damages are "never awarded as of right, no matter how egregious the defendant's conduct," in contrast to compensatory damages, which "are mandatory, once liability is found . . . ." *Id.* (citing *Smith v. Wade*, 461 U.S. 30, 52 (1983)).

Indeed, punitive damages and compensatory damages serve different goals. Compensatory damages are "intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) (citing Restatement (Second) of Torts § 903 (1979)). By contrast, punitive damages are imposed to serve two policy objectives: punishing unlawful conduct and deterring its repetition. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996). A punitive damage award does not serve any compensatory goals. *See Engquist*, 478 F.3d at 1002, 1004; *Home Ins. Co. v. Am. Home Prods. Corp*., 75 N.Y.2d 196, 200 (1990) (punitive damages are a windfall for the plaintiff who has been made whole by compensatory damages). As the Supreme Court has repeatedly cautioned:

> It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

State Farm, 538 U.S. at 418; *see also City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266–67 (1981) ("Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor . . . and to deter him and others from similar extreme conduct.").

Here, the overriding policy objectives for punitive damages are not served by allowing such damages for successor liability claims. As the Bankruptcy Court held in the November 2015 Decision, "[s]ince punitive damages punish past conduct (which, for Liabilities to be assumed, would by definition have been Old GM's, not New GM's), and deter future wrongdoing (which could not occur in the case of a liquidating Old GM), imposing punitives for Old GM conduct would not be consistent with punitive damages' purposes . . . ." *Motors Liquidation Co.*, 541 B.R. at 120.

This Court should therefore affirm Judge Gerber's ruling, especially where (i) the purchaser was found to be a "good faith purchaser" within the meaning of Section 363(m) of the Bankruptcy Code, (ii) the purchaser never assumed punitive damages under the Sale Agreement, (iii) the plaintiffs are selectively seeking to enforce the provisions of the Sale Agreement that are favorable to them, but trying to ignore the "no successor liability" provision that restricts them, and (iv) the insolvent debtor, Old GM, would not be liable for punitive damages based on the priority scheme of the Bankruptcy Code because it would punish the innocent creditors of the debtor/seller.

In sum, Designated Counsel's Opening Brief misses the mark on Threshold Issue 4, ignoring that (i) the punitive damage issue was fully litigated and decided in the November 2015 Decision/December 2015 Judgment; and (ii) plaintiffs chose not to appeal that ruling.

Accordingly, all Post-Closing Accident Plaintiffs are barred from seeking punitive damages against New GM in connection with successor liability claims.

V.

REPLIES TO SUPPLEMENTAL OPENING BRIEFS

A. Pillars Supplemental Opening Brief

Whether Pillars is a Non-Ignition Switch Pre-Closing Accident Plaintiff or a Non-Ignition Switch Post-Closing Accident Plaintiff is no longer before this Court. It will be decided by Judge Furman in the appeal of the Pillars orders.[68]

Pillars is not an Ignition Switch Plaintiff. His vehicle was a 2004 Pontiac Grand Am, which was not included in the list of vehicles subject to Recall No. 14V-047. While Pillars contests whether he is a Pre-Closing or a Post-Closing Accident Plaintiff, that question is not relevant for this Threshold Issue. He clearly is *not* an Ignition Switch Plaintiff, an Ignition Switch Pre-Closing Accident Plaintiff or an Ignition Switch Post-Closing Accident Plaintiff.

In his Supplemental Brief, Pillars asserts that New GM admitted that he is an Ignition Switch Plaintiff. *See* Pillars Supplemental Brief, at 5-6. This statement is wrong. In fact, in connection with the appeal before Judge Furman, New GM expressly stated that "Pillars is *not* a Pre-Closing Accident Plaintiff with the Ignition Switch Defect; he is a Pre-Closing Accident Plaintiff *without* the Ignition Switch Defect."[69]

Indeed, the June 2015 Judgment provided that the rulings applied to Non-Ignition Switch Pre-Closing Accident Plaintiffs (subject to them filing an Objection Pleading). Pillars was listed on Exhibit "D," the list of "Non-Ignition Switch Complaints Subject to the Judgment." Clearly,

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[68] While Pillars seeks to rehash previous arguments made in connection with the underlying dispute between New GM and Pillars (*see* Pillars Supplemental Opening Brief, at 6-7), such arguments are not germane to the issues before this Court and will be addressed in the appeal before Judge Furman.

[69] MDL 2543 ECF No. 3331 (emphasis in original).

New GM *and* the Bankruptcy Court considered Pillars a Non-Ignition Switch Pre-Closing Accident Plaintiff subject to the June 2015 Judgment. Indeed, after the June 2015 Judgment, New GM informed all Non-Ignition Switch Pre-Closing Accident Plaintiffs, including Pillars, that the June 2015 Judgment applied to them for the same reasons it applied to Ignition Switch Pre-Closing Accident Plaintiffs. This is precisely why Pillars filed his no-stay pleading with the Bankruptcy Court.

Contrary to Pillars argument, New GM never said that Non-Ignition Switch Pre-Closing Accident Plaintiffs (including Pillars) were Ignition Switch Plaintiffs. This fact is borne out by the New GM briefs cited by Pillars in his Supplemental Opening Brief. New GM's statement in its response to Pillars' no stay pleading, that Pillars' claim was "identical" to claims of Ignition Switch Pre-Closing Accident Plaintiffs, is clearly not the same as saying Pillars actually *was* an Ignition Switch Pre-Closing Accident Plaintiff. In addition, at that time, *all* Pre-Closing Accident Plaintiffs, whether Ignition Switch (on collateral estoppel grounds) or Non-Ignition Switch (on *stare decisis* grounds), were not permitted to assert claims against New GM. New GM's obvious point was that Non-Ignition Switch Pre-Closing Accident Plaintiffs were similarly situated and their claims should be barred by the Sale Order, as a matter of collateral estoppel, for the same reason as Ignition Switch Pre-Closing Accident Plaintiffs.[70]

[70] New GM quoted from the June 2015 Judgment in its' *Pillars* appellate brief to explain the context for the Bankruptcy Court's December 2015 Judgment where it found that "on two separate occasions that any claim based on a pre-363 Sale accident—like the claims asserted by Appellee [Pillars]—cannot be asserted against New GM, and is proscribed by the Sale Order and Injunction[.]" Pillars DC Appeal, ECF No. 10. The December 2015 Judgment provides that "***all*** Pre-Closing Accident Plaintiffs" are barred from asserting claims against New GM. *See* December 2015 Judgment, at ¶ 36 (emphasis added). It does not differentiate between Ignition Switch Pre-Closing Accident Plaintiffs and Non-Ignition Switch Pre-Closing Accident Plaintiffs. New GM's citations to the foregoing documents were meant to illustrate that Pillars, as a plaintiff asserting claims based on an accident that occurred prior to the 363 Sale, was a Pre-Closing Accident Plaintiff and all of his claims were barred by the Sale Order. New GM has never contended that Pillars was an Ignition Switch Plaintiff.

Pillars' reference to the Second Circuit Opinion[71] also supports New GM, not Pillars. In his Supplemental Opening Brief, Pillars quotes the Second Circuit's statement that New GM issued over 60 recalls from February to October 2014 as support for his assertion that all 60 recalls concerned a defective ignition switch. *See* Pillars Supplemental Brief, at 8. However, the Second Circuit's statement does not expand the definition of "Ignition Switch Plaintiffs," as most of the 60-plus recalls issued by New GM in 2014 did *not* concern an ignition switch issue, but different issues such as safety restraint systems, airbags, seats, brakes, steering, powertrain, transmission shift cables and other matters.[72]

In sum, Pillars is *not* an Ignition Switch Plaintiff, an Ignition Switch Pre-Closing Accident Plaintiff or an Ignition Switch Post-Closing Accident Plaintiff. To comply with Judge Furman's request for clarification, this Court should so affirm this legal conclusion.

B. Pilgrim Supplemental Opening Brief

The Pilgrim Plaintiffs[73] assert in their supplemental opening brief ("Pilgrim Supplemental Brief") that they were not a party to the Bankruptcy Court's proceedings and could not have appealed those rulings. The Pilgrim Plaintiffs are wrong. Their claims are barred by the Sale Order and the Bankruptcy Court's rulings.

While the Pilgrim Plaintiffs filed their complaint on the day of oral argument (*i.e.*, October 14, 2015) regarding the November 2015 Decision/December 2015 Judgment, the alleged defect in the Corvettes at issue in the Pilgrim Lawsuit (which are not Old GM vehicles with the Ignition Switch Defect) was known by the plaintiffs long before that date. For example,

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[71] *See* Pillars Supplemental Brief, at 8.

[72] *See* Second Amended Consolidated Complaint [MDL ECF 1038], at 228-292 (describing various recalls).

[73] For purposes of this brief, the Pilgrim Plaintiffs are those plaintiffs in the Pilgrim Lawsuit that are owners/lessees of Old GM vehicles. Those plaintiffs that are owners/lessees of vehicles manufactured by New GM are not the subject of this brief.

in the Pilgrim Plaintiffs' response to New GM's motion to enforce ("Pilgrim Motion to Enforce"), they included declarations by certain of the named plaintiffs demonstrating that they knew about the alleged defect in the Corvettes as early as 2007.[74] In addition, the original complaint filed by the Pilgrim Plaintiffs on October 14, 2015 (which was almost 200 pages long) was strikingly similar to the complaint filed by Lead Counsel in MDL 2543, demonstrating that the Pilgrim Plaintiffs were well aware of MDL 2543 and what was transpiring in that case (including, presumably, the bankruptcy issues). The Pilgrim Plaintiffs should not be permitted to benefit from their "sit back and wait" approach simply because they delayed in filing their lawsuit.

Likewise, with respect to the December 2015 Judgment, the Pilgrim Plaintiffs were aware of the issues being litigated in the Bankruptcy Court before that Judgment was entered. Indeed, the Pilgrim Plaintiffs were sent a demand letter on October 28, 2015 that explained why their complaint violated the Sale Order. That demand letter also notified the Pilgrim Plaintiffs of the proceedings taking place in the Bankruptcy Court. At the time the demand letter was sent, the November 2015 Decision had not been entered by the Bankruptcy Court, but briefing and oral argument on the issues had concluded. On December 4, 2014, the December 2015 Judgment was entered. On December 15, 2015, the Pilgrim Plaintiffs were sent a copy of the December 2015 Judgment. The Pilgrim Plaintiffs could have timely appealed the December 2015 Judgment, but chose not to, and thus are now bound by that Judgment.[75]

Accordingly, the Pilgrim Plaintiffs fit squarely within the definition of Non-Ignition Switch Plaintiffs (*i.e.*, plaintiffs asserting economic loss claims against New GM in connection

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[74] *See, e.g., Reply Of Pilgrim Plaintiffs To Motion Of General Motors LLC Pursuant To 11 U.S.C. §§ 105 And 363 To Enforce The Bankruptcy Court's July 5, 2009 Sale Order And Injunction, And The Bankruptcy Court's Rulings In Connection Therewith*, dated February 4, 2016 [ECF No. 13599], at Exh. "C."

[75] Moreover, in a stipulation filed with the California District Court on November 30, 2015 (*i.e.*, prior to the December 2015 Judgment), the parties referenced the November 2015 Decision.

with vehicles that were *not* subject to Recall No. 14V-047). Like other Non-Ignition Switch Plaintiffs, they were given time to demonstrate a due process violation with respect to their alleged successor liability claims. Now, after the November 2015 Decision, and their failure to appeal that ruling, it is too late for them to bring such claims. Under those circumstance, the Sale Order applies to bar their claims.

The Pilgrim Plaintiffs' reliance on the Stipulation entered by the Bankruptcy Court in February 2016 [ECF No. 13603], staying the Pilgrim Motion to Enforce,[76] is misplaced. That Stipulation merely states that the Second Circuit Opinion "*may*" have an effect on the issues raised in the Pilgrim Lawsuit. The Stipulation stayed New GM's motion to enforce; it had nothing to do with the Second Circuit Opinion or the proceedings leading to the December 2015 Judgment with respect to the Pilgrim Lawsuit.

In sum, any successor liability claims asserted by the Pilgrim Plaintiffs with respect to Old GM vehicles are barred by the Sale Order. The Pilgrim Plaintiffs did not establish a due process violation in 2015 with respect to the Sale Order, and it is too late for them to do so now. *See Motors Liquidation Co.*, 541 B.R. at 130 n.70.

C. Pope Supplemental Opening Brief

The Pope Plaintiffs submitted a Supplemental Opening Brief ("Pope Supplemental Brief") to address certain issues they claim are unique to their case, and why they should be permitted to pursue all of their claims against New GM. But these issues are not unique to the Pope Plaintiffs. Like other Non-Ignition Switch Post-Closing Accident Plaintiffs, the Pope Plaintiffs are barred by the Sale Order and the December 2015 Judgment.

[76] *See* Pilgrim Supplemental Brief, at 4, 7.

Contrary to the Pope Plaintiffs' arguments,[77] the correspondence sent to the Pope Plaintiffs in early September 2015 were not misleading or confusing. The Pope Plaintiffs admit they received New GM's demand letter on or about September 1, 2015 and received the September 2015 Scheduling Order on or about September 4, 2015. The demand letter specifically identified the paragraphs of the Pope Complaint that were problematic, including those that contained a consumer protection act cause of action and those seeking punitive damages; New GM asserted that such claim and request for damages were barred by the Sale Order.[78] Although New GM's letter quoted portions of the April 2015 Decision/June 2015 Judgment, it also made clear that "the reasoning and rulings set forth in the Judgment and Decision are equally applicable to the [Pope] Lawsuit." New GM never stated that the Pope Plaintiffs were Ignition Switch Plaintiffs, or that they could assert an Independent Claim against New GM. Instead, New GM asserted that the consumer protection act claim and request for damages were barred for the same reasons as other plaintiffs' claims.

After receiving New GM's correspondence in early September 2015, the Pope Plaintiffs sent a response to counsel for New GM because they allegedly were not sure what to do.[79] While the Pope Plaintiffs assert that there was no response to this inquiry, in fact counsel for New GM contacted counsel for the Pope Plaintiffs by telephone the same day that their letter was received (*i.e.*, September 15, 2015), and explained the procedures set forth in the September 2015 Scheduling Order and the issued raised therein.[80]

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[77] *See* Pope Supplemental Brief, at 5.

[78] *See* Pope Supplemental Brief, Exh. "2," at 1 (identifying paragraphs 20-26 of the Pope Complaint as asserting claims that violate the Sale Order, as well as asserting that punitive damages were barred).

[79] *See id.*, Exh. "4."

[80] *See Declaration of Scott I. Davidson*, sworn to on April 7, 2017, attached hereto as **Exhibit "E."**

In any event, even if the Pope Plaintiffs found New GM's demand letter confusing, or they had questions they believed were not sufficiently addressed by New GM, the Pope Plaintiffs could have contacted Designated Counsel. Designated Counsel wrote to plaintiffs, informing them that if they had "any questions about the procedures [in the September 2015 Scheduling Order], please contact . . . plaintiffs' Liaison Counsel to the MDL, and/or Co-Lead Counsel for the MDL . . . ."[81] Although the Pope Plaintiffs contend that their interests were "squarely aligned with the interests of the Ignition Switch Plaintiffs,"[82] they never contacted Designated Counsel to confirm their understanding or raise any issue.

Finally, the Pope Plaintiffs' assertion that New GM "prevented" them from raising issues is incorrect. Counsel for the Pope Plaintiffs was served with all of the pleadings/letters filed by New GM in connection with the proceedings leading to the November 2015 Decision/December 2015 Judgment.[83] These included pleadings regarding punitive damages and consumer protection act claims (both of which were at issue in the Pope lawsuit). The Pope Plaintiffs do not deny receiving these pleadings, which put the Pope Plaintiffs on notice of all the relevant Bankruptcy Court proceedings. The Pope Plaintiffs could have sought permission to file a brief with the Bankruptcy Court to raise whatever issues they had. They did not do so at the appropriate time and it is too late for them to raise those arguments now.[84]

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[81] Pope Supplemental Brief, Exh. "3," at 2.

[82] *Id.* at 3.

[83] *See Certificates of Service*, found at ECF Nos. 13440, 13457, 13464, 13467, 13468, 13474, 13485.

[84] The Pope Plaintiffs complain that they were not served with the November 2015 Decision or the December 2015 Judgment. However, the Pope Plaintiffs never cite any authority that would have required New GM to serve them with these documents. As the Pope Plaintiffs were fully aware of the bankruptcy proceedings, and who counsel for New GM and Designated Counsel were, they could have easily requested these documents or researched the matter themselves. *See, e.g.*, *Stevens v. Miller*, 676 F.3d 62, 70 (2d Cir. 2012) ("[The Second Circuit] has made clear that the 'parties have an obligation to monitor the docket sheet to inform themselves of the entry of orders they wish to appeal.'" (quoting *U.S. ex rel. McAllan v. City of N.Y.*, 248 F.3d 48, 53 (2d Cir. 2001)).

D. Peller Supplemental Opening Brief

Many of the Peller Plaintiffs' arguments are addressed in previous sections of this brief where New GM responds to the arguments made in connection with the 2016 Threshold Issues. New GM responds in this Section to the Peller Plaintiffs' remaining arguments not addressed above.

First, the Peller Plaintiffs' assertion that there is only one issue that should be decided by the Court on remand is wrong. The December 13, 2016 Order to Show Cause identifies many other issues that require resolution. Indeed, at the November 16, 2016 Status Conference, Attorney Peller made the very same argument (that there is only one issue to be decided by the Court), and this Court rejected it. *See* November 16, 2016 Hr'g Tr., at 43:25-45:12.

Second, contrary to the Peller Plaintiffs' assertion (Peller Supplemental Brief, at 8), Attorney Peller did not have standing in the Second Circuit to assert arguments on behalf of all Non-Ignition Switch Plaintiffs. Attorney Peller filed notices of appeal on behalf of his individual clients,[85] not on behalf of other Non-Ignition Switch Plaintiffs. Attorney Peller is not one of the Designated Counsel in the bankruptcy proceedings; and he is not one of the Lead Counsel in MDL 2543.[86] He only represents certain individuals that are Non-Ignition Switch Plaintiffs, along with other individuals that are seeking recovery for Ignition Switch Defects.

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[85] Specifically, Peller's notices of appeal stated the following: (i) "Celestine Elliott, Lawrence Elliott and Berenice Summerville, Plaintiffs in their action pending before the United States District Court for the Southern District of New York, appeal . . . from [the April 2015 Decision/June 2015 Judgment]" [ECF No. 13179], (ii) "Ishmael Sesay And Joanne Yearwood, Plaintiffs in their action pending before the United States District Court for the Southern District of New York, appeal . . . from [the April 2015 Decision/June 2015 Judgment]" [ECF No. 13180], and (iii) "Sharon Bledsoe, Celestine Elliott, Lawrence Elliott, Tina Farmer, Paul Fordham, Momoh Kanu, Tynesia Mitchell, Dierra Thomas, and James Tibbs, ("Bledsoe Plaintiffs"), hereby appeal . . . [the April 2015 Decision/June 2015 Judgment]" [ECF No. 13337]. In addition, while the lawsuits commenced by Peller are styled as class actions, no class has been certified by any court in his lawsuits.

[86] As stated in New GM's Opening Brief, Peller commenced proceedings in the District Court seeking to ***oust Lead Counsel*** because they took no action in the Bankruptcy Court or the Second Circuit to advocate the interests of Non-Ignition Switch Plaintiffs. *See* New GM's Opening Brief, at 15 (citing *Notice Of Conflict Within The Plaintiffs' Group And Of The Possible Need For The Court To Augment Plaintiffs' Leadership*

Third, the Peller Plaintiffs' argument regarding the interlocutory nature of the June 2015 Judgment is a red herring. The controlling rulings with respect to potential successor liability claims and purported Independent Claims asserted by the Peller Plaintiffs are contained in the December 2015 Judgment. That is a final ruling and the Peller Plaintiffs did not appeal the ruling in that Judgment.

Fourth, the Peller Plaintiffs incorrectly assert that the only ruling in the December 2015 Judgment that was not dependent on the April 2015 Decision/June 2015 Judgment was the ruling regarding fraudulent concealment of a right to file a proof of clam. *See* Peller Supplemental Brief, at 8. In fact, the December 2015 Judgment concerns many separate issues that were *not* addressed in the June 2015 Judgment. For example, the bar on punitive damages (*see* December 2015 Judgment, ¶ 6), the use of imputation principles (*see id.*, ¶¶ 1-5), and issues relating to Post-Closing Accident Plaintiffs (*see, e.g.*, *id.*, ¶ 7) were not part of the June 2015 Judgment. In addition, (i) the ruling in the November 2015 Decision that Non-Ignition Switch Plaintiffs waived the right to raise a due process violation (*see Motors Liquidation Co.*, 541 B.R. at 130 n.70) and (ii) the ruling in the December 2015 Judgment that plaintiffs whose claims arise from vehicles without the Ignition Switch Defect cannot assert Independent Claims (*see* December 2015 Judgment, at ¶ 14), were not part of the June 2015 Judgment. And, the June 2015 Judgment did not address whether specific claims, as demonstrated in marked and other pleadings, were viable under the Sale Order. *See, e.g.*, December 2015 Judgment, at ¶¶ 19, 21, 29. Simply stated, the proceedings leading to the November 2015 Decision/December 2015 Judgment were meant to address *separate and distinct issues* not decided by the April 2015 Decision/June 2015 Judgment; not to re-litigate issues that were on appeal.

Structure, dated April 14, 2016 [MDL 2543 ECF No. 2772], at 1). Peller cannot credibly disavow his previous statements regarding Lead Counsel.

Finally, even if the Peller Plaintiffs argue that the Second Circuit permitted them to assert an Independent Claim, they have no answer to the fact that the Bankruptcy Court reviewed their alleged Independent Claims as part of the marked pleading process and ruled that they had *not* asserted a valid Independent Claim. *See* December 2015 Judgment, ¶ 28 ("the Peller Complaints shall remain stayed unless and until they are amended . . . to strike any purported Independent Claims by Non-Ignition Switch Plaintiffs"). The Peller Plaintiffs failed to appeal this ruling in the December 2015 Judgment, and it is now *res judicata* as to them.

CONCLUSION

For all of the foregoing reasons and for the reasons set forth in New GM's Opening Brief, New GM requests that the Court determine the 2016 Threshold Issues consistent with the following conclusions of law:

1. Ignition Switch Plaintiffs, Ignition Switch Pre-Closing Accident Plaintiffs, and Ignition Switch Post-Closing Accident Plaintiffs are only those plaintiffs with Subject Vehicles and the Ignition Switch Defect. All other plaintiffs are Non-Ignition Switch Plaintiffs, Non-Ignition Switch Pre-Closing Accident Plaintiffs, or Non-Ignition Switch Post-Closing Accident Plaintiffs. Pillars is not an Ignition Switch Plaintiff.

2. The Opinion only refers to the Peller Plaintiffs, and not to other Non-Ignition Switch Plaintiffs. No other Non-Ignition Switch Plaintiff appealed the June 2015 Judgment. Furthermore, the rulings set forth in the November 2015 Decision/December 2015 Judgment are binding on Non-Ignition Switch Plaintiffs and Non-Ignition Switch Post-Closing Accident Plaintiffs that were before the Bankruptcy Court, including plaintiffs that were represented by Designated Counsel. That includes (a) the ruling that Non-Ignition Switch Plaintiffs had not established a due process violation in connection with the notice of the 363 Sale, and were thus bound by the Sale Order, and (b) the ruling that Non-Ignition Switch Plaintiffs and Non-Ignition Switch Post-Closing Accident Plaintiffs had failed to assert valid Independent Claims. For claims that were not before the Court in 2015 (or that remain unresolved), the Court should remain the gatekeeper to ensure that plaintiffs are not improperly asserting claims barred by the Sale Order and the Bankruptcy Court's other rulings.

3. Post-363 Sale Used Car Purchasers of Subject Vehicles with the Ignition Switch Defect asserting economic loss claims are not bound by the Sale Order, but the Sale Order necessarily affects the scope and type of claim that may be transferred to used car owners by the original owners from whom they purchased their

vehicle. All such used car buyers/assignees have the same rights as their used car sellers/assignors and are bound by the Sale Order and Key Court Rulings.

4. All Post-Closing Accident Plaintiffs (with or without the Ignition Switch Defect) are prohibited from pursuing punitive damages claims against New GM even if they are allowed to assert successor liability theories.

Dated: New York, New York
April 7, 2017

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg
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-and-

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Attorneys for General Motors LLC

Exhibit A

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September 23, 2015

VIA E-MAIL TRANSMISSION
AND ECF FILING
The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

Re: In re Motors Liquidation Company, *et al.*
Case No. 09-50026 (REG)

Dear Judge Gerber:

Pursuant to page 5 of Your Honor's September 3, 2015 *Scheduling Order* (Dkt. No. 13416), we submit this Letter regarding the claims made in Other Plaintiffs' Complaints against New GM that violate the Sale Order and Judgment, but are not raised by the Bellwether Complaints, the MDL Complaint or the States' Complaints (collectively, the "**Main Cases**").[1] Because of the large volume of papers already submitted (and to be submitted) to the Court pursuant to the Scheduling Order, for efficiency purposes, New GM is only identifying at this time the specific claims in the Other Plaintiffs' Complaints that violate the Sale Order and Judgment. New GM believes that submitting marked-up versions of the Other Plaintiffs' Complaints is not necessary for the Court to rule on the issues raised in this Letter. If the Court decides it would be helpful to have marked-up versions of the Other Plaintiffs' Complaints, we will promptly submit them.

Set forth below are claims in Other Plaintiffs' Complaints that violate the Sale Order and Judgment, with an explanation of New GM's position and references to representative cases where the issue is raised.[2]

[1] The issues raised by the Other Plaintiffs' Complaints are found in multiple cases filed against New GM. Pursuant to the Scheduling Order, New GM was permitted to identify "representative cases" that raise these issues. New GM's arguments are applicable to all such cases, and any rulings by the Court should be binding on all plaintiffs in such cases.

[2] New GM reserves the right to supplement this Letter if it becomes aware of other claims, not in the Main Cases or referenced in this Letter, that violate the Sale Order and Judgment.

Failure to Recall / Retrofit Vehicles (*e.g. Moore v. Ross, et al.*, No. 2011-CP-42-3625, 4th Am. Complaint at p. 3 ¶¶ f, g (S.C. 7th Cir. Ct. Com. Pl.) (**Exh. "A" hereto**)): These claims allege that New GM had a duty to recall or retrofit Old GM vehicles. But such claims, if they exist as a matter of law at all, are Retained Liabilities. Once New GM purchased Old GM's assets free and clear of claims and obligations relating to Old GM vehicles, New GM (an entity that did not manufacture or sell the Old GM vehicles at issue) did not have any ongoing duties to Old GM vehicle owners (other than specific Assumed Liabilities). Although New GM had obligations under the Motor Vehicle Safety Act and to the U.S. Government based on a covenant in the Sale Agreement ("**Recall Covenant**"), this covenant was not an Assumed Liability. Vehicle owners were not third party beneficiaries under the Sale Agreement, and did not have a private right of action relating to any breach of the Recall Covenant. *See New GM's Opening Brief With Respect to the Imputation Issue*, Dkt. No. 13451 at 17-18; *New GM's Letter Brief re Bellwether Complaints*, Dkt. No. 13456, at 3. Thus, claims for failure to recall or retrofit the vehicles violate the Sale Order.

Negligent Failure to Identify Defects Or Respond To Notice of a Defect (*e.g., Benbow v. Medeiros Williams, Inc., et al.*, No. 14 789, Complaint ¶ 16 (Mass. Hampden Cty. Super. Ct.) (**Exh. "B" hereto**)): These claims purport to allege that New GM should have identified the defect earlier and taken some sort of action in response. These are Retained Liabilities for the same reasons as the claims based on an alleged failure to recall or retrofit Old GM vehicles. Such duties with respect to Old GM vehicles remained with Old GM.

Negligent Infliction of Economic Loss and Increased Risk (*e.g., Elliott v. General Motors LLC*, No. 1:14-cv-00691, 1st Am. Complaint ("***Elliott* Complaint**") ¶¶ 79-86 (D.D.C.) (**Exh. "C" hereto**)):[3] This claim alleges that New GM had a duty to warn consumers about the alleged defect but instead concealed it, and by doing so, the economic value of plaintiffs' vehicles was diminished. This claim violates the Sale Order for the reasons set forth in New GM's Bellwether Complaints letter relating to post-vehicle failure-to-warn claims and fraud claims. Dkt. No. 13456 at 2-3; *see also* the forthcoming *New GM Marked MDL Letter*. Such claims are economic loss claims that relate to Old GM conduct at the time the vehicle was sold. They do not "arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents," and are not otherwise Assumed Liabilities.

Civil Conspiracy (*e.g., De Los Santos v. Ortega, et al.*, No. 2014CCV-6078802, 1st Am. Petition ¶¶ 50-51 (Tex. Nueces Cty. Ct.) (**Exh. "D" hereto**)):[4] These claims allege that New GM was involved in a civil conspiracy with others to conceal the alleged ignition switch defect. Such claims are based on representations, omissions, or other alleged acts relating to the supposed concealment rather than, as set forth in the Sale Agreement, being "caused by motor vehicles," "aris[ing] directly out of" personal injury or property damages, and being "caused by accidents or incidents." *See also* Dkt. No. 13451 at 18-19; Dkt. No. 13456, at 2-3. As such, these claims are not Product Liabilities, and thus not Assumed Liabilities under the Sale Agreement.

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[3] The same claim is asserted in *Sesay et al. v. General Motors LLC*, No. 1:14-md-02543, Complaint ("***Sesay* Complaint**") ¶¶ (69-76).

[4] Claims for "Civil Conspiracy, Joint Action or Aiding and Abetting" are also asserted in the *Elliott* Complaint (¶¶ 114-123), *Sesay* Complaint (¶¶ 85-94), and the complaint filed in *Bledsoe v. General Motors LLC*, No. 1:14-cv-07631 (S.D.N.Y.), ¶¶ 115-121.

Section 402B – Misrepresentation by Seller (*e.g.*, *Rickard v. Walsh Const. Co. et al.*, No. GD-14-020549, Am. Complaint ¶¶ 73aaa-73ccc (Pa. Allegheny Cty Ct. Com. Pleas) (**Exh. "E" hereto**)):[5] These types of claims are based on alleged representations or omissions, and do not satisfy the definition of Product Liabilities because such claims are not "caused by motor vehicles," but are instead caused by statements or omissions. They also do not "arise directly out of" personal injuries or property damages and are not "caused by accident or incidents." Instead, they arise from and are caused by statements, omissions or other Old GM conduct. Such representation or omission-based claims were not assumed by New GM.

Claims Based on Pre-Sale Accidents (*e.g.*, *Coleman v. General Motors LLC, et al.*, No. 1:15-cv-03961, Complaint (E.D. La.) (**Exh. "F" hereto**)): The Judgment authorized New GM to send letters to plaintiffs who filed lawsuits asserting claims based on accidents that occurred prior to the 363 Sale, and set forth procedures with respect to such letters and potential responses. The Scheduling Order superseded certain procedures in the Judgment. As a result, New GM includes herein a representative example of complaints that assert claims based on pre-363 Sale accidents. For the reasons set forth in the Sale Agreement, the Decision and the Judgment, New GM is not liable for claims based on accidents that occurred prior to the closing of the 363 Sale. The Sale Agreement is clear that Retained Liabilities (as defined in Section 2.3(b) of the Sale Agreement) of Old GM specifically include "all Product Liabilities arising in whole or in part from any accidents, incidents or other occurrences that happen prior to the Closing Date[.]" Sale Agreement, § 2.3(b)(ix); *see also Judgment*, ¶ 7. Thus, lawsuits filed against New GM that are based on accidents or incidents occurring prior to the closing of the 363 Sale should be dismissed as provided by the Judgment.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

cc: Edward S. Weisfelner
Howard Steel
Sander L. Esserman
Jonathan L. Flaxer
S. Preston Ricardo
Matthew J. Williams
Lisa H. Rubin
Keith Martorana
Daniel Golden

[5] Plaintiff filed with this Court a *No Dismissal Pleading Of Carolyn Rickard, Administratrix Of The Estate Of William J. Rickard, Deceased*, dated September 4, 2015 [Dkt. No. 13423]. This letter, and New GM's other letters and pleadings filed pursuant to the Scheduling Order should be deemed its response to the *Rickard* No Dismissal Pleading.

Honorable Robert E. Gerber
September 23, 2015
Page 4

Deborah J. Newman
Jamison Diehl
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller

Exhibit A

JAMES WALTER MOORE v. GM, ET AL.

JAIMIE REDA MOORE v. GM, ET AL.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG James Walter Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3625 **FOURTH AMENDED COMPLAINT** (Jury Trial Demanded)

Plaintiff would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.

2. Plaintiff is informed and believes that the Defendant Anthony Wade Ross is a citizen and resident of Spartanburg County, South Carolina.

3. Plaintiff is informed and believes that Defendant General Motors, LLC is a Delaware corporation, doing business in Spartanburg County, South Carolina, and is legally responsible for vehicles manufactured by General Motors Corporation (n/k/a Motors Liquidation Company).

4. Plaintiff is informed and believes that the Defendant Dura Automotive Systems, Inc., is a corporation organized and existing under and by virtue of the laws of the state of Michigan or one of the other states of the United States of America, doing business throughout the United States.

5. Plaintiff is informed and believes that Dura Operating, LLC is a corporation organized and existing under and by virtue of the laws of the state of Delaware or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Dura Automotive Systems, Inc.

6. Plaintiff is informed and believes that the Defendant Sparton Corporation is a corporation organized and existing under and by virtue of the laws of the state of Ohio or one of the other states of the United States of America, doing business throughout the United States.

7. Plaintiff is informed and believes that Defendant Sparton Engineered Products, Inc. – Flora Group, is a corporation organized and existing under and by virtue of the laws of the state of Illinois or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Sparton Corporation.

8. On or about August 8, 2011, the Plaintiff was traveling in a northeasterly direction on Interstate Highway 85 when the spare tire of the Defendant Ross fell from the 1996 GMC pickup truck that the Defendant Ross was driving, into the path of the Plaintiff. In attempting to avoid the tire, the vehicle of the Plaintiff struck a barrier and overturned. The truck being operated by the Defendant Ross was manufactured by General Motors Corporation (n/k/a Motors Liquidation Company), for whose acts the Defendant General Motors, LLC, is responsible. Upon information and belief, the spare wheel retaining device (device) on this vehicle was designed, manufactured, and/or distributed by one or more of the Defendants: Dura Automotive Systems, Inc.; Dura Operating, LLC; Sparton Corporation; and Sparton Engineered Products, Inc. – Flora Group.

9. As a direct and proximate result, the Plaintiff suffered severe disabling and incapacitating injuries, all of which have caused and will in the future cause the Plaintiff to endure great physical and mental pain and suffering, to require extensive medical treatment and care for the rest of his life, and will prevent him from working and earning an income.

10. The injuries and damages suffered by the Plaintiff herein were the direct and proximate result of the following negligent, wilful, wanton, careless, reckless, and grossly negligent acts of the Defendants herein at the time and place above mentioned:

AS TO THE DEFENDANT ANTHONY WADE ROSS

a) Failing to maintain his vehicle in a proper condition;

b) Failing to have his vehicle properly secured and serviced; and

c) Operating his vehicle in an unsafe manner.

All of which are in violation of the common statutory laws of the state of South Carolina as wel as the rules and regulations of the South Carolina Department of Transportation.

AS TO THE DEFENDANT
GENERAL MOTORS, LLC

a) Failing to design the vehicle properly;

b) Failing to manufacture the vehicle properly;

c) Failing to inspect the vehicle properly;

d) Failing to test the vehicle properly;

e) Failing to warn owners and the public as to the dangerous defect in this vehicle;

f) Failing to recall vehicles with this dangerous condition; and

g) Failing to retrofit vehicles with this dangerous condition.

AS TO THE DEFENDANTS
DURA AUTOMOTIVE SYSTEMS, INC.,
DURA OPERATING, LLC,
SPARTON CORPORATION, AND

SPARTON ENGINEERED PRODUCTS, INC. – FLORA GROUP

a) Failing to design the device properly;

b) Failing to manufacture the device properly;

c) Failing to test the device properly;

d) Failing to warn owners of the vehicles and the public as to the dangerous defect in this device;

e) Failing to recall the device; and

f) Failing to retrofit vehicles using the device.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANTS GENERAL MOTORS, LLC, DURA AUTOMOTIVE SYSTEMS, INC., DURA OPERATING, LLC SPARTON CORPORATION, AND SPARTON ENGINEERED PRODUCTS, INC. – FLORA GROUP

11. Plaintiff reiterates and realleges all of the allegations contained in Paragraphs One (1) through Nine (9) of the First Cause of Action as fully as though set forth verbatim.

12. The 1996 pickup truck and the device were in defective condition and unreasonably dangerous to the consumer.

13. As a direct and proximate result, the Plaintiff suffered severe disabling and incapacitating injuries, all of which have caused and will in the future cause the Plaintiff to endure great physical and mental pain and suffering, to require extensive medical treatment and care for the rest of his life, and will prevent him from working and earning an income.

14. Plaintiff is informed and believes that he is entitled to such actual damages from the Defendants General Motors, LLC, Dura Automotive Systems, Inc., Dura Operating, LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, as the jury may determine.

WHEREFORE, Plaintiff prays judgment against the Defendants for such actual and punitive damages as the jury may determine, for the costs of this action and for such other and further relief as may seem just and proper.

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr., S.C. Bar No. 0404
K. Jay Anthony, S.C. Bar No. 77433
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P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 582-2355 p
(864) 583-9772 f

ATTORNEYS FOR THE PLAINTIFF

Spartanburg, South Carolina
July 29, 2014

Jury Trial Demanded:

Kenneth C. Anthony, Jr.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG Jaimie Reda Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3627 **FOURTH AMENDED SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint, herewith served upon you, (which was filed in the Office of the Clerk of Court), and to serve a copy of your answer to same upon the subscriber at 250 Magnolia Street, Post Office Box 3565, Spartanburg, South Carolina, 29304, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiff will move before the Court for the relief demanded in the Complaint.

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr., S.C. Bar No. 0404
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ATTORNEYS FOR THE PLAINTIFF

July 29, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
Jaimie Reda Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC, Dura Automotive Systems Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group, Defendants.	**FOURTH AMENDED COMPLAINT** Case No.: 2011-CP-42-3627 (Jury Trial Demanded)

Plaintiff would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.

2. Plaintiff is informed and believes that the Defendant Anthony Wade Ross is a citizen and resident of Spartanburg County, South Carolina.

3. Plaintiff is informed and believes that the Defendant General Motors, LLC, is a Deleware corporation, doing business in Spartanburg County, South Carolina, and is a legally responsible for vehicles manufactured by General Motors Corporation (n/ka Motors Liquidation Company).

4. Plaintiff is informed and believes that the Defendant Dura Automotive Systems, Inc., is a corporation organized and existing under and by virtue of the laws of the state of Michigan or one of the other states of the United States of America, doing business throughout the United States.

5. Plaintiff is informed and believes that Dura Operating, LLC is a corporation organized and existing under and by virtue of the laws of the state of Delaware or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Dura Automotive Systems, Inc.

6. Plaintiff is informed and believes that the Defendant Sparton Corporation is a corporation organized and existing under and by virtue of the laws of the state of Ohio or one of the other states of the United States of America, doing business throughout the United States.

7. Plaintiff is informed and believes that Defendant Sparton Engineered Products, Inc. – Flora Group, is a corporation organized and existing under and by virtue of the laws of the state of Illinois or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Sparton Corporation.

8. On or about August 8, 2011, the Plaintiff's husband was traveling in a northeasterly direction on Interstate Highway 85 when the spare tire of the Defendant Ross fell from the 1996 GMC pickup truck that the Defendant Ross was driving, into the path of Plaintiff's husband. In attempting to avoid the tire, the vehicle in which the Plaintiff's husband was driving, struck a barrier and overturned. The truck being operated by the Defendant Ross was manufactured by General Motors Corporation (n/k/a Motors Liquidation Company), for whose acts for the Defendant General Motors, LLC, is responsible. Upon information and belief, the spare wheel retaining device (device) on this vehicle was designed, manufactured and/or distributed by one or more of the Defendants: Dura Automotive Systems, Inc.; Dura Operating, LLC; Sparton Corporation; and Sparton Engineered Products, Inc. - Flora Group.

9. As a direct and proximate result, the Plaintiff's husband suffered severe disabling and incapacitating injuries.

10. As a further direct and proximate result, the Plaintiff has suffered as follows:

a) Experiencing shock, grief and anguish from having seen her husband so injured, watching and assisting in his protracted recovery and viewing the disability with which he now suffers;

b) Losing the care and companionship normally received from her husband;

c) Losing the services and assistance in household chores, repairs, maintenance and other activities usually provided by her husband;

d) Having to care for and assist her husband during his recovery and after to a greater extent than before.

11. The injuries and damages suffered by the Plaintiff herein were the direct and proximate result of the following negligent, willful, wanton, careless, reckless and grossly negligent acts on the part of the Defendants herein at the time and place above mentioned:

AS TO THE DEFENDANT
ANTHONY WADE ROSS

a) Failing to maintain his vehicle in proper condition;

b) Failing to have his vehicle properly secured and serviced;

c) Operating his vehicle in an unsafe manner.

All of which are in violation of the common and statutory laws of the state of South Carolina as well as the rules and regulations of the South Carolina Department of Transportation.

AS TO THE DEFENDANT
GENERAL MOTORS, LLC

a) Failing to design the vehicle properly;

b) Failing to manufacture the vehicle properly;

c) Failing to inspect the vehicle properly;

d) Failing to test the vehicle properly;

e) Failing to warn owners and the public as to the dangerous defect in this vehicle;

f) Failing to recall vehicles with this dangerous condition; and

g) Failing to retrofit vehicles with this dangerous condition.

**AS TO THE DEFENDANTS
AS TO DEFENDANTS GENERAL MOTORS, LLC,
DURA AUTOMOTIVE SYSTEMS, INC.
DURA OPERATING, LLC
SPARTON ENGINEERED PRODUCTS,
INC. - FLORA GROUP**

a) Failing to design the device properly;

b) Failing to manufacture the device properly;

c) Failing to test the device properly;

d) Failing to warn owners of vehicles and the public as to the dangerous defect in this device;

e) Failing to recall the device; and

f) Failing to retrofit vehicles using the device.

**FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANTS GENERAL MOTORS, LLC,
DURA AUTOMOTIVE SYSTEMS, INC.
DURA OPERATING, LLC
SPARTON ENGINEERED PRODUCTS,
INC. - FLORA GROUP**

12. Plaintiff reiterates and realleges all of the allegations contained in Paragraphs One (1) through Ten (10) of the First Cause of Action as fully as though set forth verbatim.

13. The 1996 pickup truck and the device were in defective condition and unreasonably dangerous to the consumer.

14. As a direct and proximate result, the Plaintiff's husband suffered severe disabling and incapacitating injuries.

15. Plaintiff is informed and believes that she is entitled to such actual damages from the Defendants General Motors, LLC, Dura Automotive Systems, Inc., Dura Operating, LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group, as the jury may determine.

WHEREFORE, Plaintiff prays judgment against the Defendants for such actual damages as the jury may determine, for the costs of this action and for such other and further relief as the Court may deem just and proper.

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr., S.C. Bar No. 0404
K. Jay Anthony, S.C. Bar No. 77433
250 Magnolia Street (29306)
Post Office Box 3565 (29304)
Spartanburg, South Carolina
(864) 582-2355 p
(864) 583-9772 f

ATTORNEYS FOR PLAINTIFF

July 29, 2014
Spartanburg, South Carolina

Jury Trial Demanded:

Kenneth C. Anthony, Jr.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG James Walter Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3625 **FOURTH AMENDED SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint, herewith served upon you, (which was filed in the Office of the Clerk of Court), and to serve a copy of your answer to same upon the subscriber at 250 Magnolia Street, Post Office Box 3565, Spartanburg, South Carolina, 29304, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr., S.C. Bar No. 0404
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ATTORNEYS FOR THE PLAINTIFF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUL 29 AM 9:38

July 29, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
James Walter Moore,)) Plaintiff,)) vs.)) Anthony Wade Ross , General Motors, LLC and Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group,) Defendants.)	Case No.: 2011-CP-42-3625 **ACCEPTANCE OF SERVICE**
Jaimie Reda Moore,)) Plaintiff,)) vs.)) Anthony Wade Ross , General Motors, LLC and Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group,) Defendants.)	Case No.: 2011-CP-42-3627 **ACCEPTANCE OF SERVICE**

DUE and legal service of the within **Fourth Amended Summons and Fourth Amended Compliant** is accepted and retained this _____day of _____ 2014.

_____

Thomas M. Kennaday
Attorney for General Motors, LLC
Defendant

Exhibit B

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION NO:

14 789

RAMONA BENBOW,

Plaintiff,

vs.

MEDEIROS WILLIAMS, INC.,
and
GENERAL MOTORS, LLC.,
and DRIVE USA 2, INC.

Defendants.

COMPLAINT AND REQUEST

FOR JURY TRIAL

PARTIES

1. The plaintiff, Ramona Benbow, is a natural person of legal age residing at 33 Genesee Street, First Floor, Springfield, Hampden County, Massachusetts.

2. The defendant, Medeiros Williams, Inc., (Formerly known as Medeiros / Williams Chevrolet, Inc.) (Hereinafter referred in this Complaint as "Medeiros Williams") was a corporation which was dissolved on December28, 2012, but at all times relevant hereto conducted business in the Commonwealth of Massachusetts and had a usual place of business located at 2045 Boston Road, Wilbraham, MA.

3. The defendant, General Motors, LLC, (Formerly known as: General Motors Company and hereinafter referred in this complaint as "General Motors"), is a foreign limited liability company, which has its principal office at 300 Renaissance Center, Detroit, Michigan, and at all times relevant hereto was a Massachusetts corporation conducting business in the Commonwealth of Massachusetts and maintained an office in the Commonwealth, which is presently located at 84 State Street, Boston, Massachusetts.

4. The Defendant, Drive USA 2, Inc., was a domestic profit corporation involuntarily dissolved by court order or by the Secretary of the Commonwealth of Massachusetts on June30, 2014, which had a principal place of business at 510 Boston Road, Springfield, Massachusetts, and which was doing business as "Drive USA".

FACTS

5. On or about February 21, 2009, the plaintiff purchased a 2005 Chevrolet Malibu from the defendant, Drive USA 2 Inc., doing business as Drive USA, in Springfield, Massachusetts.

6. Beginning in approximately January or February of 2010, the Plaintiff experienced periodic problems operating her 2005 Chevrolet Malibu when the power steering on the vehicle would stop functioning, thereby making it difficult to steer the vehicle in a safe manner.

7. On March 1, 2010, the plaintiff brought her vehicle to Medeiros Williams. Employees at Medeiros Williams failed to diagnose any problem with the power steering. The plaintiff was sent on her way without being provided any further information nor was she given any options for correcting the periodic problem she experienced steering her vehicle in a safe manner. On this day, the mileage on plaintiff's vehicle was 101,257.

8. In June, 2010, the plaintiff, Ramona Benbow, received a notice from the defendant General Motors, notifying her of a possible defect in the power steering of her 2005 Chevrolet Malibu. The notice of defect stated that: "if this condition occurs on your 2005 Chevrolet Malibu within 10 years of the date your vehicle was originally placed in service or 100,000 miles whichever occurs first, the condition will be repaired for you at no charge." The notice of defect stated that the car could be safely steered despite the defect in the power steering.

9. On the date she received the notice of the defect the plaintiff called the defendant, General Motors. The plaintiff was informed by General Motors that they would do nothing to assist her because of the amount of miles on her vehicle. She immediately informed General Motors that her vehicle was not safe to drive and asked for a Supervisor; however, nothing was done to assist or advise her.

10. On the same day in June of 2010 the plaintiff called Medeiros Williams and spoke with a supervisor in the Service Department. She was told they would not fix the vehicle because the car was over mileage and that no defect had been detected by Medeiros Williams.

11. On October 14, 2011, the plaintiff was operating her 2005 Chevrolet Malibu on Elm Street in East Longmeadow, Massachusetts when the vehicle lost power steering. She was not able to control the vehicle after the power steering was lost and was involved in a single car accident, sustaining serious personal injuries.

COUNT I: MEDEIROS WILLIAMS, INC. NEGLIGENT FAILURE TO DIAGNOSE, AND/OR IDENTIFY DEFECT IN A MOTOR VEHICLE AND/OR REPAIR VEHICLE AND/OR NEGLIGENT FAILURE TO WARN

12. The plaintiff reaffirms paragraphs one through eleven of this Complaint and repeats, realleges and incorporates them by reference herein.

13. The defendant, Medeiros Williams, was negligent in said services provided to the plaintiff, including but not limited to:

- Failure to properly identify a mechanical problem with the steering;
- Failure to property inspect the vehicle for mechanical problems;
- Failure to repair mechanical problems which they knew or should have known were likely to be present in the plaintiff's vehicle;
- Failure to adequately use, employ or otherwise operate , diagnostic equipment designed to identify mechanical defects in motor vehicles;

- Failure to warn the plaintiff that her vehicle was inherently dangerous to drive;
- Failure to properly test the vehicle for a dangerous mechanical condition;
- Failure to properly respond to a defect notice regarding a serious condition in the steering mechanism of the plaintiffs vehicle; and/or,
- Failure to properly supervise and train its employees, agents and servants in response to vehicles brought in for service, maintenance and /or repair which were the subject of a notice of defect by the manufacturer.

14. As a direct and proximate result of the said negligence by the defendant, Medeiros Williams, the plaintiff, Ramona Benbow, suffered severe pain of body and anguish of mind, has sustained serious personal injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur substantial expenses for medical care and attention.

COUNT II: GENERAL MOTORS, LLC. NEGLIGENT FAILURE TO DIAGNOSE, AND/OR IDENTIFY DEFECT IN A MOTOR VEHICLE, AND/OR REPAIR VEHICLE, AND/OR NEGLIGENT FAILURE TO WARN.

15. The plaintiff reaffirms paragraphs one through fourteen of this Complaint and repeats, realleges and incorporates them by reference herein.

16. The defendant, General Motors, LLC., directly and/or through its agents, dealers, servants and/or employees, failed to repair the plaintiff's power steering, including but not limited to:

- Failure to properly identify a mechanical problem with steering;
- Failure to properly inspect the vehicle for mechanical problems;
- Failure to repair mechanical problems which they knew or should have known were likely to be present in the plaintiff's vehicle;
- Failure to adequately use, employ or otherwise operate, diagnostic equipment designed to identify mechanical defects in motor vehicles;
- Failure to warn the plaintiff that her vehicle was inherently dangerous to drive;
- Failure to properly test the vehicle for a dangerous mechanical condition;
- Failure to properly respond to a inquiries regarding a defect notice it sent to the plaintiff regarding a serious condition in the steering mechanism of the plaintiffs vehicle;
- Failure to properly supervise and train its employees, agents, servants, and/or dealers to respond in a non-negligent manner when vehicles which were the subject of a notice of defect were brought in for service, maintenance and /or repair;
- Negligently limited options for the consumer to have their vehicles repaired to those vehicles with less than 100,000 miles;

- Negligently failed to establish adequate procedures, policies, notices, training, and/or communications with its dealers and/or other repair facilities for the identification and/or repair of the defect in the plaintiff's vehicle;

- Negligently failed to establish adequate procedures, policies, notices and/or communications with owners of 2005 Chevrolet Malibu motor vehicles so that the power steering defect could be identified and/or diagnosed and/or repaired.

17. As a direct and proximate result of the said negligence by the defendant, General Motors, LLC., the plaintiff, Ramona Benbow, suffered severe pain of body and anguish of mind, has sustained serious personal injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur substantial expenses for medical care and attention.

COUNT III: NEGLIGENT DESIGN BY GENERAL MOTORS, LLC

18. The plaintiff reaffirms paragraphs one through seventeen of this Complaint and repeats, realleges and incorporates them by reference herein.

19. The defendant, General Motors, designed the motor vehicle, and its component parts, which the plaintiff was operating at the time of the automobile accident referenced in Paragraph 10 of this Complaint.

20. The defendant, General Motors, had a duty to design motor vehicles and the components thereof, including the motor vehicle owned and operated by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint, in such a manner so that said motor vehicle was safe for its intended purpose as a means of transportation.

21. The defendant, General Motors, breached its duty to properly design said motor vehicle, and its component parts, which the plaintiff owned and operated at the time of the automobile accident referenced in Paragraph 11 of this Complaint, such that said vehicle was unsafe for its intended purpose as a means of transportation..

22. As a direct and proximate result of said breach of its duty to safely design said motor vehicle and its component parts, the plaintiff suffered severe pain and body and anguish of mind, has sustained serious personal injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur, substantial medical expenses for medical care and attention.

COUNT IV: GENERAL MOTORS, LLC: NEGLIGENT MANUFACTURE OF PLAINTIFF'S MOTOR VEHICLE

23. The plaintiff reaffirms paragraphs one through twenty-two of this Complaint and repeats, realleges and incorporates them by reference herein.

24. The defendant, General Motors, had a duty to manufacture automobiles, including the motor vehicle owned and operated by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint, such that said motor vehicle was safe as a means of transportation.

25. The defendant, General Motors, breached its duty to properly manufacture the motor vehicle operated by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint, such that said vehicle was unsafe for its intended purpose as a means of transportation.

26. As a direct and proximate result of the said negligence of the defendant, General Motors, the plaintiff suffered severe pain of body and anguish of mind, has sustained serious personal injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur substantial expenses for medical care and attention.

COUNT V GENERAL MOTORS, LLC: BREACH OF WARRANTY

27. The plaintiff reaffirms paragraphs one through twenty-six of this Complaint and repeats, realleges and incorporates them by reference herein.

28. The defendant, General Motors, sold the motor vehicle which the plaintiff was operating at the time of the automobile accident referenced in Paragraph 11 of this Complaint.

29. The defendant, General Motors, impliedly warranted to consumers, including the plaintiff as an owner of a 2005 Chevrolet Malibu, that said vehicle, and each of its component parts, was merchantable, safe and/or free of defects.

30. The vehicle sold by the defendant, General Motors, and owned by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint, had a defect and was therefore unsafe at the time the defendant sold said motor vehicle.

31. As said motor vehicle was defective at the time of said sale, the defendant, General Motors, breached its said implied warranties that the vehicle owned and operated by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint was merchantable, safe, and/or free of defects.

32. As a direct and proximate result of the said breach of said implied warranties by the defendant, General Motors, the plaintiff suffered severe pain of body and anguish of mind, has sustained serious injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur substantial expenses for medical care and attention.

COUNT VI: DRIVE USA 2, INC.: BREACH OF WARRANTY

33. The plaintiff reaffirms paragraphs one through thirty-two of this Complaint and repeats and realleges and incorporates them by reference herein.

34. The defendant, Drive USA 2, Inc., sold the motor vehicle which the plaintiff was operating at the time of automobile accident referenced in Paragraph 11 of this Complaint.

35. The defendant, Drive USA 2, Inc., impliedly warranted to consumers, including the plaintiff as an owner of a 2005 Chevrolet Malibu, that said vehicle, and each of its component parts, was merchantable, safe and/or free of defects.

36. The vehicle sold by the defendant, Drive USA 2, Inc., and owned by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint, had a defect and was therefore unsafe at the time the defendant sold said motor vehicle.

37. As said motor vehicle was defective at the time of said sale, the defendant, Drive USA 2, Inc, breached its said implied warranties that the vehicle owned and operated by the plaintiff at the time of the automobile accident referenced in Paragraph 11 of this Complaint was merchantable, safe, and/or free of defects.

38. As a direct and proximate result of the said breach of said implied warranties by the defendant, Drive USA 2, Inc., the plaintiff suffered severe pain of body and anguish of mind, has sustained serious injuries, has been disabled from her normal activities, suffered a diminution in her capacity to earn, and has incurred, and will continue to incur substantial expenses for medical care and attention.

Wherefore, pursuant to Count I of this Complaint, the plaintiff demands judgment against the defendant, Medeiros Williams, Inc., in an amount which will adequately compensate her for her severe pain of body and anguish of mind, serious personal injuries, disability from her normal activities, diminution of her capacity to earn, and expenses for past and future medical care and attention, plus interest, costs and attorney's fees, and such other relief as this court deems just and proper.

Wherefore, pursuant to Counts II, III, IV and V of this Complaint, the plaintiff demands judgment against the defendant, General Motors, LLC., in an amount which will adequately compensate her for her severe pain of body and anguish of mind, serious personal injuries, disability from her normal activities, diminution of her capacity to earn, and expenses for past and future medical care and attention, plus interest, costs and attorney's fees, and such other relief as this court deems just and proper.

Wherefore, pursuant to Count VI of this Complaint, the plaintiff demands judgment against the defendant, Drive USA 2, Inc., in an amount which will adequately compensate her for her severe pain of body and anguish of mind, serious personal injuries, disability from her normal activities, diminution of her capacity to earn, and expenses for past and future medical care and attention, plus interest, costs and attorney's fees, and such other relief as this court deems just and proper

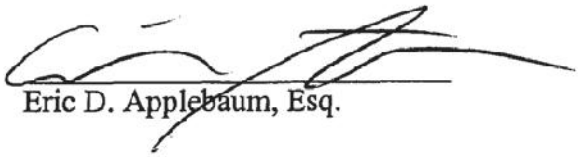
The plaintiff, Ramona Benbow, hereby requests a trial by jury on all counts and issues of this Complaint which may be tried to a jury.

The Plaintiff
By Her Attorneys
FEIN, EMOND & APPLEBAUM, P.C.

Eric D. Applebaum, Esq.
52 Mulberry Street
Springfield, MA 01105
Tel: (413) 781-5400
Fax: (413) 739-0801
BBO#: 560298
Date: Oct. 14, 2014

CERTIFICATE OF COMPLIANCE

I, Eric D. Applebaum, Esq., hereby certify that the foregoing Complaint has been filed within the time period provided therefor.



Eric D. Applebaum, Esq.

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE M. ELLIOTT, CELESTINE V. ELLIOTT, and BERENICE SUMMERVILLE, for themselves, on behalf of all others similarly situated, and on behalf of the People of the District of Columbia,	)	**Case No. 1:14-cv-00691 (KBJ)**
	)	**CLASS ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF**
Plaintiffs,	)	**REPRESENTATIVE ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF PURSUANT TO THE D.C CONSUMER PROTECTION PROCEDURES ACT, D.C. Code § 28-3901 et seq.**
v.	)	
GENERAL MOTORS LLC, DELPHI AUTOMOTIVE PLC, and DPH-DAS LLC f/k/a DELPHI AUTOMOTIVE SYSTEMS, LLC,	)	**JURY TRIAL DEMANDED**
Defendants.	)	

FIRST AMENDED COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs LAWRENCE ELLIOTT, CELESTINE ELLIOTT and BERENICE SUMMERVILLE bring this action for themselves, and on behalf of all persons similarly situated who own or have owned the substandard and dangerous vehicles identified below at any time since October 19, 2009. The Elliotts also bring this action of behalf of the public as representatives of the People of the District of Columbia.

1. Mr. and Mrs. Elliott are 78 and 73 years of age respectively as of the date of filing this Complaint. They have been married for forty-nine years. They are retired commercial drivers with over twenty-five years of on-the-road experience. After they retired from professional driving, they paid the full manufacturer's suggested retail price for a new

2006 Chevrolet Cobalt at a now-defunct GM dealership in Washington, D.C. The Elliotts' Cobalt has substantial safety related defects that render it dangerous to drive. The Elliotts' Cobalt has substantial safety related defects that render it dangerous to drive; these same defects are suspected of causing death or personal injury to hundreds of people across the United States, according to the National Highway Traffic Safety Administration ("NHTSA).

2. The Elliotts' Cobalt has a defective ignition switch that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable.

3. The Elliotts' Cobalt has a plastic fuel pump which is mounted on the top of the gas tank. When the fuel pump leaks, gasoline flows down the side of the tank and can pool under the car, dangerously close to the car's catalytic converter. The fuel pump is not designed to withstand the reasonably foreseeable environmental and operating conditions to which a car can be expected to be exposed. The fuel pump in the Elliotts' car has already failed to withstand the heat to which it is exposed. After noticing a persistent fuel smell, the Elliotts eventually discovered a two-foot in diameter pool of leaked gasoline under the car. Subsequently, a GM dealer replaced the pump at New GM's direction, with, as far as Plaintiffs can determine, a new plastic replica of the first pump - presenting the same defect and the same unreasonable safety risk of personal injury and property damages to Plaintiffs and class members due to the fire hazards associated with the pooling gas.

4. The Elliotts, whose entire family – including their children, grandchildren, and great-grandchildren – depended upon the Cobalt for transportation, are now extremely hesitant to drive the vehicle. They fear for their own safety and, in particular, for the safety of their great grandchildren (aged 6 and 8) who reside with them and were frequently driven to school in the car before the Elliotts discovered the extent and nature of the Cobalt's defects.

5. In December 2009, Ms. Berenice Summerville bought a 2010 Chevrolet Cobalt as a Christmas gift for her mother, Louella Summerville, who is 80 years of age as of the date of the filing of this First Amended Complaint. Like the Elliotts' 2006 Cobalt, Ms. Summerville's vehicle contains a defective ignition switch and a defective fuel pump, both of which posed and continue to pose risks of imminent death, personal injury or property damage. Ms. Summerville first became aware of problems with the car when she noticed the smell of gasoline when starting or switching off the car. She also noticed that the car had particularly poor gas mileage, which she supposed was consistent with fuel leakage. When she took the car in for maintenance, she asked the mechanic at Ourisman Chevrolet of Marlow Heights ("Ourisman"), a GM dealership, to inspect for fuel leakage, but the dealer refused to do so without a fee. Because the odor and poor performance continued, she again requested that the fuel system be inspected for leaks at her car's most recent service. After searching the vehicle history, Ourisman representatives informed Ms. Summerville that although there had been a recall on the fuel system, it was now closed. Ourisman again refused to inspect the fuel system without a fee. Ms. Summerville also noticed that the airbag light was flickering on and off, inexplicably, on both the passenger and driver sides of the car. She no longer drives the Cobalt because of fear for her own and her mother's safety.

6. GM admits that, since its incorporation on October 19, 2009, General Motors LLC ("GM" or "New GM") has known and failed to disclose that the Plaintiffs' Cobalts and class members' vehicles are substandard and pose significant and unreasonable risks of death, serious personal injury, and property damage. GM could hardly deny these facts in any event. New GM acquired all the books, records and accounts of General Motors Corporation ("Old GM"), including records that document the unlawful concealment of defects in vehicles sold by Old GM prior to New GM's existence. New GM also retained the engineering, legal and

management officials who were responsible for designing, engineering, and concealing safety-related defects at Old GM; those officials were immediately assigned to precisely the same tasks at New GM, and they implemented or continued identical policies and practices to conceal safety related defects in GM products.

7. The National Highway Traffic Safety Administration (NHTSA) fined New GM $28,000,000, the maximum permissible under applicable law, for GM's failure to disclose defects related to the ignition switches in Plaintiffs' and class members' cars.

8. For nearly five years after its inception, GM failed to disclose to, and actively concealed from, Plaintiffs, class members, investors, litigants, courts, law enforcement and other government officials including the NHTSA, the risks of death, personal injury, and property damage posed by its defective products. Instead, conspiring with Delphi, Ourisman, GM's dealers nationwide, outside lawyers, and various others, GM engaged in, and may still be engaging in, an extensive, aggressive and complex campaign to conceal and minimize the safety-related defects that exist in Plaintiffs' and class members' vehicles. That campaign is designed to mislead Plaintiffs, class members, consumers, investors, courts, law enforcement officials, and other governmental officials, including the NHTSA, that the value of the company and the worth and safety of its products are greater than they are. With those same co-conspirators, GM directed an unlawful and continuing enterprise calculated to gain an unfair advantage over competitor automakers that conduct their business within the bounds of the law.

9. Defendants first deployed their campaign of deception on the day that New GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, Defendants recklessly endangered the safety of Plaintiffs, their families, and members of the public. Defendants' wrongful acts and omissions harmed Plaintiffs and class

members by exposing them to increased risk of death or serious bodily injury, by depriving them of the full use and enjoyment of their vehicles, and by causing a substantial diminution in the value of the vehicles to Plaintiffs and class members, and a substantial diminution in value of their vehicles on the open automobile market.

10. As of the date of the filing of this First Amended Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

11. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that New GM employees knew about safety-related defects in millions of vehicles, including the Elliotts' 2006 Cobalt and Ms. Summerville's 2010 Cobalt, and that GM did not disclose those defects as it was required to do by law. Ms. Barra attributed New GM's "failure to disclose critical pieces of information," in her words, to New GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks. For example, GM chose to use and then conceal defective ignition switches in Plaintiffs' and class members' vehicles in order to save approximately $0.99 per vehicle.

12. In executing their scheme to conceal the dangerous character of Plaintiffs' vehicles, Defendants violated a multitude of laws:

a) In furtherance of their common design to prevent Plaintiffs, class members, other consumers, law enforcement and other governmental officials, litigants, courts, and investors from learning of the safety defects in GM cars, GM, Delphi, and GM's dealers conducted a racketeering enterprise and engaged in a pattern of racketeering activities, including repeated and continuous acts of mail and wire fraud, television and radio fraud, and tampering with witnesses and victims in violation of the Racketeer Influenced and Corrupt Organizations

Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, causing the harm to Plaintiffs and class members described above.

b) By concealing the material fact of the dangerousness of the Plaintiffs' and class members' vehicles, by failing properly to repair the safety defects in the cars in a timely manner, and by engaging in other unconscionable and/or unlawful behavior, GM and Delphi violated the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*, and the Maryland Consumer Protection Act,. Md. Code, Com. Law § 13-408 *et seq.*, causing the harm described above to Plaintiffs and class members.

c) GM and Delphi also violated their duties to warn Plaintiffs and class members about the dangers that their vehicles posed, resulting in economic loss and increased risk of personal injury for which Defendants are liable to Plaintiffs and Class members under the common law of the District of Columbia and the States of Florida, Maryland, New Jersey and Ohio.

d) Because they intentionally concealed a material fact from Plaintiffs and Class members, Defendants are liable to Plaintiffs for the harm Plaintiffs and class members have suffered and for punitive damages under the common law of fraud common to the several States.

e) By civilly conspiring to conceal the safety-related defects of GM vehicles, both among themselves and among nonparties to this litigation, and because they acted jointly to harm Plaintiffs and class members, Defendants are jointly and severally liable for all harm they or any co-conspirator caused.

f) Defendants aided and abetted the conduct of each other and of nonparties in concealing the safety-related defects of GM vehicles.

g) With respect to the claims of Ms. Summerville and other purchasers of identified cars sold since New GM's inception, Defendants are also liable for breach of a sellers implied warranty of merchantability under the Uniform Commercial Code §2-314 of thirty-one States identified herein that have abolished vertical privity requirements for such suits. They are also liable under the common law of the several States to those purchasers for fraud in inducing the purchases through misrepresentations and material omissions upon which Plaintiffs and class members based their purchases.

PARTIES

13. Plaintiffs Lawrence and Celestine Elliott are citizens and residents of the District of Columbia. Mr. and Mrs. Elliott jointly own a 2006 Chevrolet Cobalt SS. Although Mr. and Mrs. Elliott have always been the primary drivers of their cars, they have children, grand children, and great-grandchildren who live with them, and frequently ride in the cars as passengers and, on rare occasions, also drive the cars.

14. Plaintiff Berenice Summerville is a citizen and resident of the State of Maryland. She purchased a 2010 Chevrolet Cobalt in December 2010 from a GM dealer in the State of Maryland, and she has been the primary driver of the vehicle for virtually the entire period since she purchased the car. She often drives in the District of Columbia, which is less than 5 miles from her home.

15. General Motors LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Detroit, Michigan. On October 19, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout

the United States. Plaintiffs' claims and allegations against GM refer solely to this entity. In this First Amended Complaint, Plaintiffs are not making any claim against Old GM (General Motors Corporation) whatsoever, and Plaintiffs are not making any claim against New GM based on its having purchased assets from Old GM or based on its having continued the business or succeeded Old GM. Plaintiffs disavow any claim based on the design or sale of vehicles by Old GM, or based on any retained liability of Old GM. Plaintiffs seek relief from New GM solely for claims that have arisen after October 19, 2009, and solely based on actions and omissions of New GM.

16. Delphi Automotive PLC is headquartered in Gillingham, Kent, United Kingdom, and is the parent company of Delphi Automotive Systems LLC, headquartered in Troy, Michigan. At all times relevant herein, Delphi, through its various entities, designed, manufactured, and supplied GM with motor vehicle components, including the defective ignition switches contained in the Cobalts owned by Plaintiffs, and in at least 6.5 million other vehicles.

17. GM and Delphi are collectively referred to in this Complaint as "Defendants."

JURISDICTION AND VENUE

18. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331, because the claims under the Racketeer Influenced and Corrupt Organizations Act present a federal question. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiff Class are citizens of states different from Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to these claims occurred in this District, and Defendants have caused harm to plaintiffs and class members residing in this District.

FACTUAL BACKGROUND

20. GM has publicly admitted that the ignition switches in Plaintiffs' and class members' cars are defective and pose a safety hazard. It has also admitted that, from its inception in 2009, various New GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch defect and/or diminish its significance. GM has been found guilty of failing to disclose the defect to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined New GM the maximum penalty that agency is authorized to impose.

21. GM continues to conceal the defect in the design of the fuel pumps on Plaintiffs' and Class members' vehicles from Plaintiffs, class members, investors, and governmental officials. On October 29, 2009, GM notified the NHTSA that they were recalling 2006 Chevrolet Cobalt and Saturn Ion vehicles sold or registered in Arizona and Nevada, and 2007 Chevrolet Cobalt, Pontiac G5, and Saturn Ion vehicles sold or registered in Arizona, California, Florida, Nevada and Texas. The reason for the recall was that "the plastic supply or return port on the modular reservoir assembly may crack…[and] fuel will leak." (NHTSA Report Campaign No. 09V419000). The consequence of this defect was listed in the report as follows: "Fuel leakage, in the presence of an ignition source, could result in a fire." The recall was limited, however, to vehicles in the five aforementioned states. Special coverage – that is, GM would replace a noticeably leaking fuel pump if the issue was specifically brought to them by a customer – was provided in a limited number of additional states: 2006 vehicles registered in Alabama, Arkansas, California, Florida Georgia, Hawaii, Louisiana, Mississippi, North

Carolina, New Mexico, Oklahoma, South Carolina, Tennessee, and Texas, and 2007 vehicles registered in Alabama, Arkansas, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Tennessee. GM offered vehicle owners outside the listed recall states no recourse, even if their plastic fuel pumps, which were susceptible to exactly the same life-threatening defect, started noticeably leaking. GM did not inform owners of identical vehicles outside of Arizona, California, Florida, Nevada and Texas that they were in danger of being seriously injured or killed by their defective and potentially leaking fuel pump, despite the fact that the defective fuel pump can cause fuel to pool very close to the catalytic converter, which can temperatures in excess of 1000 degrees Fahrenheit in some circumstances. A fuel leak in close proximity to such high temperatures is extremely unsafe.

22. On September 19, 2012, GM notified the NHTSA that they were expanding the recall described in paragraph 21 to cover 2007 Chevrolet Equinox and Pontiac Torrent vehicles, 2007 Chevrolet Cobalt, Pontiac G5, and Saturn ION vehicles, 2008 Chevrolet Cobalt and Pontiac G5 vehicles, and 2009 Chevrolet Cobalt and Pontiac G5 vehicles, but again geographically limited the recall, providing no recourse or notification to vehicle owners outside Arizona, Arkansas, California, Nevada, Oklahoma and Texas.

23. Since at least October 29, 2009, GM has been aware that the fuel pumps in Plaintiffs' and class members' vehicles are defective because of their propensity to fail when exposed to high temperatures, which can occur in any car regardless of what state it is registered in. Failure of the fuel pump threatens the kind of fuel leakage that Plaintiffs and class members have detected, and creates an unreasonable danger of fire, personal injury and/or property damage. GM continues to conceal the safety defect and risk of death or severe personal and property damage from vehicle owners outside the recall states. GM has failed to

notify Plaintiffs, class members, and governmental officials of the full scope of the defect, nor has it rectified the defect, as required by law.

24. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must disclose the defect to appropriate government officials and registered owners of the vehicle in question.

25. Upon its inception, New GM instituted and continued policies and practices intended to conceal safety related defects in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, New GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product defects:

a) GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related defects by limiting the action that GM would take with respect to such defects to the issuance of a Technical Service Bulletin or an Information Service Bulletin.

b) New GM directed its engineers and other employees to falsely characterize safety-related defects – including the defects described in this complaint – in their reports, business and technical records as "customer convenience" issues, to avoid being forced to recall vehicles as the relevant law requires.

c) New GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by defects in GM products.

d) New GM directed its employees to avoid the word "stall" in describing vehicles experiencing a moving stall, because it was a "hot word" that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.

i. A "moving stall" is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.

e) New GM directed its engineering and other personnel to avoid the word "problem," and instead use a substitute terms, such as "issue," "concern," or "matter," with the intent of deceiving plaintiffs and the public.

f) New GM instructed its engineers and other employees not to use the term "safety" and refer instead to "potential safety implications."

g) New GM instructed its engineers and other employees to avoid the term "defect" and substitute the phrase "does not perform to design."

h) New GM instituted and/or continued managerial practices designed to ensure that its employees and officials would not investigate or respond to safety-related defects, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public. In a practice New GM management labeled "the GM nod," GM managers were trained to feign engagement in safety related product defects issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.

i) New GM's lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related defects and GM's refusal to respond to and/or GM's continuing concealment of those defects. New GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. New GM did not describe the "no-notes policy" in writing to evade detection of their campaign of concealment.

j) New GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was defective. New GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for New GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. New GM knew from its inception that the part number irregularity was intended to conceal the faulty ignition switches in Plaintiffs' and class members' vehicles.

26. New GM followed a practice and policy of intentionally mischaracterizing safety issues as "customer convenience" issues to avoid recall costs, and it enlisted its dealership network in its campaign of concealment by minimizing the safety aspects of the "technical service bulletins" and "information service bulletins" it sent to dealers. New GM directed dealers to misrepresent the safety risks associated with the product defects of its vehicles. New GM followed this practice with respect to the defective ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch defect began to unravel in February 2014.

27. New GM followed a practice or policy of minimizing and mischaracterizing safety related defects in its cars in its communications with Plaintiffs, class members, law

enforcement officials, the NHTSA, and other governmental officials. New GM followed these practices and procedures when it wrongfully limited the geographic reach of its October 2009 recall of defective fuel pumps in Plaintiffs and class members cars to drivers in a small number of states, even though GM knew that the fuel pump defect threatened the safety and posed unreasonable risks of death, serious bodily injury, and property damage in all vehicles containing the fuel pump regardless of the state in which the vehicle was registered. GM concealed the fact that vehicle owners and drivers who are residents of Maryland and the District of Columbia and other states face the same or similar unreasonable risks of fuel leakage and subsequent fire as drivers in the recall states.

28. Upon the inception of New GM in October 2009, New GM and Delphi agreed to conceal safety related defects from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors. Both New GM and Delphi knew since October 2009 that the design of the faulty ignition switch in Plaintiffs and class members' cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety defects.

29. Since New GM's inception in October 2009, both New GM and Delphi have known that the faulty ignition switch in the Plaintiffs' Cobalts and class members' vehicles posed a serious safety and public health hazard because the faulty ignition switch caused moving stalls. Each Defendant had legal duties to disclose the safety related defects. Rather than notifying the NHTSA, Defendants instead decided that Plaintiffs and class members, and millions of drivers and pedestrians should face imminent risk of injury and death due to the defective ignition switches in Plaintiffs' and class members' vehicles. Delphi and GM entered

into an agreement to conceal the alteration of the part without simultaneously changing the part number, and concealed the risks associated with the defective ignition switches.

30. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the defect.

31. In April 2013, GM hired an outside engineering-consulting firm to investigate the defective ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Defect until 2014.

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

33. While GM has finally admitted that the ignition switch in millions of vehicles poses an unreasonable safety risk to Plaintiffs, class members, and to the public, it continues to deny and conceal that fact that the fuel pump design on Plaintiffs' and class members' vehicles is also defective and poses its own imminent and unreasonable risk of death or serious bodily injury.

34. New GM explicitly directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related defects – including the ignition switch defect – in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against New GM by falsely claiming such suits are barred by Order

of the Bankruptcy Court, and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their false veneer of ignorance concerning the safety related defects. In one case, GM threatened the family of an accident victim with liability for GM's legal fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated by means of mail and wire to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product defects GM concealed.

TOLLING OF THE STATUTE OF LIMITATIONS

37. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

38. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the safety related defects described herein.

39. Plaintiffs and Class Members had no reason to know that their products were defective and dangerous because of Defendants' active concealment.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this lawsuit as a class action on their own behalves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority

requirements of those provisions. All proposed Class and Subclass periods run from the inception of New GM in October 2009 and continue until judgment or settlement of this case.

41. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of New GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch manufactured by Delphi and/or a defective fuel pump. As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerous ignition switches:

- 2005-2011 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2006-2010 Pontiac Solstice
- 2007-2010 Pontiac G5
- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2009 Buick Lacrosse
- 2006-2011 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2006-2014 Chevrolet Impala
- 2006-2008 Chevrolet Monte Carlo
- 2000-2005 Cadillac Deville
- 2004-2011 Cadillac DTS

As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerously defective fuel pumps:

- 2006-2010 Chevrolet Cobalt
- 2006-2007 Saturn Ion
- 2007-2009 Pontiac G5
- 2007 Chevrolet Equinox

42. Plaintiffs also bring this action on behalf of the following Subclasses:

a. The Elliotts bring this action on behalf of all persons in the District of Columbia who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch or defective fuel pump as described above. The GM models include those listed in the preceding paragraph (the "District of Columbia" Subclass);

b. Ms. Summerville brings this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch and/or fuel pump (the "Maryland Subclass");

c. Ms. Summerville brings this action on behalf of residents of the District of Columbia, Alaska, Arkansas, Delaware, Hawaii, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, West Virginia, and Wyoming, who, since New GM's inception in October 2009, purchased a GM vehicle containing the defective ignition switch manufactured by Delphi and/or the defective fuel pump (the "Multi-State Warranty Subclass");

d. Plaintiffs also bring this action on behalf of residents of the District of Columbia and the States of California, Florida, Maryland, New Jersey and Ohio who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch and/or fuel pump (the "Multi-State Negligence Subclass").

43. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

44. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM's possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

45. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a GM vehicle during the Class Period that contained a defective ignition switch manufactured by Delphi and/or a defective fuel pump. Plaintiffs, like all class and subclass members, have been damaged by Defendants' misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering

diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles. Furthermore, the factual bases of Defendants' misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

46. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

47. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. Whether the vehicles owned by class or subclass members during the class periods suffer from the defective ignition switch and/or defective fuel pump described herein?

b. Whether the defective ignition switch and/or fuel pump posed an unreasonable danger of death or serious bodily injury?

c. Whether GM and/or Delphi imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?

d. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?

e. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?

f. Whether GM and Delphi had a legal duty to disclose the ignition switch danger to class and subclass members?

g. Whether GM and/or Delphi had a legal duty to disclose the ignition switch danger to the NHTSA?

h. Whether either GM and/or Delphi breached duties to disclose the ignition switch defect?

i. Whether class and subclass members suffered legally compensable harm?

j. Whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle during the class period?

k. Whether Defendants violated the consumer protection statutes of the District of Columbia and Maryland by concealing the ignition switch defect and/or the fuel pump defect from Plaintiffs and governmental officials?

l. Whether Defendants violated Maryland's consumer protection statute by concealing material facts about and making affirmative misrepresentations about GM cars in connection with sales made since the inception of the New GM?

m. Whether the fact that the ignition switch was defective was a material fact?

n. Whether Ms. Summervilles and the Multi-State Warranty Subclass members' vehicles were merchantable?

o. Whether Plaintiffs and Class Members are entitled to a declaratory judgment stating that the ignition switches and/or fuel pumps in their vehicles are defective and/or not merchantable?

p. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

q. Whether GM should be declared responsible for notifying all Class Members of the Defect and ensuring that all GM vehicles with the Ignition Switch Defect are recalled and repaired?

r. Whether Defendants conducted a criminal enterprise in violation of RICO?

s. Whether Defendants engaged in a pattern or practice of racketeering?

t. Whether Defendants committed mail or wire fraud in connection with their concealment of the defective ignition switch.

u. Whether class members were harmed by Defendants' violations of RICO?

v. Whether class and subclass members are entitled to recover punitive damages from Defendants, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

48. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for Defendants' misconduct. Absent a class action, class and subclass members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and

fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is superior for defendants as well, who otherwise could be forced to litigate thousands of separate actions.

49. Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members.

CAUSES OF ACTION

COUNT I
VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. § 1962(c) and (d))

50. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

51. This claim is brought by all Plaintiffs on behalf of the nationwide Class.

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

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

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

55. At all times relevant, GM and Delphi are and were each a "person" who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While GM and Delphi each participated in the RICO Enterprise, they each exist separately and distinctly from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which GM and Delphi have engaged and are engaging.

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

The RICO Enterprise

57. Defendants participated in the operation and management of an association-in-fact enterprise whose aim was to conceal safety related defects in Delphi products installed in GM vehicles from Plaintiffs, class members, the NHTSA, litigants, courts, law enforcement officials, consumers, and investors. The Enterprise was motivated by the common design of concealing the true value of the defendant companies and their products, and it constituted an unlawful, continuing enterprise calculated to gain an unfair advantage over competitor automakers who conduct their business within the bounds of the law. The Enterprise was partly embodied in practices and procedures intended to mischaracterize safety related defects – such as the ignition switch – as "customer convenience issues" to avoid incurring the costs of a

recall, and minimizing the significance of disclosures that were made by limiting the scope of their gas-pump recall to five and then seven states.

58. The RICO Enterprise began with the inception of New GM, on October 19, 2009. The following persons, and others presently unknown, have been members of and constitute the association-in-fact enterprise with the following roles:

a) New GM, which mandated its employees take the various measures, described above at paragraph 26, to conceal safety related defects, including the ignition switch and the fuel pump defects.

b) GM's engineers (including but not limited to Ray DeGiorgio, Gary Altman, a program engineering manager, Michael Robinson, vice president for environmental sustainability and regulatory affairs, Gay Kent, general director of product investigations and safety regulations) who have carried out GM's directives since the inception of New GM in October 2009 by minimizing and misrepresenting the safety aspects of the ignition switch defect – enabling GM to avoid its legal obligations to recall vehicles with safety related defects. GM's engineers (including but not limited to Mr. DeGiorgio, Mr. Altman, Mr. Robinson and Ms. Kent) have also concealed the part-number-labeling fraud of which they have known since New GM's inception in October 2009.

c) GM's in-house lawyers (including but not limited to Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo, and Jennifer Sevigny), who knowingly assisted GM in evading its legal responsibilities by taking measures allowing GM management to claim ignorance about the increasing number of accidents and personal injuries that the ignition switches were causing throughout the Class period. GM's in-house lawyers,

as described in Paragraph 36, also took measures to ensure that lawsuits filed by victims of the ignition switch defect and their surviving families were settled confidentially – preventing them from revealing the defect to other Plaintiffs, class members, law enforcement officials, or other government authorities, including the NHTSA – for amounts below the threshold that would trigger closer scrutiny within GM.

d) GM's outside lawyers, retained to defend the Company against lawsuits filed by victims with injuries allegedly caused by the ignition switch defect, who were directed to play, and played, the same roles as those of in-house counsel described above – taking analagous measures to help GM conceal the ignition switch defect.

e) Delphi, who, since the inception of the new GM in October 2009, has participated in the Enterprise to conceal the defective ignition switch system and its knowledge that ignition switch part numbers on vehicles driven by class members during the class period were misleading or fraudulent and would hinder any attempt to investigate or learn about the ignition switch defect.

f) GM's Dealers, including but not limited to Ourisman of Marlow Heights, whom New GM instructed, explicitly or implicitly, to present false and misleading information regarding the ignition switch and fuel pump defects to Plaintiffs and Class members, through, *inter alia*, Technical Service Bulletins and Information Service Bulletins, and who did, in fact, present such false and misleading information to Plaintiffs and Class members during the Class period.

58. GM and Delphi conducted and participated in the affairs of this RICO Enterprise through a continuous pattern of racketeering activity that began with the inception

of the New GM in October 2009, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and 18 U.S.C. § 1512 (tampering with witnesses and victims).

Predicate Acts of Wire and Mail Fraud

59. Since its inception in October 2009 and in furtherance of its scheme to defraud, GM, its engineers and its lawyers communicated with Delphi on a regular basis via the mail and/or wires regarding the defective ignition switch. Through those communications, GM instructed Delphi to continue concealing the ignition switch defect and to continue to produce ignition mislabeled or fraudulently labeled switches to help GM evade detection of New GM's unlawful failure to recall vehicles with defective ignition switches by the NHTSA or other law enforcement officials. GM's and Delphi's communications constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

60. Since GM's inception in October 2009, in furtherance of its scheme to defraud, GM's lawyers communicated with those claiming injuries caused by the ignition switch defects on a regular basis via the mail and/or wires. Upon information and belief, GM's lawyers utilized the mail and wires to insist that litigants agree to confidentiality agreements forbidding disclosure that the ignition switch defects caused their injuries, and to communicate with supervisors and each other about ensuring that the cases settled below the threshold that would trigger scrutiny that might endanger Defendants' concealment of the ignition switch defects.

61. Since its inception in October 2009, GM has routinely used the wires and mail to disseminate false and fraudulent advertising about Plaintiffs' and Class members' vehicles, misrepresenting the vehicles as safe and dependable and failing to disclose the ignition switch or fuel pump defects in its advertising.

Predicate Acts of Tampering With Witnesses and Victims

62. New GM engaged in an ongoing scheme to tamper with witnesses and victims as described in 18 U.S.C. § 1512(b) by using misleading conduct to influence, delay and prevent the testimony of victims in official proceedings and by entering into a campaign of intimidation and false statements to discourage victims from pursuing their claims against GM, as described elsewhere in the complaint. New GM's in-house legal office played an integral role in the RICO Enterprise by instituting and/or continuing policies and practices with respect to potential and ongoing legal proceedings designed to intimidate victims from utilizing the courts to seek legal protection and to prevent outsiders from becoming aware of the number of victims of safety related defects in GM cars and the severity of injuries those defects were causing. GM instructed its counsel to deny to victims and their families the existence of the ignition switch defect, and to place blame for any injuries on driver error or irresponsible driving. GM instructed its counsel to prepare its corporate and fact witnesses by encouraging them to deny that they remember anything about any topic on which they were questioned. GM's lawyers actively discouraged GM personnel from taking any notes at safety related meetings. In furtherance of its scheme to conceal its wrongful behavior, GM insisted as a condition of providing any compensation to victims that they agree to confidentiality agreements designed to prevent detection of the safety related defect at issue by Plaintiffs, Class and Subclass members, the NHTSA, courts, litigants, and investors. New GM also corruptly encouraged its employees and engaged in misleading conduct to prevent said employees from reporting safety defects and therefore delay or prevent their testimony about said defects. GM accomplished this by, *inter alia*, punishing employees who raised red flags about safety defects, thus intentionally intimidating and threatening employees who otherwise could have raised red flags. Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo,

and Jennifer Sevigny, five of GM's in-house lawyers responsible for carrying the tasks described herein, were fired by GM in June 2014, after the Enterprise came to light.

63. Defendants' conduct in furtherance of this scheme to conceal and/or minimize the significance of the ignition switch defect and fuel pump defect was intentional. Plaintiff, Class and Subclass members were harmed in that they were forced to endure increased risk of death or serious bodily injury, they lost use and enjoyment of their vehicles, and their vehicles' values have diminished because of Defendants' participation in conducting the RICO Enterprise. The predicate acts committed in furtherance of the enterprise each had a significant impact on interstate commerce.

COUNT II
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

64. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

65. At the time of New GM's inception in 2009, Defendants knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. This fact was material to Plaintiffs and class members.

66. In late October 2009, Defendants also knew that the fuel pump design in the Chevrolet Cobalt was prone to cause fuel leakage and fires.

67. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and fuel pump defects, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

68. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

69. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III
Asserted on Behalf of Ms. Summerville and the Nationwide Subclass of Class Members Who Purchased their Vehicles after New GM's Incorporation on October 19, 2009 (Common Law Fraud)

70. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

71. This Claim is brought on behalf of Berenice Summerville and the subclass of consumers who purchased their vehicles after New GM's incorporation on October 19, 2009.

72. Upon incorporation of New GM, Defendants knew that ignition switch used in the 2010 Chevrolet Cobalt and other Class Vehicles purchased after October 10, 2009 could inadvertently move from "run" to "accessory" or "off," under regular driving conditions, and that the fuel pump was dangerously defective and posed an unreasonable risk of death or serious bodily injury.

73. Prior to November 2009, Defendants also knew that the fuel pump design in the Chevrolet Cobalt was improperly placed and prone to leakage and even fire.

74. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and fuel pump defects, and minimized the extent of the danger they posed. Concealment of the fuel pump defect continues to the present.

75. Because Defendants were in exclusive control of the material facts concerning the ignition switch and fuel pump defects, Plaintiffs' and Class Members' actions in purchasing and driving the dangerous vehicles were justified because they had no way of knowing that material facts had been concealed. Plaintiffs and Class Members would not have acted as they did in purchasing and driving their cars if they had known of the concealed and/or suppressed facts.

76. In the alternative, even if a class member would still have made the vehicle purchase had the defects been known, they would have paid less for their vehicles but for the concealment of the defect. The concealment of the defects artificially increased the market price of the vehicles.

77. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained, and continue to sustain, damages arising from the difference in value between the prices they were induced to pay for their vehicles, and the true value of a vehicle with a defective ignition switch or fuel pump.

78. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive

damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV
Asserted on Behalf of Plaintiffs and on Behalf of the Multi-State Negligence Subclass (Negligent Infliction of Economic Loss and Increased Risk under the Common Law of the District of Columbia and Florida, Maryland, New Jersey, and Ohio)

79. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

80. This claim is brought on behalf of Plaintiffs and the District of Columbia and Maryland Classes and, with respect to the fuel pump defect, the District of Columbia and Maryland subclasses of consumers whose vehicles also suffer from the fuel pump defect described in Paragraph 21.

81. Because the defective ignition switches and fuel pumps created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the defect as soon as soon as they learned of the problem – upon the inception of New GM in October 2009.

82. Rather than alerting vehicle owners to the danger, Defendants actively concealed and suppressed knowledge of the problems.

83. Defendants created an unreasonable risk of death or serious bodily injury to Plaintiffs and Subclass members. Plaintiffs and Subclass members were particularly identifiable and foreseeable victims of Defendants' negligence, and their injuries in terms of the diminution in the value of their vehicles and the loss of use and enjoyment of the vehicles was particularly foreseeable.

84. Defendants created an unreasonable risk of death or serious bodily injury through a pattern and practice of negligent hiring and training of its employees, and by creating

and allowing to continue a culture at GM which encouraged the minimizing and hiding of safety defects from the public. GM negligently increased this risk by firing or otherwise retaliating against employees who did attempt to convince GM to fix safety problems.

85. As a result of Defendants' failure to warn them about the defects or repair their vehicles, Plaintiffs and Class Members sustained, and continue to sustain, damages arising from the increased risk of driving vehicles with safety related defects, from the loss of use and enjoyment of their vehicles, and from the diminished value of their vehicles attributable to Defendants' wrongful acts.

86. Plaintiffs and class members seek compensatory damages in an amount to be proved at trial, including compensation for any pain and suffering they endured.

COUNT V
Asserted on Behalf of Mr. and Mrs. Elliott, for themselves, as representatives of the public, and on behalf of the District of Columbia Subclass
(Violation of the District of Columbia's Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901 *et seq.*)

87. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

88. This Count is brought on behalf of Mr. and Mrs. Elliott and the District of Columbia Subclass.

89. Plaintiffs are "consumers" within the meaning of the CPPA, § 28-3901(a)(2).

90. Defendants are "persons" within the meaning of the CPPA, § 28-3901(a)(1).

91. Upon the inception of GM in 2009, Defendants knew the Elliotts' and Subclass members' vehicles, due to the ignition switch defect, are prone to engine and electrical failure during normal and expected driving conditions. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes

Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. GM knew that the defective fuel pumps in the vehicles posed unreasonable risks of death, serious bodily injury, and property damage to the Elliotts, Subclass members, and bystanders. Because of the life threatening nature of these defects, their existence was a material fact that Defendants concealed from plaintiffs and class members.

92. Subclass members had no reason to believe that their vehicles possessed distinctive shortcomings; throughout the Class Period, they relied on Defendants to identify latent features that distinguished Plaintiffs' and Subclass members' vehicles from similar vehicles without the ignition switch and fuel pump defects, and the Defendants' failure to do so tended to mislead consumers into believing the Class Vehicles were safe to drive.

93. Defendants violated D.C. Code § 28-3904(f) by failing to state a material fact, the omission of which tended to mislead consumers.

94. Defendants violated the District of Columbia's consumer protection act generally by violating the common law governing fraud and negligence of the District of Columbia.

95. Defendants violated the CPPA because any violation of any state or federal regulation of any trade practice is also a violation of the CPPA, so each complaint of each violation of federal law described above, including allegations of GM's violations of the Tread Act, "), 49 U.S.C. §§ 30101-30170, is also a predicate violation of the CPPA.

96. Plaintiffs seek treble damages, or $1,500 per violation, whichever is greater, payable to the consumer, an order enjoining Defendants' unfair or deceptive acts or practices, attorneys' fees, punitive damages, and any other just and proper relief available under D.C.

Code § 28-3905(k)(2), including preliminary and permanent injunctive relief aimed at providing protection for the People of the District of Columbia from Defendants' reckless endangerment of the public health and their wanton disregard for the law.

COUNT VI
Asserted on Behalf of Ms. Summerville and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"),
Md. Code, Comm. Law § 13-101 *et seq.*)

97. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

98. This Count is brought on behalf of Ms. Summerville, the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3) and the portion of the Maryland Class who purchased vehicles after October 19, 2009, with respect to violations of MDCPA §§ 13-301(2)(i), 13-301(2)(iv), and 13-301(3).

99. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

100. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

101. Upon the inception of GM in 2009, Defendants knew the Elliotts' and Subclass members' vehicles, due to the ignition switch defect, are prone to engine and electrical failure during normal and expected driving conditions. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. GM knew that the defective fuel pumps in the vehicles posed unreasonable risks of death, serious bodily injury, and property damage to the Elliotts,

Subclass members, and bystanders. Because of the life threatening nature of these defects, their existence was a material fact that Defendants concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily imjury, and diminution of the value of each of their vehicles.

102. At no time during the Class Period did Ms. Summerville and Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their vehicles from similar vehicles without the ignition switch and fuel pump defects, and the Defendants' failure to do so tended to mislead consumers into believing no distinctive defect was present in their vehicles.

103. With respect to Maryland Subclass members like Ms. Summerville who purchased their defective vehicles since October 19, 2009, Defendants violated Md. Code, Comm. Laws § 13-301(2)(i) by falsely representing, through advertising, warranties, and other express representations, that the Class Vehicles had characteristics and benefits which they did not actually have, namely, reasonably safe design and component parts.

104. With respect to Maryland Subclass members like Ms. Summerville who purchased their defective vehicles since October 19, 2009, Defendants violated Md. Code, Comm. Laws § 13-301(2)(iv) by falsely representing through advertising, warranties, and other express representations, that the Class Vehicles met a certain standard or quality which they did not.

105. With respect to the Subclass generally without regard to whether they purchased their vehicle after October 129, 2009, Defendants violated Md. Code, Comm. Laws § 13-

301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch and fuel pump defects from Ms. Summerville and Subclass members.

106. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT VII
Asserted on behalf of Ms. Summerville and the Multi-State Class
(Breach of Implied Warranty of Merchantability Under § 2-314 of the UCC)

107. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

108. This Count is brought on behalf of Ms. Summerville and the Multi-State Warranty Class.

109. Plaintiffs are "buyers" within the meaning of the Uniform Commercial Code.

110. Defendants GM and Delphi are "sellers" within the meaning of the Uniform Commercial Code because the Multi-State class members' jurisdictions do not require privity with the buyer for a breach of the implied warranty of merchantability claim.

111. Subclass members who purchased Class Vehicles from Defendants since October 19, 2009, did so under an implied warranty that the vehicles would be merchantable. Because of the poor design of the fuel pump, which made leakage and fire more likely, and because of the ignition switch defect, their vehicles are not fit for ordinary purposes for which such vehicles are generally used and are therefore not merchantable.

112. Defendants sold goods that were not merchantable, because those goods are not fit for the ordinary purposes for which such goods are used – the vehicles were marketed and intended to be driven, but become unsafe under ordinary driving conditions.

113. Ms. Summerville and the Multi-State Class members were injured in that they did not receive the full benefits of their bargains with Defendants and seek to recover an amount to make them whole, or seek to exercise their contractual rights of rescission and return to the *status quo ante* by allowing them to return their vehicles to GM for a full refund, and to seek any other rights and remedies afforded them under the Uniform Commercial Code as buyers injured by the total breach of the seller in failing to tender a merchantable product as promised.

COUNT VIII
Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses
(Civil Conspiracy and Joint Action or Aiding and Abetting)

114. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

115. This Count is brought on behalf of the nationwide Class and all Subclasses.

116. Defendants are jointly and severally liable for Plaintiffs' and Class and Subclass members' injuries because they acted in concert to cause those injuries.

117. Defendants are also liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with each other and with others, including but not limited to the other defendants, dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this First Amended Complaint, to inflict those injuries and to conceal their actions from Plaintiffs, Class and Subclass members and others. By these agreements, Defendants conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

118. Defendants each committed overt acts in furtherance of the conspiracy.

119. Defendants knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

120. Defendants gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

121. Defendants were aware that their assistance and encouragement of the wrongful acts herein complained of substantially assisted the wrongful acts herein complained of.

122. The wrongful acts herein complained of harmed plaintiffs.

123. All defendants are therefore liable under civil conspiracy and civil aiding and abetting for all harm to plaintiffs and class members as described in this complaint.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

124. As of the date of the filing of this Complaint, GM concedes that some 6.5 million GM products have safety related defects that create an unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

125. Despite purporting to come clean about its campaign of concealment and deceit in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. Tens of thousands of GM vehicles with safety related defect threatening moving stalls and other dangerous conditions are driven within the District of Columbia by D.C. resident and commuters.

126. GM has recklessly endangered the public health and safety of the People of the District of Columbia.

127. One of the main purposes of the “representative action” authorized by the law of the District of Columbia is to allow private citizens such has Mr. and Mrs. Elliott to who are

entitled to relief in this representative action to assist public authorities in protecting the public interest.

PRAYER FOR RELIEF

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

E. Determine that the Elliotts may act as representatives of the public on behalf of the People of the District of Columbia;

F. Declare, adjudge and decree that Defendants have recklessly endangered the public safety of the People of the District of Columbia and order specific steps that Defendants must take to restore public safety, including but not limited to preliminary relief aimed at removing the unreasonably dangerous GM vehicles from the public streets and thoroughfares of the District forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related defects; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly admitted its years-long campaign of concealment and deceit, the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its business of manufacturing for sale to the public complex products that can so easily be a threat of death of serious bodily injury if not manufactured properly.

G. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

H. Declare, adjudge and decree that the ignition switches in Plaintiffs' and Class and Subclass Members vehicles are defective;

I. Declare, adjudge and decree that the fuel pumps in Plaintiffs' and Class and Subclass Members' vehicles are defective;

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

K. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the ignition switch and fuel pump defects or, in the case of Class and Subclass Members who purchased their vehicles after October 9, 2009, declare GM in total breach of contract for its failure to tender a merchantable vehicle, and order GM to return the full purchase price paid upon surrender of the vehicle at the election of the Class and Subclass member;

L. Declare, adjudge and decree that Defendants are financially responsible for notifying all Class Members about the defective nature of the Class Vehicles;

M. Declare, adjudge and decree that Defendants must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members all or part of the ill-gotten gains it received

from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

N. Award Plaintiffs, Class Members, and Subclass Members the greater of actual, compensatory damages or statutory damages, or treble damages under the CPPA, as proven at trial;

O. Award Plaintiff and the nation-wide Class Members treble damages pursuant to 18 U.S.C. § 1964(c);

P. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

Q. Award Plaintiff, Class Members and Subclass Members their reasonable attorneys' fees, costs, and prejudgment and postjudgment interest; and

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

JURY TRIAL DEMAND

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

Respectfully submitted,

_____/s/_____

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(202) 709-9662
daniel@taloslaw.com
Attorney for Plaintiffs

Exhibit D

CAUSE NO. 2014CCV-6078802

DIDRA DE LOS SANTOS, *Plaintiff*	§	**IN THE COUNTY COURT**
vs.	§	
	§	**AT LAW NO. 2**
MELINA GABRIELLE ORTEGA GENERAL MOTORS, LLC, and RAYMOND DEGIORGIO, GARY ALTMAN, LORI QUEEN, JIM QUEEN, MARK LANEVE, *Defendants*	§	**NUECES COUNTY, TEXAS**

PLAINTIFF'S FIRST AMENDED PETITION

COMES NOW Plaintiff Didra De Los Santos (hereinafter, "Didra" or "Plaintiff") and files her Original Petition and Application for Temporary Restraining Order and Injunction complaining of Melina Gabrielle Ortega, General Motors, LLC, Raymond DeGiorgio, Gary Altman, Lori Queen, Jim Queen, Mark LaNeve (together, "Defendants") and in support of this petition would show the Court as follows:

I.
DISCOVERY LEVEL

1. Discovery shall be conducted in this case according to a Level III discovery control plan.

II.
PARTIES

2. Plaintiff Didra De Los Santos is an individual residing in Corpus Christi, Nueces County, Texas.

3. Defendant Melina Gabrielle Ortega ("Defendant Ortega") is an individual who resides in Nueces County, Texas. Defendant Ortega has been served at her residence, 8201 Azimuth Ct., Corpus Christi, Nueces County, Texas 78414.

4. Defendant General Motors, LLC ("New GM") is a Delaware limited liability company. With respect to the facts alleged and claims asserted in this Petition, New GM is the corporate successor of General Motors Corporation ("Old GM"), which filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on June 1, 2009. On July 10, 2009, New GM acquired substantially all of the assets and assumed certain liabilities of Old GM by way of a Section 363 sale under Chapter 11 of the Bankruptcy Code. Plaintiff's causes of action in this lawsuit are brought against New GM, and Plaintiff does not assert any causes of action against Old GM. Although this Petition references facts against Old GM, it is for background and reference purposes only. At all times relevant to the claims in this lawsuit, New GM has been in the business of developing, manufacturing, and marketing cars throughout the State of Texas. New GM has a network of authorized retailers that sells New GM vehicles and parts throughout Texas. General Motors, LLC has been served with process through its registered agent for service of process in the State of Texas, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-4234, and has appeared and answered in this case.

5. Defendant Raymond DeGiorgio ("Defendant DeGiorgio") was the lead design engineer on Chevrolet Cobalt ignition switches. In 2006, DeGiorgio approved a design change to the faulty ignition switch that is the subject of GM's recent recall, and which caused Plaintiff's vehicle to stall immediately before the collision which is the subject of this lawsuit. Defendant DeGiorgio designed an improvement for the ignition switch in 2007, although he later denied,

under oath, that he had done so. He did this in what can only be described as an attempt to conceal a defective condition that GM knew about in the 2006 Chevrolet Cobalt, the vehicle owned by Plaintiff. Defendant DeGiorgio has recently been suspended, with pay, by the New GM for his role in the cover up at GM of the ignition switch defect. In fact, he was accused by at least one United States Senator of being actively involved in participation of a cover up by the New GM of the defective condition of the Chevrolet Cobalt and the extent of New GM's knowledge of the defective condition and the dangers such condition presented to Plaintiff and others. Defendant DeGiorgio has been served through the Texas Secretary of State in accordance with the Texas Long-Arm Statute, by service on him at his residence, 4085 Wildwood Court, Commerce, Michigan 48382.

6. Defendant Gary Altman ("Defendant Altman") was Chief Development Engineer at GM from 2000 to 2005, and programming engineering manager for the Chevrolet Cobalt. In 2013, Defendant Altman admitted that in 2005 GM made a conscious decision not to fix the Chevrolet Cobalt. Defendant Altman has recently been suspended, with pay, by the New GM for his role in the cover up at GM of the ignition switch defect. Defendant Altman was involved in the cover up at GM concerning the extent of New GM's knowledge of the defective switch and the dangers it posed to Plaintiff and others. Defendant Altman has been served through the Texas Secretary of State in accordance with the Texas Long-Arm Statute, by service on him at his residence, 62935 Tournament Drive, Washington, Michigan 48094.

7. Defendant James E. Queen ("Defendant J. Queen") served as Group Vice President of Global Engineering of Motors Liquidation Company (formerly known as General Motors Corporation) from 2007 to July 2009. Mr. Queen served as Vice President of vehicle systems of GM North America Car Group since January 2001, and also served as its Vice

President and Group Director since 1999. He served as Group Director of engineering of the GM Small Car Group since 1997. Mr. Queen was one of the engineers at GM that was responsible for the design of the Chevrolet Cobalt. Defendant J. Queen was involved in the cover up at GM concerning the extent of General Motor's knowledge of the defective switch and the dangers it posed to Plaintiff and others. Defendant J. Queen resides at 59 Wicklow Dr., Hilton Head Island, SC 29928, and may be served through the Secretary of State.

8. Defendant Lori Queen ("Defendant L. Queen") was GM's vehicle line executive for small cars, including the Chevrolet Cobalt, including from 2005 to 2009. E-mail communications have been discovered that demonstrate that Defendant L. Queen and GM had personal knowledge of the existence of a defective switch in the Chevrolet Cobalt since at September 2005. Defendant L. Queen was involved in the cover up at GM concerning the extent of GM's knowledge of the defective switch and the dangers it posed to Plaintiff and others. Defendant L. Queen has been served through the Texas Secretary of State in accordance with the Texas Long-Arm Statute, by service on her at his residence, 59 Wicklow Dr., Hilton Head Island, SC 29928.

9. Defendant Mark LaNeve ("Defendant LaNeve") was the head of GM Sales, Service, and Marketing from 2004 to 2009. Defendant LaNeve was involved in the cover up at GM concerning the extent of GM's knowledge of the defective switch and the dangers it posed to Plaintiff and others. Defendant LaNeve's has been served through the Texas Secretary of State in accordance with the Texas Long-Arm Statute, by service on him at his residence, 47610 Bellagio Drive, Northville, Michigan 48167.

III.
VENUE AND JURISDICTION

10. Venue is proper in Nueces County because all or a substantial part of the events giving rise to the claims brought by this lawsuit occurred in Nueces County, Texas, and Defendant Ortega resides in Nueces County, Texas.[1]

11. The Court has jurisdiction over Defendant Ortega because she is domiciled in this State.

12. The Court has jurisdiction over New GM, Raymond DeGiorgio, Gary Altman, Lori Queen, James E. Queen, Mark LaNeve (together, "GM Defendants") under the long-arm statute of the State of Texas.[2]

IV.
FACTS

A. This Lawsuit Arises Out Of A Collision In Nueces County, Texas

13. Didra owns a 2006 Chevrolet Cobalt, which she purchased from Oasis Motor Company in Nueces County, Texas. Didra purchased the 2006 Cobalt because of the vehicle's quality, reliability, and safety features.

14. During the early morning hours on September 4, 2013, Didra was traveling southbound on Weber Road on her way to work as a care provider to special needs children within Corpus Christi Independent School District. As she traveled through the intersection of

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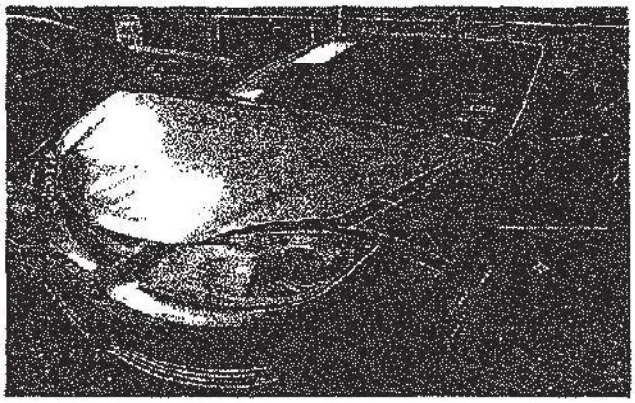
1. *See* TEX. CIV. PRAC. & REM. CODE §§ 15.002 (a)(1)-(a)(2).

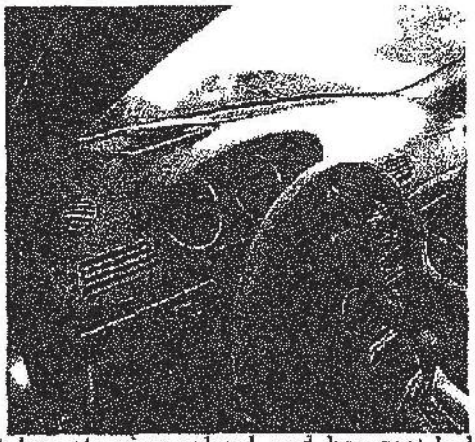
2. *See* TEX. CIV. PRAC. & REM. CODE §17.042.

Weber Road and Tiger Lane, a vehicle driven by Defendant Ortega, traveling in the opposite direction on Weber Road, made an illegal left-hand turn in front of Didra.

15. When Didra saw Defendant Ortega's vehicle turning in front of her she immediately applied her brakes. As she applied her brakes, her vehicle stalled, and she collided with Defendant Ortega's vehicle. The force of the impact was significant. The entire front end of Didra's 2006 Chevrolet Cobalt was crushed, which included significant damage to her bumper, hood, and both front quarter panels.



16. As shown in the picture taken of Didra's 2006 Cobalt after the collision, the airbags on Plaintiff's 2006 Cobalt did not deploy. The airbags should have deployed because this was a "deployable event," meaning a collision in which the airbags should have opened given the change in velocity of the vehicle caused by the collision.



17. As a result of the failed airbags, there was nothing to stop Didra's forward momentum except her steering wheel and her seat belt, neither of which adequately prevented injury to Didra's spine. As Didra was thrown around in her vehicle, she suffered severe and permanent spinal injuries, as more fully described below.

B. <u>The Airbags On Plaintiff's Vehicle Did Not Deploy Because Of A Defective Condition That GM Knew Existed</u>

1. Plaintiff's vehicle was one of the vehicles subject to a recent recall.

18. The problem with Plaintiff's vehicle was not unique. To the contrary, it is a problem that resulted in a recall notice being issued by New GM for certain of its vehicles, including Plaintiff's 2006 Chevrolet Cobalt. Initially, on February 7, 2014, New GM filed a Defect Notice to recall 2005-2007 Model Year Chevrolet Cobalt and 2007 Pontiac G5 vehicles. The Defect Notice stated that the ignition switch torque performance in these vehicles might not meet specifications, resulting in the nondeployment of airbags in crash events. The notice called for the recall of approximately six hundred thousand vehicles.

19. Seventeen days later, on February 24, 2014, New GM issued a notice to the National Highway Traffic Safety Administration ("NHTSA"), expanding the recall to include 2003-2007 Saturn Ions, 2006-2007 Chevrolet HHRs, 2006-2007 Pontiac Solstices, and 2007 Saturn Skys, bringing the number of vehicles affected by the recall to 1,367,146. This NHTSA notice furnished information dating back 10 years, and dealt directly with New GM's recall obligations and product warranties, which have been known to New GM since July 2009. The notice dated February 24, 2014, provided a chronology that, at a minimum, demonstrates GM's knowledge and actions related to the ignition switch.

20. On March 28, 2014, the recall was expanded to include the following vehicles: 2008-2010 Pontiac Solstices; 2008-2010 Pontiac G5s; 2008-2010 Saturn Skys; 2008-2010 Chevrolet Cobalts; and 2008-2011 Chevrolet HHRs (collectively, the "defective vehicles").

21. Throughout 2005, Old GM received similar field reports of vehicles losing engine power when the key moved out of the "run" position. A proposal was approved to redesign the key head, but later cancelled. Instead of recalling the vehicles to replace the defective ignition switches, Old GM issued a Service Bulletin (the "Bulletin"). The Bulletin recognized that there

was a potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort.

22. Although Old GM developed an insert for the key ring that changed it from a slot design to a hole design, to prevent the key from easily jogging the ignition switch out of the run position, the redesigned ignition switch was not installed in vehicles until the 2007 model year.

23. The defective ignition switch has been linked to numerous crashes and fatalities.

24. Given the vast number of instances of sudden engine power loss and nondeployment of airbags related to the defective ignition switch and New GM's discovery or knowledge of many or all of the instances beginning with its inception in July 2009, New GM should have aggressively taken remedial measures to address these defects. New GM failed to do so. In fact, this first recall was not implemented until 2014 – nearly ten years after the first instances of engine power loss.

25. The ignition switch defect in GM vehicles has adversely affected the company's reputation as a manufacturer of safe, reliable vehicles with high resale value, as compared to vehicles made by its competitors. In the wake of the news reports about this serious problem, GM customers and consumers generally are – as they should be – skeptical about the quality and safety of GM vehicles.

26. In the wake of the news about the ignition defects, consumers have also become rightfully skeptical about whether New GM is coming forth with truthful information about the sudden loss of power defect. Likewise, GM customers, including Plaintiff, and the general public are left to wonder whether safety concerns about GM vehicles are limited to this particular problem.

2. The recall notice is inaccurate because Plaintiff only had one key in the ignition switch at the time of the collision, and her vehicle still stalled.

27. In late March 2014, Plaintiff received a letter from New GM advising her that her vehicle was being recalled. In that letter, New GM advised Plaintiff that she should take all the weight off of her key chain and, by so doing, her car would not stall.

28. New GM's statements in the recall notice are not accurate. At the time of her collision, Plaintiff only had one key, her ignition key – with no key fob, a small security hardware device used to unlock vehicles and set a vehicle's alarm – in the ignition switch of her 2006 Chevrolet Cobalt.

3. The damage done....

29. As a direct and proximate result of the collision and the negligent conduct of Defendants, Plaintiff suffered severe bodily injuries to her cervical spine. The injuries are permanent in nature. The injuries have had a serious effect on the Plaintiff's health and well-being. Some of the effects are permanent and will abide with the Plaintiff for a long time into the future, if not for her entire life. These specific injuries and their ill effects have, in turn, caused the Plaintiff physical and mental condition to deteriorate generally and the specific injuries and ill effects alleged have caused and will, in all reasonable probability, cause the Plaintiff to suffer consequences and ill effects of this deterioration throughout her body for a long time in the future, if not for the balance of her natural life. As a further result of the nature and consequences of her injuries, the Plaintiff suffered great physical and mental pain, suffering and mental anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of her natural life.

30. Additionally, as a direct and proximate result of the occurrence made the basis of

this lawsuit, Plaintiff was caused to incur the following damages:

a. Reasonable medical care and expenses in the past. Plaintiff incurred these expenses for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in which county they were incurred;

b. Reasonable and necessary medical care and expenses, which will, in all reasonable probability be incurred in the future;

c. Physical pain and suffering in the past;

d. Physical pain and suffering, which will, in all reasonable probability be suffered in the future;

e. Physical impairment in the past;

f. Physical impairment, which will, in all reasonable probability, be suffered in the future;

g. Lost wages in the past, present and future;

h. Loss of earning capacity, which will, in all reasonable probability, be incurred in the future;

i. Mental anguish in the past;

j. Mental anguish which will, in all reasonable probability be suffered in the future;

k. Disfigurement; and

l. Other special damages.

V.
CLAIMS AGAINST DEFENDANT ORTEGA

31. Plaintiff hereby incorporates each of the foregoing paragraphs herein as if set forth in full in this section.

32. Defendant Ortega had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

33. Plaintiff's injuries were proximately caused by Defendant Ortega's negligent, careless and reckless disregard of said duty.

34. The negligent, careless and reckless disregard of duty of Defendant Ortega consisted of, but is not limited to, the following acts and omissions:

a. Defendant Ortega failed to keep a proper lookout for Plaintiff's safety that would have been maintained by a person of ordinary prudence under the same or similar circumstances;

b. Defendant Ortega failed to yield the right-of-way to Plaintiff's vehicle;

c. Defendant Ortega failed to timely apply the brakes of the vehicle in order to avoid the collision in question;

d. Defendant Ortega failed to turn her motor vehicle to the right or the left in an effort to avoid the collision complained of; and

e. Defendant Ortega failed to blow her horn to warn of imminent collision.

35. Each of these acts and/or omissions, whether taken singularly or in any combination constitute negligence, negligence per se and gross negligence, which proximately caused the collision and injuries and other losses as specifically set forth herein, all of which Plaintiff suffered and which Plaintiff will continue to suffer in the future, if not for the remainder of her natural life, and the damage and other losses to Plaintiff.

VI.
CLAIMS AGAINST GM DEFENDANTS

A. Negligence And Gross Negligence

36. Plaintiff re-alleges as if fully set forth, each and every allegation set forth herein.

37. Plaintiff hereby asserts a cause of action for negligence strictly and solely against "New GM" and the GM Defendants, as defined above to include Defendant J. Queen, Defendant L Queen, Defendant DeGiorgio, Defendant Altman, and Defendant LaNeve.

38. Each and every act of negligence asserted herein by the Plaintiff is asserted against the New GM and the GM Defendants, only, and not the Old GM.

39. The GM Defendants owed Plaintiff a duty to detect known safety defects in GM vehicles.

40. The GM Defendants owed Plaintiff a duty, once it discovered the safety defects, such as the ignition switch defect, to provide thorough notice of the defect, including a warning that the defective vehicles should not be driven until an appropriate repair procedure is developed and performed.

41. The GM Defendants owed Plaintiff a duty, once it discovered the ignition switch defect, to ensure that an appropriate repair procedure was developed and made available to drivers.

42. The GM Defendants knew that their customers, such as Plaintiff, expect that the company will employ all reasonable efforts to detect safety defects, warn drivers of their existence, and develop and make available an appropriate repair procedure.

43. The GM Defendants efforts to discover, provide notice of, and provide repair procedures for safety related defects exist for the benefit of Plaintiff and other drivers of GM vehicles. New GM was aware that by providing maintenance and repair information and assistance, including through its authorized dealerships, GM had a responsibility to Plaintiff and other drivers to take the reasonable measures listed above.

44. Between July 10, 2009, and March 2014, the GM Defendants breached their

duties to Plaintiff by failing to provide appropriate notice of and repair procedures for the ignition switch defect in Plaintiff's vehicle. In doing so, New GM departed from the reasonable standard of care required of it.

45. It was foreseeable that if the GM Defendants did not provide appropriate notice and repair procedure for the defect, that Plaintiff and other drivers would be endangered, and that when news of the defect became widespread, that the value of Plaintiff's vehicle and other defective vehicles would be diminished.

46. Plaintiff has suffered injury by, among other things, being stuck with a defective vehicle with no known appropriate fix, and with a diminished value. Plaintiff is thus deprived of the use and enjoyment of her vehicle as well as the ability to sell her vehicle for the value it would have had if New GM had not concealed and failed to develop a repair procedure for the defect. In addition, Plaintiff and other drivers have been and continue to be endangered by New GM's refusal to state unequivocally that the vehicles should not be driven in their current state. New GM's failure to provide an appropriate notice and repair was the direct and proximate cause of Plaintiff's injuries, and led directly and predictably to the harm suffered.

47. Plaintiff's injuries were reasonably foreseeable to New GM.

48. Plaintiff could not through the exercise of reasonable diligence have prevented the injuries caused by New GM's negligence.

49. Plaintiff seeks an order enjoining New GM from its continued negligence; including to require New GM to provide appropriate notice to drivers (including instructions to drivers to park the vehicle); to pay for a rental car while the necessary repairs are conducted; and to extend warranty coverage covering components of the ignition system.

B. Civil Conspiracy Against The GM Defendants

50. Plaintiff re-alleges as if fully set forth each and every allegation set forth above.

51. The GM Defendants and the New GM were involved in a civil conspiracy, as two or more persons whose goal was to accomplish a cover up of the defective ignition switch at the New GM. The cover up was for the purpose of an unlawful act, to wit, the defective condition which proximately caused damage to Plaintiff.

C. **Fraud by Non Disclosure**

52. Plaintiff re-alleges as if fully set forth, each and every allegation set forth herein.

53. The Plaintiff hereby asserts a cause of action for fraud by non-disclosure strictly and solely against New GM. That is, each and every act constituting fraud by non-disclosure asserted herein by the Plaintiff are asserted against the New GM only and not the Old GM.

54. As set forth above, from July 2009 to the present, New GM intentionally concealed or failed to disclose material facts from the Plaintiff, the public, and NHTSA.

55. As early as 2001, during pre-production development of the Ion, Old GM became aware of issues relating to ignition switch "passlock" system. The 2001 report stated the problem included a "low detent plunger force" in the ignition switch.

56. In 2003, before the launch of the 2005 Cobalt, Old GM became aware of incidents wherein the vehicle engine would suddenly lose power in the event the key moved out of the "run" position when the driver inadvertently contacted the key or steering column. An investigation was opened and, after consideration of lead-time required and the cost and effectiveness of potential solutions, the investigation was closed with no action taken.

57. New GM had a duty to disclose the facts to the Plaintiff and New GM knew: (1) the Plaintiff was ignorant of the material facts that New GM did not disclose and/or intentionally

concealed; and (2) the plaintiff did not have an equal opportunity to discover the material facts that GM did not disclose and/or intentionally concealed.

58. By failing to disclose these material facts, New GM intended to induce Plaintiff to take some action or refrain from acting.

59. Plaintiff relied on New GM's non-disclosure and the Plaintiff was injured as a result of acting without knowledge of the undisclosed facts.

D. Intentional Infliction of Emotional Distress

60. Plaintiff re-alleges as if fully set forth, each and every allegation set forth herein.

61. The Plaintiff hereby asserts a cause of action for intentional infliction of emotional distress strictly and solely against New GM. That is, each and every act constituting the intentional infliction of emotional distress asserted herein by the Plaintiff is asserted against the New GM only and not the Old GM.

62. New GM's intentional and/or reckless conduct, outlined above, was both extreme and outrageous, causing Plaintiff to suffer severe emotional distress. Specifically, New GM's conduct, as described above, was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, and the emotional distress suffered by Plaintiff was so severe that no reasonable person could be expected to endure it.

VII.
PREJUDGMENT AND POST-JUDGMENT INTEREST

65. Plaintiff seeks prejudgment and post-judgment interest at the maximum rate permitted by law.

VIII.
JURY DEMAND

66. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiff hereby makes application for a jury trial and request that this cause be set on the Court's Jury Docket. In support of his application, the appropriate jury fee has been paid to the Clerk at least thirty (30) days in advance of the trial setting.

XIII.
PRAYER

For the foregoing reasons, Plaintiff Didra De Los Santos prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for actual damages, as alleged, and exemplary damages, in an amount within the jurisdictional limits of this Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

HILLIARD MUÑOZ GONZALES LLP

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record, listed below, pursuant to the Texas Rules of Civil Procedure on this the 19th day of May 2014.

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Robert C. Hilliard

Exhibit E

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CAROLYN RICKARD, ADMINISTRATRIX OF THE ESTATE OF WILLIAM J. RICKARD, Deceased,

Plaintiff,

v.

WALSH CONSTRUCTION COMPANY, an Illinois Business Corporation, t/d/b/a Walsh Northeast; SARGENT ELECTRIC COMPANY, a Pennsylvania Business Corporation; CONCRETE RESTORATION SPECIALISTS, LLC, an Ohio Business Corporation; INDEPENDENCE EXCAVATING, INC., an Ohio Business Corporation; W.G. TOMKO, INC., a Pennsylvania Business Corporation, PARKING LOT PAINTING CO., LLC, a Pennsylvania Business Corporation; MICHAEL BAKER JR., INC., a Pennsylvania Business Corporation; BETH'S BARRICADES, a Pennsylvania Business Corporation; COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; GENERAL MOTORS, LLC, a Delaware Business Corporation f/k/a General Motors Company; WOODLEY PAUL, an individual and CHARLES PHILLIPS, an individual.

Defendants.

CIVIL DIVISION

No.: GD-14-020549

Code:

AMENDED COMPLAINT

Filed By:
Plaintiffs

Counsel of Record for
This party:

Arthur Cutruzzula, Esquire
Pa. I.D. #27915

Walter J. Nalducci, Esquire
Pa. I.D. #69256

Julianne Cutruzzula Beil, Esquire
Pa. I.D. #315892

CUTRUZZULA & NALDUCCI
3300 Grant Building
Pittsburgh, PA 15219
(412) 391-4040

A JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CAROLYN RICKARD, ADMINISTRATRIX OF THE ESTATE OF WILLIAM J. RICKARD, Deceased Plaintiff, v. WALSH CONSTRUCTION COMPANY, an Illinois Business Corporation, t/d/b/a Walsh Northeast; SARGENT ELECTRIC COMPANY, a Pennsylvania Business Corporation; CONCRETE RESTORATION SPECIALISTS, LLC, an Ohio Business Corporation; INDEPENDENCE EXCAVATING, INC., an Ohio Business Corporation; W.G. TOMKO, INC., a Pennsylvania Business Corporation, PARKING LOT PAINTING CO., LLC, a Pennsylvania Business Corporation; MICHAEL BAKER JR., INC., a Pennsylvania Business Corporation; BETH'S BARRICADES, a Pennsylvania Business Corporation; COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; GENERAL MOTORS, LLC, a Delaware Business Corporation f/k/a General Motors Company; WOODLEY PAUL, an individual and CHARLES PHILLIPS, an individual, Defendants.	)	CIVIL DIVISION No.: GD-14-020549 Code:

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

ACBA LAWYER REFERRAL SERVICE
400 KOPPERS BUILDING – 436 SEVENTH AVENUE
PITTSBURGH, PA 15219
412-261-5555

AMENDED COMPLAINT
A JURY TRIAL DEMANDED

AND NOW, comes the Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, by and through her attorneys, Arthur Cutruzzula, Esquire and CUTRUZZULA & NALDUCCI, and files this action against the Defendants upon a set of particulars of which the following is a statement:

1. That Plaintiff, Carolyn Rickard, wife of Plaintiff's Decedent, William J. Rickard, was duly appointed as the Administratrix of the Estate of William J. Rickard, Deceased by the Register of Wills of Westmoreland County, Pennsylvania on October 29, 2014 at No. 6514-2087 of 2014.

2. That Plaintiff brings this action as the Administratrix of the Estate of William J. Rickard, Deceased of 2075 Guinevere Drive, North Huntingdon, PA 15642.

3. That Defendant, Walsh Construction Company t/d/b/a Walsh Northeast is an Illinois Business Corporation with a principal place of business at 929 W. Adams Street, Chicago, Illinois 60607, which is registered to do business in Pennsylvania and which regularly conducts business in Western Pennsylvania, including Allegheny County.

4. That Defendant, Sargent Electric Company is a Pennsylvania Business Corporation with a principal place of business at 2767 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

5. That Defendant, Concrete Restoration Specialists, LLC is an Ohio Business Corporation with a principal place of business at 388 S. Main Street, Suite 500 Akron, Ohio 44311, which is registered to do business in Pennsylvania and which regularly conducts business in Western Pennsylvania, including Allegheny County.

6. That Defendant, Independence Excavating, Inc. is an Ohio business corporation with a principal place of business at 5720 Schaff Road, Independence, Ohio 44131, which is registered to do business in Pennsylvania and which regularly conducts business in Western Pennsylvania, including Allegheny County.

7. That Defendant, W.G. Tomko, Inc. is a Pennsylvania business corporation with a principal place of business at 2559 Library Road, Finleyville, Pennsylvania 15332.

8. That Defendant, Parking Lot Painting Company, LLC, is a Pennsylvania business corporation with a principal place of business at 2991 Industrial Boulevard, Bethel Park, Pennsylvania 15102.

9. That Defendant, Michael Baker Jr., Inc. is a Pennsylvania business corporation with a principal place of business at 100 Airside Drive, Moon Township, Pennsylvania 15108.

10. That Defendant, Beth's Barricades, is a Pennsylvania business corporation with a principal place of business at 8260 Fox Ridge Road, Pittsburgh, PA 15237.

11. That Defendant, Commonwealth of Pennsylvania, Pennsylvania Department of Transportation (hereinafter "PennDOT") is a governmental agency duly organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 301 Fifth Avenue, Suite 210, Pittsburgh, Pennsylvania 15222.

12. That Defendant, General Motors LLC f/k/a General Motors Company is a Delaware Business Corporation with a principal place of business at 300 Renaissance Center, Detroit, Michigan 48090, and is registered to do business in Pennsylvania and which regularly conducts business in Western Pennsylvania, including Allegheny County.

13. That Defendant, Woodley Paul, is an individual residing at 6036 A Street, Philadelphia, PA 19120.

14. That Defendant, Charles Phillips, is an individual residing at 335 Ashton Street, Pittsburgh, PA 15207.

15. That Defendant, Walsh Construction Company t/d/b/a Walsh Northeast, entered into a contract with PennDOT on January 30, 2012, for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued onward through November 16, 2012.

16. That at all times relevant to this action, Defendants, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc. and Parking Lot Painting Co., LLC were engaged in work on that project being the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

17. That Defendant, Michael Baker Jr., Inc. entered into a contract with PennDOT for construction inspection and management services during the aforesaid rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued onward through November 16, 2012.

18. That Defendant, Beth's Barricades entered into a contract with Defendant, Walsh Construction Company t/d/b/a Walsh Northeast, on February 20, 2012, to provide services relative to the protection and maintenance of traffic during the construction project for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued onward through November 16, 2012, and was responsible for, inter alia, the installation, maintenance and removal of traffic control signs, changeable message signs, arrow panels, impact attenuating devices, traffic channelizing devices and portable camera units.

19. That at all times relevant to this action, Defendant General Motors, LLC f/k/a General Motors Company was engaged in the business of designing, manufacturing, assembling, selling, supplying, preparing for delivery, recalling, retrofitting, repairing, inspecting, and/or distributing, and did design, manufacture, assemble, sell, supply, prepare for delivery, recall, retrofit, repair, inspect, and/or distribute, inter alia, Chevrolet S-10 automobiles and their component parts, including their seats, seat backs, seat rails, headrests and related systems, including the 2002 Chevrolet S-10 pickup, its seats, seat backs, seat rails, headrests and related systems, devices and components, bearing vehicle identification number 1GCDT13W32K151405 involved in this accident.

20. That on or about November 16, 2012, at or around 3:15 a.m., Plaintiff's decedent, William J. Rickard, was traveling Westbound in the right hand lane on Pennsylvania Interstate 376, a four land divided highway, just prior to the Squirrel Hill Tunnel, in his 2002 Chevrolet S-10 four-door pickup truck.

21. That on and at the above stated date, time and place, Defendant, Woodley Paul, was operating a 2005 Toyota Camry, owned by Defendant, Charles Phillips, also in the right hand lane of west-bound I-376 prior to the Squirrel Hill Tunnel, behind Plaintiff's decedent's vehicle.

22. That on and at the above stated date, time and place, the left lane of travel prior to the Squirrel Hill Tunnel was completely blocked off with cones and a stationary truck with a mounted arrow board located in the closed left lane which was directing all traffic to the right lane.

23. That also on and at the above stated date, time and place, the Westbound Squirrel Hill Tunnel was suddenly closed, blocking the one remaining lane of travel.

24. That on and at the above stated date, time and place, Plaintiff's decedent, William J. Rickard, due to the aforementioned traffic restrictions, was brought to an abrupt halt in the right lane of I-376 West, just prior to the Squirrel Hill Tunnel.

25. That on and at the above stated date, time and place, as Defendant, Woodley Paul approached the closed tunnel he was unable to stop his vehicle, causing him to strike Mr. Rickard's vehicle directly from behind.

26. That during the aforementioned impact, Plaintiff's decedent, William J. Rickard's 2002 Chevrolet S-10 pickup driver's seat, seat back, seat rails, headrest and related systems failed, such that the driver's seat and Plaintiff's decedent were propelled rearward into the backseat area of the vehicle, resulting in the injuries hereinafter described.

27. That as a result of the aforementioned accident, Plaintiff's decedent, William J. Rickard, sustained, inter alia, the following injuries:

a. Bilateral jump-lock facets, C7-T1 with complete paraplegia;

b. Severe central canal stenosis;

c. Abnormal widening of T10-T9;

d. L2 spinous process fracture;

e. Posterior spinal fusion of C5-T2;

f. Posterior spinal fusion of T8-T11;

g. Tracheostomy;

h. Chronic respiratory failure;

i. Cardiac arrest;

j. Strep pneumo pneumonia;

k. Sepsis;

l. Tracheal Stenosis;

m. Decreased range of motion in upper extremities;

n. Stage IV pressure ulcer;

o. Left shoulder/scapular pain;

p. Pain in upper extremities; and

q. Other serious and severe injuries.

28. That as a result of the aforementioned accident and injuries, Plaintiff's decedent, after a long, slow, consciously painful and agonizing course, died.

COUNT I

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Walsh Construction Company t/d/b/a Walsh Northeast, An Illinois Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

29. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, hereby incorporates by reference each and every allegation contained in Paragraph 1 through 28, inclusive, as fully as if the same had been set forth herein at length.

30. That Plaintiff brings this action by virtue of the Act of July 9, 1976, P.L. 586 No. 142, 2, effective June 27, 1978, 42 Pa. C.S.A. 8301 and Pa. R.C.P. No. 2202(a).

31. That Decedent left surviving him the following persons entitled to recover damages for his death and on whose behalf this action is brought:

NAME	RELATIONSHIP	ADDRESS
CAROLYN RICKARD	WIFE	2075 Guinevere Drive North Huntingdon, PA 15642
SARAH RICKARD	DAUGHTER	2075 Guinevere Drive North Huntingdon, PA 15642

32. That by reason of the death of Plaintiffs' decedent, the surviving beneficiaries have suffered pecuniary losses and incurred expenses resulting from the injuries and death of said Decedent, including the loss of nurture, care, training, advice, services, guidance, education, companionship, comfort, society, solace and protection.

33. That, at all pertinent times, Walsh Construction Company t/d/b/a Walsh Northeast did perform work under a contract with PennDOT for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

34. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence and/or strict liability and/or vicarious liability of the Defendant, Walsh Construction Company t/d/b/a Walsh Northeast, itself and acting through its agents, servants, workmen, and/or employees, including, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars:

Negligence

a. In stopping traffic on Westbound I-376 at the time of the accident;

b. In failing to follow PennDOT's work zone rules and regulations;

c. In failing to supplement PennDOT's work zone rules and regulations when they knew or should have known the plan was inadequate;

d. In failing to make necessary changes to the traffic controls and devices in the work zone, advanced warning area and approach when, during the progress of the project and prior to the subject accident, it knew or should have known of other accidents, events and traffic mishaps which rendered the traffic control regimen in place wholly inadequate;

e. In negligently designing, planning and performing work on the roadway in question at the time of Plaintiff's decedent's accident;

f. In failing to request a "cue" car from the Pennsylvania State Police;

g. In failing to provide or arrange for a "cue" and/or escort or pilot car in advance of the work area, when it knew or should have known from other accidents, events and traffic mishaps that the situation required one;

h. In failing to provide a "cue" and/or escort or pilot vehicle for the stopped and/or slowing traffic when it knew or should have known from other accidents, events and traffic mishaps that the situation required one;

i. In failing to have "cue" and/or escort or pilot vehicles to slow/stop traffic, particularly at times of lane closures or complete tunnel closures and particularly when the project history had demonstrated the need for this and other enhanced traffic controls;

j. In failing to adequately slow approaching traffic to the lane closure and tunnel closure points when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

k. In failing to adequately notify and slow approaching traffic well in advance of the lane restriction and complete closure, both as to time and distance, when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

l. In failing to provide proper lighting conditions in the work zone and advanced warning area when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

m. In lighting the work zone and advanced warning area in a manner that was confusing and disorienting to drivers, causing them to stop abruptly;

n. In failing to properly design, plan, and put in place adequate signs and safeguards for the work being performed on the roadway in question at the time of the accident;

o. In failing to maintain such signs and safeguards on the subject roadway in an adequately visible and effective condition;

p. In failing to adequately warn persons such as Plaintiff's decedent of the dangers associated with the roadway and work being performed on the roadway;

q. In negligently hiring and supervising an independent contractor to design, erect and maintain traffic controls and devices and/or safeguards with respect to the subject roadway and the work being performed on the roadway;

r. In failing to provide approaching vehicles with adequate warning of lane closure ahead when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

s. In failing to provide approaching vehicles with adequate warning of stopped traffic ahead when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

t. In failing to properly restrict traffic to a single lane and in failing to properly close the tunnel;

u. In failing to properly place warning signs for lane restrictions; and

v. In negligently restricting traffic and closing the tunnel at the aforementioned time.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Walsh Construction Company t/d/b/a

Walsh Northeast, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT II

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Walsh Construction Company t/d/b/a Walsh Northeast, An Illinois Business Corporation, Defendant

UNDER THE SURVIVAL ACT

35. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28 and 33 and 34, inclusive, as fully as if the same had been set forth herein at length.

36. The Plaintiff brings this action under and by virtue of the Act of July 9, 1976, P.L. No. 142 2 effective June 27, 1978, 42 Pa.C.S.A. 8302.

37. That no legal or court action for damages for the personal injuries sustained by said Decedent that was brought during his lifetime remains active.

38. That the Plaintiff claims damages on behalf of Decedent's Estate for the damage suffered by said Estate as a result of the death of said Decedent as well as for his conscious pain, suffering and inconvenience resulting from his above described accident and personal injuries.

WHEREFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages against Walsh Construction Company t/d/b/a Walsh Northeast in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars exclusive of interest and costs.

COUNT III

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Sargent Electric Company, a Pennsylvania Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

39. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

40. That, at all pertinent times, Sargent Electric Company did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

41. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Sargent Electric Company , itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Sargent Electric Company in an amount

in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT IV

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Sargent Electric Company, a Pennsylvania Business Corporation, Defendant

UNDER THE SURVIVAL ACT

42. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 40 and 41 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Sargent Electric Company in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT V

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Concrete Restoration Specialists, LLC an Ohio Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

43. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

44. That, at all pertinent times, Concrete Restoration Specialists, LLC did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on

Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

45. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Concrete Restoration Specialists, LLC, itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Concrete Restoration Specialists in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT VI

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Concrete Restoration Specialists, LLC an Ohio Business Corporation, Defendant

UNDER THE SURVIVAL ACT

46. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 44 and 45 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Concrete Restoration Specialists in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT VII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Independence Excavating, Inc. an Ohio Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

47. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

48. That, at all pertinent times, Independence Excavating, Inc. did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

49. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant Independence Excavating, Inc. itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Independence Excavating, Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT VIII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Independence Excavating, Inc. an Ohio Business Corporation, Defendant

UNDER THE SURVIVAL ACT

50. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 48 and 49 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Independence Excavating, Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT IX

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. W.G. Tomko, Inc., a Pennsylvania Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

51. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

52. That, at all pertinent times, W.G. Tomko, Inc. did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

53. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, W.G. Tomko, Inc. itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, W.G. Tomko, Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT X

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. W.G. Tomko, Inc., a Pennsylvania Business Corporation, Defendant

UNDER THE SURVIVAL ACT

54. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs

1 through 28, 36 through 38, 52 and 53 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, W.G. Tomko, Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XI

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Parking Lot Painting Company, LLC, a Pennsylvania Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

55. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

56. That, at all pertinent times, Parking Lot Painting Company, LLC did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

57. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant Parking Lot Painting Company, LLC itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., LLC, Michael Baker Jr., Inc., Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of

inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Parking Lot Painting Company, LLC in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Parking Lot Painting Company, LLC, a Pennsylvania Business Corporation, Defendant

UNDER THE SURVIVAL ACT

58. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 56 and 57 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Parking Lot Painting Company, LLC in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XIII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Michael Baker Jr., Inc., a Pennsylvania Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

59. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

60. That, at all pertinent times, Michael Baker Jr., Inc. did perform work on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

61. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant Michael Baker Jr. Inc, itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Beth's Barricades and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Michael Baker Jr., Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XIV

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Michael Baker Jr., Inc., a Pennsylvania Business Corporation, Defendant

UNDER THE SURVIVAL ACT

62. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 60 and 61 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Michael Baker Jr., Inc. in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XV

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Beth's Barricades, a Pennsylvania Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

63. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

64. That, at all pertinent times, Beth's Barricades was responsible for the protection and maintenance of traffic and did perform such duties on the project that was for the rehabilitation of the Squirrel Hill Tunnel, located on Pittsburgh Pennsylvania's Parkway East, I-376, which rehabilitation continued through November 16, 2012.

65. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Beth's Barricades, itself and acting through its agents, servants, workmen, and/or employees, including, Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc. and PennDOT, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars, being those contained in sub paragraphs (a) through (v) of Paragraph 34, above, which are incorporated herein by reference as fully as if the same had been set forth herein at length, and the following sub paragraphs (a) through (l) all of which caused Plaintiff's Decedent to stop suddenly and Defendant Mr. Paul to be unable to stop his vehicle, thereby hitting Plaintiff's Decedent's vehicle:

a. In failing to properly install and maintain the traffic control devices;

b. In failing to inspect whether it had properly installed signs for construction work on the day of Plaintiff's Decedent's accident;

c. In failing to alert vehicles that traffic was fully stopped ahead;

d. In failing to properly install and maintain traffic channelizing devices during a lane closure;

e. In failing to properly install and maintain traffic channelizing devices to adequately slow traffic when it knew or should have known that the set-up was inadequate;

f. In failing to make changes to the approved traffic control plan when it knew or should have known that it was assisting Walsh Construction and

PennDOT in the creation of a dangerous traffic control area of the work zone;

g. In failing to make recommendations to PennDOT and/or Walsh Construction for changes to the early approach to the work zone when it knew or should have known that it was creating a dangerous traffic control area of the work zone;

h. In failing to train its workers in the installation and maintenance of traffic control devices;

i. In failing to require its foreman to drive through the work zone to make certain that its laborers correctly installed and maintained the traffic control devices;

j. In failing to have its foreman supervise its workers installation and maintenance of the traffic control devices;

k. In permitting hazardous defects of the traffic control plan to exist; and

l. In failing to maintain and update the traffic control plan within the construction zone in a safe and proper condition when it knew or should have known that the plan was created a dangerous and/or inadequate traffic control area.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Beth's Barricades in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XVI

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Beth's Barricades, a Pennsylvania Business Corporation, Defendant

UNDER THE SURVIVAL ACT

66. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs

1 through 28, 36 through 38, 64 and 65 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Beth's Barricades in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XVII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, Defendant

UNDER THE WRONGFUL DEATH ACT

67. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

68. That, at all pertinent times, Defendant, Commonwealth of Pennsylvania, Department of Transportation was the owner and/or lessee and/or manager and was responsible for the property where the accident occurred including the roadway surface and subsurface located at Pittsburgh Pennsylvania's Parkway East, I-376, just prior to the Squirrel Hill Tunnel.

69. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, itself and acting through its agents, servants, workmen, and/or employees, including Walsh Construction Company t/d/b/a Walsh Northeast, Sargent Electric Company, Concrete Restoration Specialists, LLC, Independence Excavating, Inc., W.G. Tomko, Inc., Parking Lot Painting Co., LLC, Michael Baker Jr., Inc. and Beth's Barricades acting within the scope of their agency, servitude,

workmanship and/or employment, said negligence consisting of inter alia, the following particulars:

a. In negligently causing Plaintiff's Decedent's accident;

b. In maintaining the subject roadway in a dangerous condition;

c. In allowing a dangerous condition of the roadway to exist;

d. In permitting traffic to be stopped on Westbound I-376 at the time of the accident;

e. In negligently designing, planning and performing work on the roadway in question at the time of the accident;

f. In failing to do and in failing to require a contractor to do the following:

i. Request a "cue" car from the Pennsylvania State Police;

ii. Provide or arrange for a "cue" car in advance of the work area when it knew or should have known from other accidents, events and traffic mishaps that the situation required one;

iii. Provide a "cue" and/or escort or pilot vehicle for stopped and/or slowing traffic, when it knew or should have known from other accidents, events and traffic mishaps that the situation required one;

iv. Have "cue" and/or escort or pilot vehicles to slow traffic particularly at times of lane closure or complete tunnel closure and particularly when the project history had demonstrated the need for this and other enhanced traffic controls;

v. Maintain adequate rules and/or regulations regarding the stoppage of traffic on a 4 lane divided highway;

vi. Enforce PennDOT work zone rules and/or regulations;

vii. Follow PennDOT work zone rules and/or regulations;

viii. Supplement or amend the PennDOT work zone rules and/or regulations when during the progress of the project and prior to the subject accident, it knew or should have known of other accidents, events and traffic mishaps which rendered them wholly inadequate;

ix. Establish adequate rules and/or regulations regarding work zone lighting;

x. Make necessary changes to the traffic controls and devices in the work zone, advanced warning area and approach when, during the progress of the project and prior to the subject accident, it knew or should have known of other accidents, events and traffic mishaps which rendered the traffic control regimen in place, wholly inadequate;

xi. Properly design, erect, position and maintain adequate traffic and/or warning signs and/or safeguards for travel on the subject roadway and/or for the work being performed on the roadway;

xii. Maintain such signs on the subject roadway in an adequately visible and effective condition;

xiii. Adequately inspect the condition of the roadway, the work being performed on the roadway and the traffic and/or warning signs and/or safeguards of the subject roadway;

xiv. Adequately warn persons such as Plaintiff's decedent of the dangers

related to the subject roadway and work being performed on the roadway;

xv. Adequately slow approaching traffic to the lane closure and tunnel closure points when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

xvi. Adequately notify and slow approaching traffic well in advance of the lane restriction and complete closure, both as to time and distance, when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

xvii. Properly restrict traffic to a single lane and/or properly close the tunnel;

xviii. Properly place warning signs for lane restrictions;

xix. Provide approaching vehicles with adequate warning of lane closure ahead when it knew or should have known from other accidents, events and traffic mishaps that the situation required it;

xx. Provide adequate warning to approaching vehicles of stopped traffic ahead; and

xxi. Maintain lighting in the work zone in a manner that was not confusing or disorienting to drivers.

g. In negligently hiring and supervising an independent contractor to maintain signs and safeguards with respect to the subject roadway and the work being performed on the roadway;

h. In negligently designing, planning, and performing the work on the roadway in question at the time of Plaintiff's decedent's accident;

i. In negligently closing the tunnel at the aforementioned time;

j. In being vicariously liable for the negligent design, plan and performance of work on the roadway in question at the time of the accident;

k. In being vicariously liable for the negligence of others in lighting the work zone in a manner that was confusing and disorienting to drivers on the roadway in question at the time of the accident;

l. In being vicariously liable for the negligence of others in designing, erecting, positioning and maintaining signs and safeguards on the subject roadway at the time of the accident;

m. In being vicariously liable for the negligence of others in restricting traffic to a single lane and stopping traffic on the subject roadway at the time of the aforementioned accident;

n. In being vicariously liable for the failure of an independent contractor to properly restrict traffic to a single lane of travel and to properly stop traffic on the subject roadway at the time of the aforementioned accident;

o. In being vicariously liable for the failure of an independent contractor to adequately warn approaching vehicles that all lanes of travel were closed on the subject roadway at the time of the aforementioned accident; and

p. In being vicariously liable for the failure of others to request a "cue" car from the Pennsylvania State Police.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XIII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, Defendant

UNDER THE SURVIVAL ACT

70. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 68 and 69 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Commonwealth of Pennsylvania, Pennsylvania Department of Transportation in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XIX

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. General Motors, LLC, f/k/a General Motors Company, a Delaware Business Corporation, Defendant

UNDER THE WRONGFUL DEATH ACT

71. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28 and 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

72. That, at all pertinent times, Defendant, General Motors, LLC, f/k/a General Motors Company, did design, manufacture, assemble, sell, supply, prepare for delivery, recall, retrofit, repair, inspect and/or distribute the Chevrolet S-10 pickup truck, its seats, seat backs, seat rails, headrests and related systems involved in this case.

73. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence and/or strict and/or vicarious liability of the Defendant, General Motors, LLC, f/k/a General Motors Company, itself and acting through its agents, servants, workmen, and/or employees acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars:

Negligence

a. In negligently designing, manufacturing, assembling, selling, supplying, leasing, maintaining, inspecting, approving, and/or distributing the 2002 Chevrolet S-10 including its seats, seat backs, seat rails, headrests and related systems, and materials comprising the same;

b. In failing to adequately warn Plaintiff's decedent of any and all dangers and risks involved with the use of the 2002 Chevrolet S-10 including their seats, seat backs, seat rails, headrests and related systems;

c. In supplying the 2002 Chevrolet S-10 to Plaintiff's decedent when it knew or should have known that the seats, seat backs, seat rails, headrests and related systems and materials comprising the same, would be dangerous, and when it knew or should have known that Plaintiff's decedent would fail to realize this dangerous condition, and in failing to use reasonable care to inform Plaintiff's decedent of this dangerous condition.

d. In failing to adequately and properly test and inspect the 2002 Chevrolet S-10 including their

seats, seat backs, seat rails, headrests and related systems;

e. In negligently supervising the design, manufacture, assembly, sale, supply, lease maintenance, inspection, approval, and/or distribution of the 2002 Chevrolet S-10 including their seats, seat backs, seat rails, headrests and related systems;

f. In negligently recommending and selecting contractors for the design, manufacture, assembly, sale, supply, lease, maintenance, inspection, approval and/or distribution of the 2002 Chevrolet S-10 including their seats, seat backs, seat rails, headrests and related systems;

g. In being vicariously liable for the causal negligence of others for the design, manufacture, assembly, sale, supply, lease, maintenance, inspection, approval and/or distribution of the 2002 Chevrolet S-10 including their seats, seat backs, seat rails, headrests and related systems;

h. In failing to recall or retrofit the vehicle in question;

i. In failing to assure that any recall or retrofit work was done and/or done properly; and

j. In otherwise being negligent under the circumstances as more fully described hereinafter.

Strict Liability, 402 A

aa. The 2002 Chevrolet S-10 was defective in its design;

bb. The 2002 Chevrolet S-10 was defective in its construction and manufacture including recall and retrofit work;

cc. The 2002 Chevrolet S-10 was not accompanied by adequate warning and instruction in regard to its intended use; and

dd. The 2002 Chevrolet S-10 was not designed and constructed with the proper materials or in the proper manner for its intended use.

Strict Liability, 402 B

aaa. That with regard the 2002 Chevrolet S-10, the Defendant misrepresented material facts to the public, including Plaintiff's decedent William J. Rickard, concerning the character and/or quality of the vehicle and all safety features, including the seats, seat backs, seat rails, headrests and related systems;

bbb. That Plaintiff's decedent justifiably relied on such misrepresentations; and

ccc. That such justified reliance caused Plaintiff's decedent to suffer physical harm.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from General Motors, LLC f/k/a General Motors Company in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XX

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. General Motors, LLC, f/k/a General Motors Company, a Delaware Business Corporation, Defendant

UNDER THE SURVIVAL ACT

74. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38, 72 and 73 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, General Motors, LLC f/k/a General Motors Company in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XXI

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Woodley Paul, Defendant

UNDER THE WRONGFUL DEATH ACT

75. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28 and 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

76. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Woodley Paul, himself and acting through his agents, servants, workmen, and/or employees, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars:

a. In negligently striking Plaintiff's decedent's vehicle;

b. In failing to operate the 2005 Toyota Camry at a safe speed and in a safe manner under the then existing conditions;

c. In failing to warn Plaintiff's decedent by sounding a horn or otherwise;

d. In being inattentive and failing to maintain a sharp lookout of the road for stopped vehicles;

e. In failing to take evasive action to prevent striking Plaintiff's decedent's vehicle;

f. In failing to operate the brakes in such a manner that the 2005 Toyota Camry could be stopped before the accident occurred;

g. In failing to have the 2005 Toyota Camry under proper control;

h. In negligently failing to maintain, repair and inspect the 2005 Toyota Camry;

i. In being vicariously liable for the failure of others to maintain, inspect and repair the 2005 Toyota Camry;

j. In that Defendant was not in proper physical condition to operate the vehicle;

k. In operating his vehicle in excess of the posted speed limit; and

l. In failing to slow the speed of his vehicle for a work zone.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Woodley Paul, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XXII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Woodley Paul, Defendant

UNDER THE SURVIVAL ACT

77. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs

1 through 28, 36 through 38 and 76 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Woodley Paul, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XXIII

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Charles Phillips, Defendant

UNDER THE WRONGFUL DEATH ACT

78. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28 and 30 through 32 inclusive, as fully as if the same had been set forth herein at length.

79. That the above-described accident and resulting injuries and damages were caused solely and by and were the direct and proximate result of the negligence of the Defendant, Charles Phillips, himself and acting through his agents, servants, workmen, and/or employees, including Woodley Paul, acting within the scope of their agency, servitude, workmanship and/or employment, said negligence consisting of inter alia, the following particulars:

a. In negligently permitting Defendant, Woodley Paul to use his 2005 Toyota Camry when he knew or should have known that he was likely to use the 2005 Toyota Camry in such a manner as to create an unreasonable risk of harm to others; and

b. In negligently failing to maintain, repair and inspect the 2005 Toyota Camry.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Charles Phillips, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

COUNT XXIV

Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, Plaintiff v. Charles Phillips, Defendant

UNDER THE SURVIVAL ACT

80. That Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, incorporates by reference each and every allegation contained in Paragraphs 1 through 28, 36 through 38 and 79 inclusive, as fully as if the same had been set forth herein at length.

WHERERFORE, Plaintiff, Carolyn Rickard, Administratrix of the Estate of William J. Rickard, Deceased, claims damages from the Defendant, Charles Phillips, in an amount in excess of Thirty Five Thousand and 00/100 ($35,000.00) Dollars, exclusive of costs and interest.

Respectfully submitted,

CUTRUZZULA & NALDUCCI

By: _____
Arthur Cutruzzula, Esquire
Attorney for Plaintiff

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

BEFORE ME, the undersigned authority, personally appeared Carolyn M. Rickard who, being first duly sworn according to law, deposes and says that the facts set forth in the foregoing Amended Complaint are true and correct to the best of his/her knowledge, information and belief.

x Carolyn M Rickard

SWORN TO AND SUBSCRIBED
before me this 19th day
of March, 2015.

Kristina Baker
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Kristina Baker, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires April 10, 2016
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

CERTIFICATE OF SERVICE

I, Arthur Cutruzzula, Esquire, hereby certify that I served a true and correct copy of the foregoing Plaintiff's Amended Complaint upon the following by United States Mail, postage pre-paid, this date:

William J. Ricci, Esquire
RICCI TYRELL JOHNSON & GREY
1515 Market Street, Suite 700
Philadelphia, PA 19102
(Attorney for Defendant General Motors, LLC f/k/a General Motors Company)

Thomas McGinnis, Esquire
THOMAS, THOMAS & HAFER
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Pittsburgh, PA 15219
(Attorney for Defendants Woodley Paul and Charles Phillips)

Miles A. Kirshner, Esquire
MARGOLIS EDELSTEIN
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(Attorney for Defendant, Parking Lot Painting Company, LLC)

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Sr. Deputy Attorney General in-Charge
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(Attorney for Defendant Commonwealth of Pennsylvania, Pennsylvania Department of Transportation)

Date: 3/19/15

By: _____
Arthur Cutruzzula, Esquire
Attorney for Plaintiff

Exhibit F

UNITED STATES DISTRICT COURT

EASTERN DISTRCT OF LOUISIANA

YOLANDA COLEMAN and QUNSTON COLEMAN	*	**CIVIL ACTION NO.**
VERSUS	*	**JURY TRIAL DEMAND**
GENERAL MOTORS, LLC, GENERAL MOTORS HOLDING, LLC, STONERIDGE, INC., STONERIDGE, INC. d/b/a POLLAK ENGINEERED PRODUCTS, AND ABC MANUFACTURING COMPANY	*	**SECTION:** **MAGISTRATE:**

****

COMPLAINT

NOW INTO COURT, through undersigned counsel, come plaintiffs, **YOLANDA COLEMAN**, hereinafter occasionally referred to as **"COLEMAN"** and **QUNSTON COLEMAN,** also sometimes referred to collectively as "Plaintiffs," who are domiciled in Houma, Louisiana respectfully file the following Complaint for Damages:

VENUE AND JURISIDCITION

1.

This Honorable Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. Venue is proper in accordance with 28 U.S.C. § 1391(b)(2).

2.

This case is brought pursuant to the Constitution and the laws of the United States of America, the Louisiana Products Liability Act (LA. R.S. 9:2800.51 *et seq.*), the Louisiana Unfair Trade Practices and Consumer Protection Law (LA R.S. 51:1401), the Transportation Recall

Enhancement, Accountability, and Documentation Act (49 U.S.C. § 30118 *et seq.*), Louisiana Civil Code Articles 2315, 2520, 2475, and 2524, and all other provisions of Louisiana Law which may have bearing on this proceeding.

PARTIES

3.

YOLANDA COLEMAN, plaintiff, is a person of the full age of majority and a resident of Houma, Louisiana and the driver of the 2001 Pontiac Grand Am (hereinafter the "Defective Vehicle") at the time of the accident described in Paragraph 14 of this Complaint.

4.

QUNSTON COLEMAN, plaintiff, is a person of the full age of majority and a resident of Houma, Louisiana and the husband of **YOLANDA COLEMAN**.

5.

GENERAL MOTORS CORPORATION (hereinafter "**GM CORP.**") was a Delaware corporation with its headquarters in Detroit, Michigan. **GM CORP.** designed, manufactured, marketed, distributed and sold Pontiac, Saturn, Chevrolet and other brand automobiles in Louisiana and multiple other locations in the United States and worldwide.

6.

In 2009, **GM CORP.** filed for bankruptcy, and substantially all of its assets were sold pursuant to a Master Sales and Purchase Agreement ("Agreement") to **GENERAL MOTORS, LLC** (hereinafter "**GM LLC**").

7.

Under the Agreement, **GM LLC** also expressly assumed certain liabilities of **GM**

CORP., including certain statutory requirements:

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

GM LLC also set forth that **GM LLC**:

> shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers [**GM CORP.]** that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre- owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws.

8.

GM LLC is liable through successor liability for the deceptive and unfair acts and omissions of **GM CORP.**, as alleged in this Complaint because **GM LLC** acquired and operated **GM CORP.** and ran it as a continuing business enterprise, and because **GM LLC** was aware from its inception of the Ignition Switch Defects in the Defective Vehicle driven by the Plaintiff.

9.

GM LLC is a Delaware corporation with its headquarters in Detroit, Michigan. **GM LLC** is registered with the Secretary of State and conducts business in all fifty states (including the District of Columbia). **GM LLC** was incorporated in 2009 and on July 10, 2009, acquired substantially all assets and assumed certain liabilities of **GM CORP.** through a Section 363 sale

under Chapter 11 of the U.S. Bankruptcy Code.

10.

At all times relevant herein, **GM CORP.** and its successor in interest **GM LLC** were engaged in the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Defective Vehicle driven by the Plaintiff, and other motor vehicles and motor vehicle components throughout the United States.

11.

STONERIDGE, INC. and **STONERIDGE, INC. d/b/a POLLAK ENGINEERED PRODUCTS and/or ABC MANUFACTURING COMPANY,** (hereinafter collectively **"STONERIDGE"**) is an Ohio corporation with its principal places of business in Ohio and Massachusetts. **STONERIDGE, INC.** is located at 9400 East Market Street, Warren OH 44484, and can be served with process through its Registered Agent listed by the Ohio Secretary of State's office at: CT Corporation System, 1300 East 9th Street, Cleveland, OH 44114. **STONERIDGE, INC. d/b/a POLLAK ENGINEERED PRODUCTS** is located at 300 Dan Road, Canton, MA 02021, and can be served with process through its Registered Agent listed by the Massachusetts Secretary of State's office, at: CT Corporation System, 155 Federal Street, Suite 700, Boston, MA 02110.

12.

Upon information and belief, at all times relevant herein, **STONERIDGE**, through its various entities, designed, manufactured, and supplied **GM LLC** with motor vehicle components, including the subject ignition switches.

13.

GM LLC, **STONERIDGE,** and **ABC MANUFACTURING COMPANY** are collectively referred to in this Complaint as "Defendants."

FACTUAL ALLEGATIONS

14.

On August 18, 2002, **COLEMAN** was driving the Defective Vehicle, on Louisiana Highway 24 in Houma, Louisiana when suddenly and without warning, she was sideswiped by another vehicle causing her steering column to lock and lose control of the vehicle. This malfunction caused his vehicle to travel off the highway and run into a utility pole. Additionally, the driver's side airbag failed to deploy. This accident caused **COLEMAN** to suffer severe and debilitating injuries, which require ongoing medical treatment.

15.

The defective vehicle should have been recalled because of the following defect in design, manufacture, and/or assembly later detailed in a recall notice:

> "If the key ring is carrying added weight and the vehicle goes off road or experiences some other jarring event, it may unintentionally move the key away from the "run" position. If this occurs, engine power, power steering, and power braking may be affected, increasing the risk of a crash. If the ignition switch is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality."

16.

GM LLC failed to disclose this defect in a timely manner and effectively concealed this defect until after **COLEMAN**'s accident.

17.

A manufacturer that is aware of dangerous design defects that cause its vehicles to shut down during operation, or the vehicles' airbags not to deploy, must promptly disclose and remedy such defects.

18.

More importantly, the Ignition Switch Defect in **GM LLC**'s vehicles could have been easily avoided. From at least 2005 to the present, **GM LLC** received reports of crashes and injuries that put **GM LLC** on notice of the serious safety issues presented by its ignition switch system.

19.

Because of its faulty design and improper positioning, the ignition switch can unexpectedly and suddenly move from the "on" or "run" position while the vehicle is in operation to the "off" or "accessory" position (the "Ignition Switch Defect"). This can occur at any time during normal and proper operation of the Defective Vehicle, meaning the ignition can suddenly switch off while it is driving on the highway, as in **COLEMAN**'s case, leaving the driver unable to safely control the vehicle.

20.

The vehicle **COLEMAN** was driving was originally designed, manufactured, marketed, and placed into the stream of commerce by **GM CORP**. **GM CORP.** also violated these obligations and duties by designing and marketing vehicles with defective ignition switch systems, and then by failing to disclose that defect even after becoming aware that the ignition switch defect was causing fatal accidents. In addition to the liability arising out of the statutory obligations assumed by **GM LLC**, **GM LLC** also has successor liability for the deceptive and

unfair acts and omissions of **GM CORP.** because **GM LLC** has continued the business enterprise of **GM CORP.** with full knowledge of the Ignition Switch Defects.

21.

GM LLC's predecessor, **GM CORP.** filed for bankruptcy in 2009. In July 2009, the bankruptcy court approved the sale of **GM CORP.** to **GM LLC**. Notwithstanding the prior bankruptcy or contractual obligations under the sale agreement, **GM LLC** is liable for its own conduct. From its inception in 2009 and while extolling the safety and reliability of its vehicles, **GM LLC** had its own independent knowledge of the defects in its vehicles, yet chose to conceal them.

22.

Specifically, **GM LLC** has actual knowledge that, because of the way in which the ignition was designed and integrated into the Defective Vehicle, the ignition switch can suddenly fail during normal operation, cutting off engine power and certain electrical systems in the cars, which, in turn, disables key vehicle components, safety features (like airbags), or other vehicle functions, leaving occupants vulnerable to crashes, serious injuries, and death.

SUCCESSOR LIABILITY

23.

The defective ignition switch was manufactured by **STONERIDGE AUTOMOTIVE PLC** and/or **STONERIDGE AUTOMOTIVE SYSTEMS, LLC** (hereinafter "**STONERIDGE**").

24.

Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"),[1] and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must promptly disclose the defect.[2] 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.[3]

25.

GM LLC also violated the TREAD Act by failing to timely inform NHTSA of the ignition switch defects and allowed cars to remain on the road with these defects.

26.

Upon information and belief, prior to the sale of the Defective Vehicle, **GM LLC** knew of the Ignition Switch Defect through sources such as pre-release design, manufacturing, and field testing data; in-warranty repair data; early consumer complaints made directly to **GM LLC**, collected by the National Highway Transportation Safety Administration's Office of Defect Investigation ("NHTSA ODI") and/or posted on public online vehicle owner forums; field testing done in response to those complaints; aggregate data from **GM LLC** dealers; and accident data. Despite this knowledge, **GM LLC** failed to disclose and actively concealed the Ignition Switch Defect from Plaintiff and the public, and continued to market and advertise the Defective Vehicle as a reliable and safe vehicle, which it was not.

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1 49 U.S.C.§§ 30101-30170
2 49 U.S.C. § 30118(c)(l) & (2).
3 49 U.S.C. § 30118(b)(2)(A) & (B)

CLAIMS FOR RELIEF

PRODUCTS LIABILITY CLAIMS

27.

Upon information and belief, at all material times, **GM LLC** was the manufacturer and distributor of the vehicle.

28.

At all material times, **GM LLC**, was engaged in the business of designing, manufacturing, assembling, and selling the Defective Vehicle.

29.

At all material times, **GM LLC** was responsible for the sale and marketing of the Defective Vehicle.

30.

At all material times, **GM LLC** was responsible for all warnings and labels which accompanied the Defective Vehicle.

31.

COLEMAN's injuries were caused by the fault of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**, in that they manufactured and sold a defective product pursuant to Louisiana law.

32.

COLEMAN's injuries were caused by the fault of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**, in that the vehicle's ignition switch was unreasonably dangerous in construction and/or composition.

33.

COLEMAN's injuries were caused by the fault of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**, in that the vehicle's ignition switch was unreasonably dangerous in design.

34.

COLEMAN's injuries were caused by the fault of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**, in that the ignition switch is unreasonably dangerous because an adequate warning about the ignition switch was not provided to Plaintiffs in a timely manner.

35.

COLEMAN's injuries were caused by the fault of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**, in that the ignition switch is unreasonably dangerous because the ignition switch does not conform to an express warranty of the manufacturer.

VIOLATION OF THE MAGNUUSON-MOSS WARRANTY ACT, 15 U.S.C. §§ 2301 et seq.

36.

Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

37.

At all times relevant hereto, there was in full force and effect the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.

38.

Plaintiffs are consumers as defined in 15 U.S.C. § 2301(3). They are consumers because

they are persons entitled under applicable state law to enforce against the warrantor the obligations of its implied warranty.

39.

The Defective Vehicle is a "consumer product" within the meaning of 15 U.S.C. § 2301(1).

40.

GM LLC is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)-(5).

41.

15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by failure of a warrantor to comply with a written or implied warranty. **GM LLC** breached these warranties as described in more detail herein.

42.

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

43.

GM LLC is liable to Plaintiffs pursuant to 15 U.S.C. § 2310(d)(1), because it breached the implied warranty of merchantability.

44.

GM LLC breached its implied warranty of merchantability to Plaintiffs because the Defective Vehicle was not fit for the ordinary purposes for which it is used—namely, as a safe passenger motor vehicle. The Ignition Switch Defect, which affects the ignition switch system in the Defective Vehicle, may, among other things, result in the vehicle's airbags not deploying in a crash event, increasing the potential for occupant injury or death. This safety defect makes the Defective Vehicle unfit for its ordinary purpose of providing safe transportation.

45.

GM LLC further breached its implied warranty of merchantability to Plaintiffs because the Defective Vehicle would not pass without objection in the trade, as it contained a defect that relates to motor vehicle safety due to the Ignition Switch Defect in the Defective Vehicle.

46.

GM LLC further breached its implied warranty of merchantability to Plaintiffs because the Defective Vehicle was not adequately contained, packaged, and labeled. The directions and warnings that accompanied the Defective Vehicle did not adequately instruct Plaintiffs on the proper use of the Defective Vehicle in light of the Ignition Switch Defect, or adequately warn Plaintiffs of the dangers of improper use of the Defective Vehicle.

47.

At the time of the delivery of the Defective Vehicle, **GM LLC** did not provide instructions and warnings to Plaintiffs to not place extra weight on the vehicle's key chains, including a fob or extra keys. According to **GM LLC**, placing extra weight on the vehicle's key chain increases the chances that the ignition switch will unintentionally move from the "on" position to the

"accessory" or "off" position.

48.

At the time of the delivery of the Defective Vehicle, **GM LLC** did not provide instructions and warnings to Plaintiffs to avoid rough, bumpy, and uneven terrain while driving his vehicle. Traveling across such terrain increases the chances that the ignition switch in the Defective Vehicle will unintentionally move from the "on" position and into the "accessory" or "off" position, especially when the key chains are weighted down with a fob, additional keys or other items.

49.

At the time of the delivery of the Defective Vehicle, **GM LLC** did not provide instructions and warnings to Plaintiffs to carefully avoid brushing or bumping up against his vehicle's key chain with a body part. According to **GM LLC**, brushing or bumping up against the Defective Vehicle's key chains increases the chances that the ignition switch in the Defective Vehicle will unintentionally move from the "on" position and into the "accessory" or "off" position.

50.

At the time of the delivery of the Defective Vehicle, **GM LLC** did not adequately warn Plaintiffs of the dangers of not taking the necessary steps outlined above to prevent the ignition switch in their vehicle from unintentionally moving from the "on" position and into the "accessory" or "off" position while in motion, including the loss of power and shut off of the engine resulting in an increased difficulty in maneuvering the vehicle, the lack of airbag deployment in the event of a crash and injury or death.

51.

Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs are entitled to recover the damages caused to them by **GM LLC**'s breach of the implied warranty of merchantability, which damages constitute the difference in value between the Defective Vehicle as warranted (its sales prices) and the Defective Vehicle as actually delivered (perhaps worth $0.00) (i.e., a total or partial refund of the full purchase prices of the Defective Vehicle), plus loss of use and other consequential damages arising after the date of delivery of the Defective Vehicle.

52.

Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have been reasonably incurred by Plaintiffs in connection with the commencement and prosecution of this action.

BREACH OF WARRANTY OF FITNESS FOR ORDINARY USE

53.

GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY also warranted that the Defective Vehicle was reasonably fit for its ordinary and intended use. La. C.C. Art. 2524.

54.

The Defective Vehicle was clearly not safe and contained a serious and life threatening defect. As a result, the Defective Vehicle was unfit and inherently dangerous for ordinary use.

55.

As a direct and proximate result of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY's** actions in breaching their warranty of fitness for ordinary use, Plaintiffs have sustained serious and significant damages for which **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY** are liable.

VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

56.

GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY's acts and omissions as well as their failure to use reasonable care in this matter as alleged in this Complaint demonstrate unfair and deceptive methods.

57.

The unfair and deceptive acts and practices of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY** violate the provisions of the Louisiana Unfair Trade Practices and Consumer Protection Law. As a result, Plaintiffs suffered actual damages for which they are entitled to relief.

58.

As a direct and proximate cause of **GM LLC, STONERIDGE and/or ABC MANUFACTURING COMPANY**'s acts and omissions, Plaintiffs have incurred economic damages and are entitled to recover monetary damages, including but not limited to, replacement and/or reimbursement for loss of value.

BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS

59.

Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

60.

At all times relevant hereto, Defendants knew of the use for which the Defective Vehicle was intended and impliedly warranted the Defective Vehicle to be of merchantable quality and safe and fit for such use.

61.

Defendants were aware that a consumer, such as the Plaintiffs, would use the Defective Vehicle in the manner in which passenger vehicles are intended to be used.

62.

Plaintiffs reasonably relied upon the judgment and sensibility of Defendants to sell the Defective Vehicle only if it was indeed of merchantable quality and safe and fit for Plaintiffs' intended use. Defendants breached their implied warranty of merchantability to Plaintiffs because the Defective Vehicle was neither of merchantable quality nor fit for the ordinary purposes for which it is used—as a safe passenger vehicle. Specifically, and according to **GM LLC**'s representatives, the Defective Vehicle contained the Ignition Switch Defect, which makes the Defective Vehicle unfit for their ordinary purpose of providing safe transportation.

63.

Defendants further breached their implied warranty of merchantability to Plaintiffs because the Defective Vehicle was not adequately contained, packaged, and labeled in that

the directions and warnings that accompanied the Defective Vehicle did not adequately instruct Plaintiffs on the proper use of the Defective Vehicle in light of the Ignition Switch Defect.

64.

At the time of delivery of the Defective Vehicle, Defendants did not provide instructions and warnings to Plaintiffs to not place extra weight on their vehicles' key chains, including a fob or extra keys. On or around March of 2014, GM publicly stated that placing extra weight on the key chain of the Defective Vehicles increases the chances that the ignition switch in the Defective Vehicles will move from the "on" position and into the "accessory" or "off" position.

65.

At the time of the delivery of the Defective Vehicle, Defendants did not provide instructions and/or warnings to Plaintiffs to avoid rough, bumpy, and uneven terrain while driving. On or around March of 2014, GM publicly stated that traveling across such terrain increases the chances that the ignition switch in the Defective Vehicles will move from the "on" position to the "accessory" or "off" position.

66.

Additionally, at the time of delivery of the Defective Vehicle, Defendants did not adequately warn Plaintiffs of the dangers of not taking the necessary steps outlined above to prevent the ignition switch in the Defective Vehicles from moving from the "on" position to the "accessory" or "off" position while the Vehicle is in motion.

67.

It was not necessary for Plaintiffs to give Defendants notice of GM's breach of the implied warranty of merchantability because Defendants had actual notice of the Ignition Switch Defect. Prior to the filing of this action, GM issued a safety recall for the Defective Vehicles acknowledging the Ignition Switch Defect. Defendants admitted they had notice of the Ignition Switch Defect as early as 2004, and possibly as early as 2001. At the time of the safety recall, GM also acknowledged that numerous accidents and fatalities were caused by the Ignition Switch Defect. In addition to the above, the filing of this action is sufficient to provide Defendants notice of their breaches of the implied warranty of merchantability with respect to the Defective Vehicles.

68.

Plaintiffs' injuries were caused by the negligence of defendant, **GM LLC**, in the following non-exclusive particulars, to-wit:

a. Manufacturing and selling a product which is unreasonably dangerous in construction and/or composition;

b. Manufacturing and selling a product which is unreasonably dangerous in design;

c. Failing to provide adequate and timely warnings about the product;

d. Manufacturing and selling a product which is unreasonably dangerous because it does not conform to an express warranty;

e. Improperly installing the **STONERIDGE** ignition switch;

f. The vehicle and ignition switch were being used in a way that was intended and/or foreseeable;

g. The defendant, **GM LLC,** is engaged in the business of manufacturing or selling

vehicles; and

h. Any other acts of negligence to be shown at the trial of this matter.

69.

Plaintiffs' injuries were caused by the negligence of defendant, **STONERIDGE and/or ABC MANUFACTURING COMPANY**, in the following non-exclusive particulars, to-wit:

a. Manufacturing and selling a product which is unreasonably dangerous in construction and/or composition;

b. Manufacturing and selling a product which is unreasonably dangerous in design;

c. Failing to provide adequate and timely warnings about the product;

d. Manufacturing and selling a product which is unreasonably dangerous because it does not conform to an express warranty;

e. The ignition switch was being used in a way that was intended and/or foreseeable;

f. The defendant, **STONERIDGE,** is engaged in the business of manufacturing and selling ignition switches; and

g. Any other acts of negligence to be shown at the trial of this matter.

70.

YOLANDA COLEMAN alleges the following general and specific damages for which she is entitled to recover in an amount calculated to adequately compensate her for the injuries and damages she sustained:

a. Past, present, and future medical expenses;

b. Past, present, and future physical pain and suffering and loss of function;

c. Past, present, and future mental anguish and emotional distress;

d. Past, present, and future lost wages and diminished earning capacity;

e. Special care and services;

f. Loss of enjoyment of life;

g. Permanent partial disability;

h. Travel expenses;

i. Costs of these proceedings and experts fees, and

j. Any other damages which will be shown through discovery, proven at trial, and are recoverable by law.

71.

QUNSTON COLEMAN alleges the following general and specific damages for which he is entitled to recover in an amount calculated to adequately compensate him for the damages he sustained:

a. Loss of consortium;

b. Loss of aid, assistance, companionship, affection, society, and service; and

c. Any other damages which will be shown through discovery, proven at trial, and are recoverable by law.

72.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

WHEREFORE, plaintiffs, **YOLANDE COLEMAN and QUNSTON COLEMAN,** pray the defendants be cited and served with this complaint and after due proceedings are had, there be judgment in their favor and against defendants, **GENERAL MOTORS CORPORATION, GENERAL MOTORS, LLC, STONERIDGE AUTOMOTIVE PLC,**

STONERIDGE AUTOMOTIVE SYSTEMS, LLC, **and ABC MANUFACTURING COMPANY** severally, jointly and *in solido*, in a full and true sum calculated to compensate plaintiffs for the damages complained of herein, along with legal interest from the date of judicial demand until paid, for all costs of these proceedings, and for all other general and equitable relief.

Respectfully submitted,

SANGISETTY LAW FIRM, LLC

/s/ Michael Lillis_____
RAVI K. SANGISETTY (Bar No. 30709)
MICHAEL E. LILLIS (Bar No. 33245)
935 Gravier Street, Suite 835
New Orleans, La 70112
Telephone: (504) 662-1016
Facsimile: (504) 662-1318

and

BRIAN K. JEFFERSON (Bar No. 23143)
228 St. Charles Avenue, Ste. 1110
New Orleans, LA 70130
Telephone: (504) 586-9395

SERVICE INSTRUCTIONS:

Service on all defendants will be completed by waiver pursuant to Rule 4(d) of the FRCP.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
YOLANDA COLEMAN AND QUNSTON COLEMAN

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
MICHAEL LILLIS AND RAVI SANGISETTY
935 GRAVIER ST., STE. 835
NEW ORLEANS, LA 70112 5046621016

DEFENDANTS
GENERAL MOTORS, LLC, GEBERAL MOTORS HOLDING, LLC, STONERIDGE, INC, STONERIDGE INC. DBA POLLAK ENGINEERING PRODUCTS, ABC MANUFACTURING COMPANY

County of Residence of First Listed Defendant DELAWARE
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☒ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:
FAULTY IGNITION SWITCH INJURY CASE

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE DOCKET NUMBER

DATE
08/31/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Exhibit B

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

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Arthur Steinberg
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October 30, 2015

VIA E-MAIL TRANSMISSION AND ECF FILING

The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

Re: In re Motors Liquidation Company, *et al.*
Case No. 09-50026 (REG)
Explanatory Letter With Respect to Peller Clients Complaints

Dear Judge Gerber:

Pursuant to Your Honor's October 19, 2015 Endorsed Order [Dkt. No. 13506], General Motors LLC ("**New GM**") submits this letter setting forth its position with respect to the Marked Peller Client Complaints (as defined in the Endorsed Order), attached hereto as Exhibits "A" through "C."[1] Initially, New GM notes that the *Elliott*, *Sesay* and *Bledsoe* lawsuits are currently stayed in MDL 2543, and the Peller Client Complaints raise substantially similar issues as those addressed by New GM in the Marked MDL Complaint and its accompanying explanatory letter. In this regard, just like the MDL Complaint, the Peller Client Complaints include parties, factual allegations and claims that violate this Court's Judgment, Decision, and Sale Order,[2] and are highlighted with different colors as follows: (1) blue, for named plaintiffs and plaintiff classes/subclasses asserting claims based on Old GM vehicles; (2) green, for allegations based on Old GM conduct that support claims for Retained Liabilities; (3) yellow, for allegations seeking to impute wholesale Old GM's knowledge to New GM, and (4) pink, for allegations related to punitive damages, which were not assumed by New GM.

[1] New GM incorporates by reference (i) its Opening and Reply Briefs regarding the Punitive Damages Issue, dated September 13, 2015 and September 22, 2015, respectively [Dkt. Nos. 13437 and 13460]; (ii) its Opening and Reply Briefs regarding the Imputation Issue, dated September 18, 2015 and September 30, 2015, respectively [Dkt. No. 13451 and 13482]; and (iii) its explanatory letters regarding other marked complaints (*see* Dkt. Nos. 13456, 13466, 13469 and 13470).

[2] Judgment, entered on June 1, 2015 ("**Judgment**"); *In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015) ("**Decision**"); and Order, dated July 5, 2009 ("**Sale Order**").

If the Court agrees with New GM's arguments, all Old GM vehicle plaintiffs and all Old GM conduct allegations and corresponding causes of action will be stricken.[3] ***Every*** cause of action in the Peller Client Complaints asserted by Old GM vehicle plaintiffs and/or arising from Old GM conduct—including but not limited to (a) violations of RICO, (b) fraud, (c) negligent infliction of economic loss and increased risk under common law, (d) violations of consumer protection statutes, (e) breach of implied warranty of merchantability, and (f) civil conspiracy and joint action or aiding and abetting—are Retained Liabilities and should be stricken. Therefore, assuming New GM's arguments prevail, the Peller Client Complaints will be properly narrowed to address only New GM vehicle plaintiffs, New GM conduct allegations, and corresponding causes of action.

Blue Coded Allegations: The Peller Client Complaints identify named plaintiffs and proposed classes of plaintiffs who purchased vehicles manufactured and sold by Old GM before the 363 Sale.[4] Although plaintiffs assert that the Peller Client Complaints do not include successor liability claims, that is not the case. The Judgment held that "all claims and/or causes of action that the Ignition Switch Plaintiffs may have against New GM concerning an Old GM vehicle or part seeking to impose liability or damages based in whole or in part on Old GM conduct (including, without limitation, on any successor liability theory of recovery) are barred and enjoined pursuant to the Sale Order." Judgment, ¶ 9; *see also In re Motors Liquidation Co*, 534 B.R. 542, 553 (Bankr. S.D.N.Y. 2015) (stating, in connection with the *Bledsoe* Plaintiffs' motion to amend the Judgment, "[i]f it is to argue that successor liability claims can still be asserted, notwithstanding the Court's extensive analysis and conclusions to the contrary, that is not a matter the Court overlooked; it is a matter for appeal." (footnote omitted)).

Further, certain of the Peller Client Complaints identify named plaintiffs and portions of proposed classes who purchased used Old GM vehicles after the closing of the 363 Sale from third parties with no connection to New GM. The inclusion of such plaintiffs' claims violates the Decision, which held that "if the Sale Order and Injunction would have applied to the original owner who purchased the vehicle prior to the 363 Sale, it equally applies to the current owner who purchased the vehicle after the 363 Sale." Decision, 529 B.R. at 572. The claims of plaintiffs who purchased Old GM vehicles from Old GM or from a third party unrelated to New GM—whether before or after the closing of the 363 Sale—should be stricken.

This is particularly true with regard to Non-Ignition Switch Plaintiffs in the Peller Client Complaints. The Court held that with respect to Non-Ignition Switch Plaintiffs, the Sale Order prohibits all claims against New GM that are not Assumed Liabilities. In other words, the Sale Order was modified to allow only Ignition Switch Plaintiffs (not Non-Ignition Switch Plaintiffs)

[3] The *Bledsoe* complaint appears to assert, among others, product liability claims resulting from accidents that took place before and after the closing of the sale from Old GM to New GM. New GM assumed "Product Liabilities" (as defined in the Sale Agreement) for post-363 Sale accidents. As such, to the extent the *Bledsoe* complaint asserts assumed Product Liabilities, those claims would not be barred by the Sale Order. Note, however, that New GM disputes any and all liability for such claims.

[4] New GM did not mark every reference to "Plaintiffs", "Class members", "Class members' vehicle" and the like because it would have made the marked complaints overly cumbersome to review. Nonetheless, because such terms include Old GM vehicle owners and Old GM vehicles, such terms should be deemed to be marked.

to assert Independent Claims that would otherwise be barred by the Sale Order.[5] In the absence of any exclusion for Independent Claims, there is no theory pursuant to which the Non-Ignition Switch Plaintiffs can pursue any claim premised on any Old GM vehicle.

Green Coded Allegations: The Peller Client Complaints identify numerous paragraphs containing improper allegations of Old GM conduct that are the basis for their Retained Liabilities claims.[6] The Court unequivocally ruled that "[c]laims premised in any way on Old GM conduct are properly proscribed under the Sale Agreement and the Sale Order, and by reason of the Court's other rulings, the prohibitions against the assertion of such claims stand." Decision, 529 B.R. at 528; *see also* Judgment, ¶ 9.[7] Furthermore, the Peller Client Complaints identify allegations containing improper references to GM—for example, "GM," "GM vehicles" and "Class Vehicles." Plaintiffs' merging of Old GM and New GM in their defined terms was purposeful and violated the Court's prior rulings. *See In re Motors Liquidation Co.*, 514 B.R. 377, 382 n.24 (Bankr. S.D.N.Y. 2014). Ambiguous references to "GM" in the Peller Client Complaints should be modified to specify the proper entity.[8]

Yellow Coded Allegations: The Peller Client Complaints seek to automatically impute Old GM's knowledge to New GM. For the reasons described in New GM's Opening and Reply Briefs on the Imputation Issue, plaintiffs' attempt to impute to New GM, on a wholesale basis, knowledge of events that took place at Old GM, or information contained in Old GM's books and records, violates the Sale Order.

Pink Coded Allegations: The Peller Client Complaints seek punitive damages from New GM. For the reasons described in New GM's Opening and Reply Briefs on the Punitive Damages Issue, all requests for punitive damages based on Old GM conduct violate the Sale Order, and cannot be maintained against New GM.

---

[5] *See In re Motors Liquidation Co.*, 531 B.R. 354, 360 (Bank. S.D.N.Y. 2015) ("The Non–Ignition Switch Plaintiffs' claims remain stayed, and properly so; those Plaintiffs have not shown yet, if they ever will, that they were known claimants at the time of the 363 Sale, and that there was any kind of a due process violation with respect to them. ***And unless and until they do so, the provisions of the Sale Order, including its injunctive provisions, remain in effect.***") (emphasis added)).

[6] This Court has already found that the *Elliott* and *Sesay* complaints impermissibly contain allegations of Old GM conduct. *See In re Motors Liquidation Co.*, 514 B.R. 377, 383 (Bankr. S.D.N.Y. 2015) ("And while the Elliott Plaintiffs' brief disclaims reliance on Old GM acts, their complaint doesn't bear that out."); *In re Motors Liquidation Co.*, 522 B.R. 13, 19 (Bankr. S.D.N.Y. 2015) ("The Sesay Plaintiffs' allegations concerned model years ranging from 2003 to 2011—addressing, significantly, both Old GM and New GM vehicles, and bringing their claims within the express coverage of the Sale Order.").

[7] *See also In re Motors Liquidation Co.*, 533 B.R. 46, 51 n. 10 (Bankr. S.D.N.Y. 2015) ("Presumably her counsel envisioned a theory based on a species of successor liability or other theory under which New GM would be responsible for Old GM's acts. But theories of this character cannot be asserted under the Court's recent opinions . . . .").

[8] The Peller Client Complaints' class definitions, and concomitant causes of action, include both plaintiffs who purchased Old GM vehicles from Old GM (or an unrelated third party), and those that purchased New GM vehicles from New GM. New GM did not mark entire causes of action that might relate to both Old GM vehicle owner plaintiffs and New GM vehicle owner plaintiffs. If it had, almost every cause of action would have been marked.

Respectfully submitted,

/s/ Arthur Steinberg

Arthur Steinberg

AJS/sd

cc: Gary Peller
Edward S. Weisfelner
Howard Steel
Sander L. Esserman
Jonathan L. Flaxer
S. Preston Ricardo
Matthew J. Williams
Lisa H. Rubin
Keith Martorana
Daniel Golden
Deborah J. Newman
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE M. ELLIOTT, CELESTINE V. ELLIOTT, and BERENICE SUMMERVILLE, for themselves, on behalf of all others similarly situated, and on behalf of the People of the District of Columbia,	)	**Case No. 1:14-cv-00691 (KBJ)**
	)	**CLASS ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF**
Plaintiffs,	)	**REPRESENTATIVE ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF PURSUANT TO THE D.C CONSUMER PROTECTION PROCEDURES ACT, D.C. Code § 28-3901 et seq.**
v.	)	
GENERAL MOTORS LLC, DELPHI AUTOMOTIVE PLC, and DPH-DAS LLC f/k/a DELPHI AUTOMOTIVE SYSTEMS, LLC,	)	**JURY TRIAL DEMANDED**
Defendants.	)	

FIRST AMENDED COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs LAWRENCE ELLIOTT, CELESTINE ELLIOTT and BERENICE SUMMERVILLE bring this action for themselves, and on behalf of all persons similarly situated who own or have owned the substandard and dangerous vehicles identified below at any time since October 19, 2009. The Elliotts also bring this action of behalf of the public as representatives of the People of the District of Columbia.

1. Mr. and Mrs. Elliott are 78 and 73 years of age respectively as of the date of filing this Complaint. They have been married for forty-nine years. They are retired commercial drivers with over twenty-five years of on-the-road experience. After they retired from professional driving, they paid the full manufacturer's suggested retail price for a new

2006 Chevrolet Cobalt at a now-defunct GM dealership in Washington, D.C. The Elliotts' Cobalt has substantial safety related defects that render it dangerous to drive. The Elliotts' Cobalt has substantial safety related defects that render it dangerous to drive; these same defects are suspected of causing death or personal injury to hundreds of people across the United States, according to the National Highway Traffic Safety Administration ("NHTSA).

2. The Elliotts' Cobalt has a defective ignition switch that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable.

3. The Elliotts' Cobalt has a plastic fuel pump which is mounted on the top of the gas tank. When the fuel pump leaks, gasoline flows down the side of the tank and can pool under the car, dangerously close to the car's catalytic converter. The fuel pump is not designed to withstand the reasonably foreseeable environmental and operating conditions to which a car can be expected to be exposed. The fuel pump in the Elliotts' car has already failed to withstand the heat to which it is exposed. After noticing a persistent fuel smell, the Elliotts eventually discovered a two-foot in diameter pool of leaked gasoline under the car. Subsequently, a GM dealer replaced the pump at New GM's direction, with, as far as Plaintiffs can determine, a new plastic replica of the first pump - presenting the same defect and the same unreasonable safety risk of personal injury and property damages to Plaintiffs and class members due to the fire hazards associated with the pooling gas.

4. The Elliotts, whose entire family – including their children, grandchildren, and great-grandchildren – depended upon the Cobalt for transportation, are now extremely hesitant to drive the vehicle. They fear for their own safety and, in particular, for the safety of their great grandchildren (aged 6 and 8) who reside with them and were frequently driven to school in the car before the Elliotts discovered the extent and nature of the Cobalt's defects.

5. In December 2009, Ms. Berenice Summerville bought a 2010 Chevrolet Cobalt as a Christmas gift for her mother, Louella Summerville, who is 80 years of age as of the date of the filing of this First Amended Complaint. Like the Elliotts' 2006 Cobalt, Ms. Summerville's vehicle contains a defective ignition switch and a defective fuel pump, both of which posed and continue to pose risks of imminent death, personal injury or property damage. Ms. Summerville first became aware of problems with the car when she noticed the smell of gasoline when starting or switching off the car. She also noticed that the car had particularly poor gas mileage, which she supposed was consistent with fuel leakage. When she took the car in for maintenance, she asked the mechanic at Ourisman Chevrolet of Marlow Heights ("Ourisman"), a GM dealership, to inspect for fuel leakage, but the dealer refused to do so without a fee. Because the odor and poor performance continued, she again requested that the fuel system be inspected for leaks at her car's most recent service. After searching the vehicle history, Ourisman representatives informed Ms. Summerville that although there had been a recall on the fuel system, it was now closed. Ourisman again refused to inspect the fuel system without a fee. Ms. Summerville also noticed that the airbag light was flickering on and off, inexplicably, on both the passenger and driver sides of the car. She no longer drives the Cobalt because of fear for her own and her mother's safety.

6. GM admits that, since its incorporation on October 19, 2009, General Motors LLC ("GM" or "New GM") has known and failed to disclose that the Plaintiffs' Cobalts and class members' vehicles are substandard and pose significant and unreasonable risks of death, serious personal injury, and property damage. GM could hardly deny these facts in any event. New GM acquired all the books, records and accounts of General Motors Corporation ("Old GM"), including records that document the unlawful concealment of defects in vehicles sold by Old GM prior to New GM's existence. New GM also retained the engineering, legal and

management officials who were responsible for designing, engineering, and concealing safety-related defects at Old GM; those officials were immediately assigned to precisely the same tasks at New GM, and they implemented or continued identical policies and practices to conceal safety related defects in GM products.

7. The National Highway Traffic Safety Administration (NHTSA) fined New GM $28,000,000, the maximum permissible under applicable law, for GM's failure to disclose defects related to the ignition switches in Plaintiffs' and class members' cars.

8. For nearly five years after its inception, GM failed to disclose to, and actively concealed from, Plaintiffs, class members, investors, litigants, courts, law enforcement and other government officials including the NHTSA, the risks of death, personal injury, and property damage posed by its defective products. Instead, conspiring with Delphi, Ourisman, GM's dealers nationwide, outside lawyers, and various others, GM engaged in, and may still be engaging in, an extensive, aggressive and complex campaign to conceal and minimize the safety-related defects that exist in Plaintiffs' and class members' vehicles. That campaign is designed to mislead Plaintiffs, class members, consumers, investors, courts, law enforcement officials, and other governmental officials, including the NHTSA, that the value of the company and the worth and safety of its products are greater than they are. With those same co-conspirators, GM directed an unlawful and continuing enterprise calculated to gain an unfair advantage over competitor automakers that conduct their business within the bounds of the law.

9. Defendants first deployed their campaign of deception on the day that New GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, Defendants recklessly endangered the safety of Plaintiffs, their families, and members of the public. Defendants' wrongful acts and omissions harmed Plaintiffs and class

members by exposing them to increased risk of death or serious bodily injury, by depriving them of the full use and enjoyment of their vehicles, and by causing a substantial diminution in the value of the vehicles to Plaintiffs and class members, and a substantial diminution in value of their vehicles on the open automobile market.

10. As of the date of the filing of this First Amended Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

11. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that New GM employees knew about safety-related defects in millions of vehicles, including the Elliotts' 2006 Cobalt and Ms. Summerville's 2010 Cobalt, and that GM did not disclose those defects as it was required to do by law. Ms. Barra attributed New GM's "failure to disclose critical pieces of information," in her words, to New GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks. For example, GM chose to use and then conceal defective ignition switches in Plaintiffs' and class members' vehicles in order to save approximately $0.99 per vehicle.

12. In executing their scheme to conceal the dangerous character of Plaintiffs' vehicles, Defendants violated a multitude of laws:

a) In furtherance of their common design to prevent Plaintiffs, class members, other consumers, law enforcement and other governmental officials, litigants, courts, and investors from learning of the safety defects in GM cars, GM, Delphi, and GM's dealers conducted a racketeering enterprise and engaged in a pattern of racketeering activities, including repeated and continuous acts of mail and wire fraud, television and radio fraud, and tampering with witnesses and victims in violation of the Racketeer Influenced and Corrupt Organizations

Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, causing the harm to Plaintiffs and class members described above.

b) By concealing the material fact of the dangerousness of the Plaintiffs' and class members' vehicles, by failing properly to repair the safety defects in the cars in a timely manner, and by engaging in other unconscionable and/or unlawful behavior, GM and Delphi violated the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*, and the Maryland Consumer Protection Act,. Md. Code, Com. Law § 13-408 *et seq.*, causing the harm described above to Plaintiffs and class members.

c) GM and Delphi also violated their duties to warn Plaintiffs and class members about the dangers that their vehicles posed, resulting in economic loss and increased risk of personal injury for which Defendants are liable to Plaintiffs and Class members under the common law of the District of Columbia and the States of Florida, Maryland, New Jersey and Ohio.

d) Because they intentionally concealed a material fact from Plaintiffs and Class members, Defendants are liable to Plaintiffs for the harm Plaintiffs and class members have suffered and for punitive damages under the common law of fraud common to the several States.

e) By civilly conspiring to conceal the safety-related defects of GM vehicles, both among themselves and among nonparties to this litigation, and because they acted jointly to harm Plaintiffs and class members, Defendants are jointly and severally liable for all harm they or any co-conspirator caused.

f) Defendants aided and abetted the conduct of each other and of nonparties in concealing the safety-related defects of GM vehicles.

g) With respect to the claims of Ms. Summerville and other purchasers of identified cars sold since New GM's inception, Defendants are also liable for breach of a sellers implied warranty of merchantability under the Uniform Commercial Code §2-314 of thirty-one States identified herein that have abolished vertical privity requirements for such suits. They are also liable under the common law of the several States to those purchasers for fraud in inducing the purchases through misrepresentations and material omissions upon which Plaintiffs and class members based their purchases.

PARTIES

13. Plaintiffs Lawrence and Celestine Elliott are citizens and residents of the District of Columbia. Mr. and Mrs. Elliott jointly own a 2006 Chevrolet Cobalt SS. Although Mr. and Mrs. Elliott have always been the primary drivers of their cars, they have children, grand children, and great-grandchildren who live with them, and frequently ride in the cars as passengers and, on rare occasions, also drive the cars.

14. Plaintiff Berenice Summerville is a citizen and resident of the State of Maryland. She purchased a 2010 Chevrolet Cobalt in December 2010 from a GM dealer in the State of Maryland, and she has been the primary driver of the vehicle for virtually the entire period since she purchased the car. She often drives in the District of Columbia, which is less than 5 miles from her home.

15. General Motors LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Detroit, Michigan. On October 19, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout

the United States. Plaintiffs' claims and allegations against GM refer solely to this entity. In this First Amended Complaint, Plaintiffs are not making any claim against Old GM (General Motors Corporation) whatsoever, and Plaintiffs are not making any claim against New GM based on its having purchased assets from Old GM or based on its having continued the business or succeeded Old GM. Plaintiffs disavow any claim based on the design or sale of vehicles by Old GM, or based on any retained liability of Old GM. Plaintiffs seek relief from New GM solely for claims that have arisen after October 19, 2009, and solely based on actions and omissions of New GM.

16. Delphi Automotive PLC is headquartered in Gillingham, Kent, United Kingdom, and is the parent company of Delphi Automotive Systems LLC, headquartered in Troy, Michigan. At all times relevant herein, Delphi, through its various entities, designed, manufactured, and supplied GM with motor vehicle components, including the defective ignition switches contained in the Cobalts owned by Plaintiffs, and in at least 6.5 million other vehicles.

17. GM and Delphi are collectively referred to in this Complaint as "Defendants."

JURISDICTION AND VENUE

18. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331, because the claims under the Racketeer Influenced and Corrupt Organizations Act present a federal question. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiff Class are citizens of states different from Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to these claims occurred in this District, and Defendants have caused harm to plaintiffs and class members residing in this District.

FACTUAL BACKGROUND

20. GM has publicly admitted that the ignition switches in Plaintiffs' and class members' cars are defective and pose a safety hazard. It has also admitted that, from its inception in 2009, various New GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch defect and/or diminish its significance. GM has been found guilty of failing to disclose the defect to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined New GM the maximum penalty that agency is authorized to impose.

21. GM continues to conceal the defect in the design of the fuel pumps on Plaintiffs' and Class members' vehicles from Plaintiffs, class members, investors, and governmental officials. On October 29, 2009, GM notified the NHTSA that they were recalling 2006 Chevrolet Cobalt and Saturn Ion vehicles sold or registered in Arizona and Nevada, and 2007 Chevrolet Cobalt, Pontiac G5, and Saturn Ion vehicles sold or registered in Arizona, California, Florida, Nevada and Texas. The reason for the recall was that "the plastic supply or return port on the modular reservoir assembly may crack…[and] fuel will leak." (NHTSA Report Campaign No. 09V419000). The consequence of this defect was listed in the report as follows: "Fuel leakage, in the presence of an ignition source, could result in a fire." The recall was limited, however, to vehicles in the five aforementioned states. Special coverage – that is, GM would replace a noticeably leaking fuel pump if the issue was specifically brought to them by a customer – was provided in a limited number of additional states: 2006 vehicles registered in Alabama, Arkansas, California, Florida Georgia, Hawaii, Louisiana, Mississippi, North

Carolina, New Mexico, Oklahoma, South Carolina, Tennessee, and Texas, and 2007 vehicles registered in Alabama, Arkansas, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Tennessee. GM offered vehicle owners outside the listed recall states no recourse, even if their plastic fuel pumps, which were susceptible to exactly the same life-threatening defect, started noticeably leaking. GM did not inform owners of identical vehicles outside of Arizona, California, Florida, Nevada and Texas that they were in danger of being seriously injured or killed by their defective and potentially leaking fuel pump, despite the fact that the defective fuel pump can cause fuel to pool very close to the catalytic converter, which can temperatures in excess of 1000 degrees Fahrenheit in some circumstances. A fuel leak in close proximity to such high temperatures is extremely unsafe.

22. On September 19, 2012, GM notified the NHTSA that they were expanding the recall described in paragraph 21 to cover 2007 Chevrolet Equinox and Pontiac Torrent vehicles, 2007 Chevrolet Cobalt, Pontiac G5, and Saturn ION vehicles, 2008 Chevrolet Cobalt and Pontiac G5 vehicles, and 2009 Chevrolet Cobalt and Pontiac G5 vehicles, but again geographically limited the recall, providing no recourse or notification to vehicle owners outside Arizona, Arkansas, California, Nevada, Oklahoma and Texas.

23. Since at least October 29, 2009, GM has been aware that the fuel pumps in Plaintiffs' and class members' vehicles are defective because of their propensity to fail when exposed to high temperatures, which can occur in any car regardless of what state it is registered in. Failure of the fuel pump threatens the kind of fuel leakage that Plaintiffs and class members have detected, and creates an unreasonable danger of fire, personal injury and/or property damage. GM continues to conceal the safety defect and risk of death or severe personal and property damage from vehicle owners outside the recall states. GM has failed to

notify Plaintiffs, class members, and governmental officials of the full scope of the defect, nor has it rectified the defect, as required by law.

24. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must disclose the defect to appropriate government officials and registered owners of the vehicle in question.

25. Upon its inception, New GM instituted and continued policies and practices intended to conceal safety related defects in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, New GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product defects:

a) GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related defects by limiting the action that GM would take with respect to such defects to the issuance of a Technical Service Bulletin or an Information Service Bulletin.

b) New GM directed its engineers and other employees to falsely characterize safety-related defects – including the defects described in this complaint – in their reports, business and technical records as "customer convenience" issues, to avoid being forced to recall vehicles as the relevant law requires.

c) New GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by defects in GM products.

d) New GM directed its employees to avoid the word "stall" in describing vehicles experiencing a moving stall, because it was a "hot word" that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.

i. A "moving stall" is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.

e) New GM directed its engineering and other personnel to avoid the word "problem," and instead use a substitute terms, such as "issue," "concern," or "matter," with the intent of deceiving plaintiffs and the public.

f) New GM instructed its engineers and other employees not to use the term "safety" and refer instead to "potential safety implications."

g) New GM instructed its engineers and other employees to avoid the term "defect" and substitute the phrase "does not perform to design."

h) New GM instituted and/or continued managerial practices designed to ensure that its employees and officials would not investigate or respond to safety-related defects, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public. In a practice New GM management labeled "the GM nod," GM managers were trained to feign engagement in safety related product defects issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.

i) New GM's lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related defects and GM's refusal to respond to and/or GM's continuing concealment of those defects. New GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. New GM did not describe the "no-notes policy" in writing to evade detection of their campaign of concealment.

j) New GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was defective. New GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for New GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. New GM knew from its inception that the part number irregularity was intended to conceal the faulty ignition switches in Plaintiffs' and class members' vehicles.

26. New GM followed a practice and policy of intentionally mischaracterizing safety issues as "customer convenience" issues to avoid recall costs, and it enlisted its dealership network in its campaign of concealment by minimizing the safety aspects of the "technical service bulletins" and "information service bulletins" it sent to dealers. New GM directed dealers to misrepresent the safety risks associated with the product defects of its vehicles. New GM followed this practice with respect to the defective ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch defect began to unravel in February 2014.

27. New GM followed a practice or policy of minimizing and mischaracterizing safety related defects in its cars in its communications with Plaintiffs, class members, law

enforcement officials, the NHTSA, and other governmental officials. New GM followed these practices and procedures when it wrongfully limited the geographic reach of its October 2009 recall of defective fuel pumps in Plaintiffs and class members cars to drivers in a small number of states, even though GM knew that the fuel pump defect threatened the safety and posed unreasonable risks of death, serious bodily injury, and property damage in all vehicles containing the fuel pump regardless of the state in which the vehicle was registered. GM concealed the fact that vehicle owners and drivers who are residents of Maryland and the District of Columbia and other states face the same or similar unreasonable risks of fuel leakage and subsequent fire as drivers in the recall states.

28. Upon the inception of New GM in October 2009, New GM and Delphi agreed to conceal safety related defects from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors. Both New GM and Delphi knew since October 2009 that the design of the faulty ignition switch in Plaintiffs and class members' cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety defects.

29. Since New GM's inception in October 2009, both New GM and Delphi have known that the faulty ignition switch in the Plaintiffs' Cobalts and class members' vehicles posed a serious safety and public health hazard because the faulty ignition switch caused moving stalls. Each Defendant had legal duties to disclose the safety related defects. Rather than notifying the NHTSA, Defendants instead decided that Plaintiffs and class members, and millions of drivers and pedestrians should face imminent risk of injury and death due to the defective ignition switches in Plaintiffs' and class members' vehicles. Delphi and GM entered

into an agreement to conceal the alteration of the part without simultaneously changing the part number, and concealed the risks associated with the defective ignition switches.

30. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the defect.

31. In April 2013, GM hired an outside engineering-consulting firm to investigate the defective ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Defect until 2014.

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

33. While GM has finally admitted that the ignition switch in millions of vehicles poses an unreasonable safety risk to Plaintiffs, class members, and to the public, it continues to deny and conceal that fact that the fuel pump design on Plaintiffs' and class members' vehicles is also defective and poses its own imminent and unreasonable risk of death or serious bodily injury.

34. New GM explicitly directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related defects – including the ignition switch defect – in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against New GM by falsely claiming such suits are barred by Order

of the Bankruptcy Court, and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their false veneer of ignorance concerning the safety related defects. In one case, GM threatened the family of an accident victim with liability for GM's legal fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated by means of mail and wire to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product defects GM concealed.

TOLLING OF THE STATUTE OF LIMITATIONS

37. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

38. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the safety related defects described herein.

39. Plaintiffs and Class Members had no reason to know that their products were defective and dangerous because of Defendants' active concealment.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this lawsuit as a class action on their own behalves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority

requirements of those provisions. All proposed Class and Subclass periods run from the inception of New GM in October 2009 and continue until judgment or settlement of this case.

41. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of New GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch manufactured by Delphi and/or a defective fuel pump. As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerous ignition switches:

- 2005-2011 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2006-2010 Pontiac Solstice
- 2007-2010 Pontiac G5
- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2009 Buick Lacrosse
- 2006-2011 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2006-2014 Chevrolet Impala
- 2006-2008 Chevrolet Monte Carlo
- 2000-2005 Cadillac Deville
- 2004-2011 Cadillac DTS

As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerously defective fuel pumps:

- 2006-2010 Chevrolet Cobalt
- 2006-2007 Saturn Ion
- 2007-2009 Pontiac G5
- 2007 Chevrolet Equinox

42. Plaintiffs also bring this action on behalf of the following Subclasses:

a. The Elliotts bring this action on behalf of all persons in the District of Columbia who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch or defective fuel pump as described above. The GM models include those listed in the preceding paragraph (the "District of Columbia" Subclass);

b. Ms. Summerville brings this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch and/or fuel pump (the "Maryland Subclass");

c. Ms. Summerville brings this action on behalf of residents of the District of Columbia, Alaska, Arkansas, Delaware, Hawaii, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, West Virginia, and Wyoming, who, since New GM's inception in October 2009, purchased a GM vehicle containing the defective ignition switch manufactured by Delphi and/or the defective fuel pump (the "Multi-State Warranty Subclass");

d. Plaintiffs also bring this action on behalf of residents of the District of Columbia and the States of California, Florida, Maryland, New Jersey and Ohio who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a defective ignition switch and/or fuel pump (the "Multi-State Negligence Subclass").

43. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

44. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM's possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

45. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a GM vehicle during the Class Period that contained a defective ignition switch manufactured by Delphi and/or a defective fuel pump. Plaintiffs, like all class and subclass members, have been damaged by Defendants' misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering

diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles. Furthermore, the factual bases of Defendants' misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

46. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

47. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. Whether the vehicles owned by class or subclass members during the class periods suffer from the defective ignition switch and/or defective fuel pump described herein?

b. Whether the defective ignition switch and/or fuel pump posed an unreasonable danger of death or serious bodily injury?

c. Whether GM and/or Delphi imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?

d. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?

e. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?

f. Whether GM and Delphi had a legal duty to disclose the ignition switch danger to class and subclass members?

g. Whether GM and/or Delphi had a legal duty to disclose the ignition switch danger to the NHTSA?

h. Whether either GM and/or Delphi breached duties to disclose the ignition switch defect?

i. Whether class and subclass members suffered legally compensable harm?

j. Whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a GM Vehicle during the class period?

k. Whether Defendants violated the consumer protection statutes of the District of Columbia and Maryland by concealing the ignition switch defect and/or the fuel pump defect from Plaintiffs and governmental officials?

l. Whether Defendants violated Maryland's consumer protection statute by concealing material facts about and making affirmative misrepresentations about GM cars in connection with sales made since the inception of the New GM?

m. Whether the fact that the ignition switch was defective was a material fact?

n. Whether Ms. Summervilles and the Multi-State Warranty Subclass members' vehicles were merchantable?

o. Whether Plaintiffs and Class Members are entitled to a declaratory judgment stating that the ignition switches and/or fuel pumps in their vehicles are defective and/or not merchantable?

p. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

q. Whether GM should be declared responsible for notifying all Class Members of the Defect and ensuring that all GM vehicles with the Ignition Switch Defect are recalled and repaired?

r. Whether Defendants conducted a criminal enterprise in violation of RICO?

s. Whether Defendants engaged in a pattern or practice of racketeering?

t. Whether Defendants committed mail or wire fraud in connection with their concealment of the defective ignition switch.

u. Whether class members were harmed by Defendants' violations of RICO?

v. Whether class and subclass members are entitled to recover punitive damages from Defendants, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

48. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for Defendants' misconduct. Absent a class action, class and subclass members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and

fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is superior for defendants as well, who otherwise could be forced to litigate thousands of separate actions.

49. Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members.

CAUSES OF ACTION

COUNT I
VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. § 1962(c) and (d))

50. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

51. This claim is brought by all Plaintiffs on behalf of the nationwide Class.

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

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

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

55. At all times relevant, GM and Delphi are and were each a "person" who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While GM and Delphi each participated in the RICO Enterprise, they each exist separately and distinctly from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which GM and Delphi have engaged and are engaging.

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

The RICO Enterprise

57. Defendants participated in the operation and management of an association-in-fact enterprise whose aim was to conceal safety related defects in Delphi products installed in GM vehicles from Plaintiffs, class members, the NHTSA, litigants, courts, law enforcement officials, consumers, and investors. The Enterprise was motivated by the common design of concealing the true value of the defendant companies and their products, and it constituted an unlawful, continuing enterprise calculated to gain an unfair advantage over competitor automakers who conduct their business within the bounds of the law. The Enterprise was partly embodied in practices and procedures intended to mischaracterize safety related defects – such as the ignition switch – as "customer convenience issues" to avoid incurring the costs of a

recall, and minimizing the significance of disclosures that were made by limiting the scope of their gas-pump recall to five and then seven states.

58. The RICO Enterprise began with the inception of New GM, on October 19, 2009. The following persons, and others presently unknown, have been members of and constitute the association-in-fact enterprise with the following roles:

a) New GM, which mandated its employees take the various measures, described above at paragraph 26, to conceal safety related defects, including the ignition switch and the fuel pump defects.

b) GM's engineers (including but not limited to Ray DeGiorgio, Gary Altman, a program engineering manager, Michael Robinson, vice president for environmental sustainability and regulatory affairs, Gay Kent, general director of product investigations and safety regulations) who have carried out GM's directives since the inception of New GM in October 2009 by minimizing and misrepresenting the safety aspects of the ignition switch defect – enabling GM to avoid its legal obligations to recall vehicles with safety related defects. GM's engineers (including but not limited to Mr. DeGiorgio, Mr. Altman, Mr. Robinson and Ms. Kent) have also concealed the part-number-labeling fraud of which they have known since New GM's inception in October 2009.

c) GM's in-house lawyers (including but not limited to Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo, and Jennifer Sevigny), who knowingly assisted GM in evading its legal responsibilities by taking measures allowing GM management to claim ignorance about the increasing number of accidents and personal injuries that the ignition switches were causing throughout the Class period. GM's in-house lawyers,

as described in Paragraph 36, also took measures to ensure that lawsuits filed by victims of the ignition switch defect and their surviving families were settled confidentially – preventing them from revealing the defect to other Plaintiffs, class members, law enforcement officials, or other government authorities, including the NHTSA – for amounts below the threshold that would trigger closer scrutiny within GM.

d) GM's outside lawyers, retained to defend the Company against lawsuits filed by victims with injuries allegedly caused by the ignition switch defect, who were directed to play, and played, the same roles as those of in-house counsel described above – taking analagous measures to help GM conceal the ignition switch defect.

e) Delphi, who, since the inception of the new GM in October 2009, has participated in the Enterprise to conceal the defective ignition switch system and its knowledge that ignition switch part numbers on vehicles driven by class members during the class period were misleading or fraudulent and would hinder any attempt to investigate or learn about the ignition switch defect.

f) GM's Dealers, including but not limited to Ourisman of Marlow Heights, whom New GM instructed, explicitly or implicitly, to present false and misleading information regarding the ignition switch and fuel pump defects to Plaintiffs and Class members, through, *inter alia*, Technical Service Bulletins and Information Service Bulletins, and who did, in fact, present such false and misleading information to Plaintiffs and Class members during the Class period.

58. GM and Delphi conducted and participated in the affairs of this RICO Enterprise through a continuous pattern of racketeering activity that began with the inception

of the New GM in October 2009, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and 18 U.S.C. § 1512 (tampering with witnesses and victims).

Predicate Acts of Wire and Mail Fraud

59. Since its inception in October 2009 and in furtherance of its scheme to defraud, GM, its engineers and its lawyers communicated with Delphi on a regular basis via the mail and/or wires regarding the defective ignition switch. Through those communications, GM instructed Delphi to continue concealing the ignition switch defect and to continue to produce ignition mislabeled or fraudulently labeled switches to help GM evade detection of New GM's unlawful failure to recall vehicles with defective ignition switches by the NHTSA or other law enforcement officials. GM's and Delphi's communications constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

60. Since GM's inception in October 2009, in furtherance of its scheme to defraud, GM's lawyers communicated with those claiming injuries caused by the ignition switch defects on a regular basis via the mail and/or wires. Upon information and belief, GM's lawyers utilized the mail and wires to insist that litigants agree to confidentiality agreements forbidding disclosure that the ignition switch defects caused their injuries, and to communicate with supervisors and each other about ensuring that the cases settled below the threshold that would trigger scrutiny that might endanger Defendants' concealment of the ignition switch defects.

61. Since its inception in October 2009, GM has routinely used the wires and mail to disseminate false and fraudulent advertising about Plaintiffs' and Class members' vehicles, misrepresenting the vehicles as safe and dependable and failing to disclose the ignition switch or fuel pump defects in its advertising.

Predicate Acts of Tampering With Witnesses and Victims

62. New GM engaged in an ongoing scheme to tamper with witnesses and victims as described in 18 U.S.C. § 1512(b) by using misleading conduct to influence, delay and prevent the testimony of victims in official proceedings and by entering into a campaign of intimidation and false statements to discourage victims from pursuing their claims against GM, as described elsewhere in the complaint. New GM's in-house legal office played an integral role in the RICO Enterprise by instituting and/or continuing policies and practices with respect to potential and ongoing legal proceedings designed to intimidate victims from utilizing the courts to seek legal protection and to prevent outsiders from becoming aware of the number of victims of safety related defects in GM cars and the severity of injuries those defects were causing. GM instructed its counsel to deny to victims and their families the existence of the ignition switch defect, and to place blame for any injuries on driver error or irresponsible driving. GM instructed its counsel to prepare its corporate and fact witnesses by encouraging them to deny that they remember anything about any topic on which they were questioned. GM's lawyers actively discouraged GM personnel from taking any notes at safety related meetings. In furtherance of its scheme to conceal its wrongful behavior, GM insisted as a condition of providing any compensation to victims that they agree to confidentiality agreements designed to prevent detection of the safety related defect at issue by Plaintiffs, Class and Subclass members, the NHTSA, courts, litigants, and investors. New GM also corruptly encouraged its employees and engaged in misleading conduct to prevent said employees from reporting safety defects and therefore delay or prevent their testimony about said defects. GM accomplished this by, *inter alia*, punishing employees who raised red flags about safety defects, thus intentionally intimidating and threatening employees who otherwise could have raised red flags. Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo,

and Jennifer Sevigny, five of GM's in-house lawyers responsible for carrying the tasks described herein, were fired by GM in June 2014, after the Enterprise came to light.

63. Defendants' conduct in furtherance of this scheme to conceal and/or minimize the significance of the ignition switch defect and fuel pump defect was intentional. Plaintiff, Class and Subclass members were harmed in that they were forced to endure increased risk of death or serious bodily injury, they lost use and enjoyment of their vehicles, and their vehicles' values have diminished because of Defendants' participation in conducting the RICO Enterprise. The predicate acts committed in furtherance of the enterprise each had a significant impact on interstate commerce.

COUNT II
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

64. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

65. At the time of New GM's inception in 2009, Defendants knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. This fact was material to Plaintiffs and class members.

66. In late October 2009, Defendants also knew that the fuel pump design in the Chevrolet Cobalt was prone to cause fuel leakage and fires.

67. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and fuel pump defects, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

68. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

69. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III
Asserted on Behalf of Ms. Summerville and the Nationwide Subclass of Class Members Who Purchased their Vehicles after New GM's Incorporation on October 19, 2009 (Common Law Fraud)

70. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

71. This Claim is brought on behalf of Berenice Summerville and the subclass of consumers who purchased their vehicles after New GM's incorporation on October 19, 2009.

72. Upon incorporation of New GM, Defendants knew that ignition switch used in the 2010 Chevrolet Cobalt and other Class Vehicles purchased after October 10, 2009 could inadvertently move from "run" to "accessory" or "off," under regular driving conditions, and that the fuel pump was dangerously defective and posed an unreasonable risk of death or serious bodily injury.

73. Prior to November 2009, Defendants also knew that the fuel pump design in the Chevrolet Cobalt was improperly placed and prone to leakage and even fire.

74. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and fuel pump defects, and minimized the extent of the danger they posed. Concealment of the fuel pump defect continues to the present.

75. Because Defendants were in exclusive control of the material facts concerning the ignition switch and fuel pump defects, Plaintiffs' and Class Members' actions in purchasing and driving the dangerous vehicles were justified because they had no way of knowing that material facts had been concealed. Plaintiffs and Class Members would not have acted as they did in purchasing and driving their cars if they had known of the concealed and/or suppressed facts.

76. In the alternative, even if a class member would still have made the vehicle purchase had the defects been known, they would have paid less for their vehicles but for the concealment of the defect. The concealment of the defects artificially increased the market price of the vehicles.

77. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained, and continue to sustain, damages arising from the difference in value between the prices they were induced to pay for their vehicles, and the true value of a vehicle with a defective ignition switch or fuel pump.

78. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive

damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV

Asserted on Behalf of Plaintiffs and on Behalf of the Multi-State Negligence Subclass (Negligent Infliction of Economic Loss and Increased Risk under the Common Law of the District of Columbia and Florida, Maryland, New Jersey, and Ohio)

79. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

80. This claim is brought on behalf of Plaintiffs and the District of Columbia and Maryland Classes and, with respect to the fuel pump defect, the District of Columbia and Maryland subclasses of consumers whose vehicles also suffer from the fuel pump defect described in Paragraph 21.

81. Because the defective ignition switches and fuel pumps created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the defect as soon as soon as they learned of the problem – upon the inception of New GM in October 2009.

82. Rather than alerting vehicle owners to the danger, Defendants actively concealed and suppressed knowledge of the problems.

83. Defendants created an unreasonable risk of death or serious bodily injury to Plaintiffs and Subclass members. Plaintiffs and Subclass members were particularly identifiable and foreseeable victims of Defendants' negligence, and their injuries in terms of the diminution in the value of their vehicles and the loss of use and enjoyment of the vehicles was particularly foreseeable.

84. Defendants created an unreasonable risk of death or serious bodily injury through a pattern and practice of negligent hiring and training of its employees, and by creating

and allowing to continue a culture at GM which encouraged the minimizing and hiding of safety defects from the public. GM negligently increased this risk by firing or otherwise retaliating against employees who did attempt to convince GM to fix safety problems.

85. As a result of Defendants' failure to warn them about the defects or repair their vehicles, Plaintiffs and Class Members sustained, and continue to sustain, damages arising from the increased risk of driving vehicles with safety related defects, from the loss of use and enjoyment of their vehicles, and from the diminished value of their vehicles attributable to Defendants' wrongful acts.

86. Plaintiffs and class members seek compensatory damages in an amount to be proved at trial, including compensation for any pain and suffering they endured.

COUNT V
Asserted on Behalf of Mr. and Mrs. Elliott, for themselves, as representatives of the public, and on behalf of the District of Columbia Subclass
(Violation of the District of Columbia's Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901 *et seq.*)

87. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

88. This Count is brought on behalf of Mr. and Mrs. Elliott and the District of Columbia Subclass.

89. Plaintiffs are "consumers" within the meaning of the CPPA, § 28-3901(a)(2).

90. Defendants are "persons" within the meaning of the CPPA, § 28-3901(a)(1).

91. Upon the inception of GM in 2009, Defendants knew the Elliotts' and Subclass members' vehicles, due to the ignition switch defect, are prone to engine and electrical failure during normal and expected driving conditions. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes

Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. GM knew that the defective fuel pumps in the vehicles posed unreasonable risks of death, serious bodily injury, and property damage to the Elliotts, Subclass members, and bystanders. Because of the life threatening nature of these defects, their existence was a material fact that Defendants concealed from plaintiffs and class members.

92. Subclass members had no reason to believe that their vehicles possessed distinctive shortcomings; throughout the Class Period, they relied on Defendants to identify latent features that distinguished Plaintiffs' and Subclass members' vehicles from similar vehicles without the ignition switch and fuel pump defects, and the Defendants' failure to do so tended to mislead consumers into believing the Class Vehicles were safe to drive.

93. Defendants violated D.C. Code § 28-3904(f) by failing to state a material fact, the omission of which tended to mislead consumers.

94. Defendants violated the District of Columbia's consumer protection act generally by violating the common law governing fraud and negligence of the District of Columbia.

95. Defendants violated the CPPA because any violation of any state or federal regulation of any trade practice is also a violation of the CPPA, so each complaint of each violation of federal law described above, including allegations of GM's violations of the Tread Act, "), 49 U.S.C. §§ 30101-30170, is also a predicate violation of the CPPA.

96. Plaintiffs seek treble damages, or $1,500 per violation, whichever is greater, payable to the consumer, an order enjoining Defendants' unfair or deceptive acts or practices, attorneys' fees, punitive damages, and any other just and proper relief available under D.C.

Code § 28-3905(k)(2), including preliminary and permanent injunctive relief aimed at providing protection for the People of the District of Columbia from Defendants' reckless endangerment of the public health and their wanton disregard for the law.

COUNT VI
Asserted on Behalf of Ms. Summerville and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"),
Md. Code, Comm. Law § 13-101 *et seq.*)

97. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

98. This Count is brought on behalf of Ms. Summerville, the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3) and the portion of the Maryland Class who purchased vehicles after October 19, 2009, with respect to violations of MDCPA §§ 13-301(2)(i), 13-301(2)(iv), and 13-301(3).

99. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

100. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

101. Upon the inception of GM in 2009, Defendants knew the Elliotts' and Subclass members' vehicles, due to the ignition switch defect, are prone to engine and electrical failure during normal and expected driving conditions. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. GM knew that the defective fuel pumps in the vehicles posed unreasonable risks of death, serious bodily injury, and property damage to the Elliotts,

Subclass members, and bystanders. Because of the life threatening nature of these defects, their existence was a material fact that Defendants concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily injury, and diminution of the value of each of their vehicles.

102. At no time during the Class Period did Ms. Summerville and Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their vehicles from similar vehicles without the ignition switch and fuel pump defects, and the Defendants' failure to do so tended to mislead consumers into believing no distinctive defect was present in their vehicles.

103. With respect to Maryland Subclass members like Ms. Summerville who purchased their defective vehicles since October 19, 2009, Defendants violated Md. Code, Comm. Laws § 13-301(2)(i) by falsely representing, through advertising, warranties, and other express representations, that the Class Vehicles had characteristics and benefits which they did not actually have, namely, reasonably safe design and component parts.

104. With respect to Maryland Subclass members like Ms. Summerville who purchased their defective vehicles since October 19, 2009, Defendants violated Md. Code, Comm. Laws § 13-301(2)(iv) by falsely representing through advertising, warranties, and other express representations, that the Class Vehicles met a certain standard or quality which they did not.

105. With respect to the Subclass generally without regard to whether they purchased their vehicle after October 129, 2009, Defendants violated Md. Code, Comm. Laws § 13-

301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch and fuel pump defects from Ms. Summerville and Subclass members.

106. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT VII
Asserted on behalf of Ms. Summerville and the Multi-State Class
(Breach of Implied Warranty of Merchantability Under § 2-314 of the UCC)

107. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

108. This Count is brought on behalf of Ms. Summerville and the Multi-State Warranty Class.

109. Plaintiffs are "buyers" within the meaning of the Uniform Commercial Code.

110. Defendants GM and Delphi are "sellers" within the meaning of the Uniform Commercial Code because the Multi-State class members' jurisdictions do not require privity with the buyer for a breach of the implied warranty of merchantability claim.

111. Subclass members who purchased Class Vehicles from Defendants since October 19, 2009, did so under an implied warranty that the vehicles would be merchantable. Because of the poor design of the fuel pump, which made leakage and fire more likely, and because of the ignition switch defect, their vehicles are not fit for ordinary purposes for which such vehicles are generally used and are therefore not merchantable.

112. Defendants sold goods that were not merchantable, because those goods are not fit for the ordinary purposes for which such goods are used – the vehicles were marketed and intended to be driven, but become unsafe under ordinary driving conditions.

113. Ms. Summerville and the Multi-State Class members were injured in that they did not receive the full benefits of their bargains with Defendants and seek to recover an amount to make them whole, or seek to exercise their contractual rights of rescission and return to the *status quo ante* by allowing them to return their vehicles to GM for a full refund, and to seek any other rights and remedies afforded them under the Uniform Commercial Code as buyers injured by the total breach of the seller in failing to tender a merchantable product as promised.

COUNT VIII
Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses
(Civil Conspiracy and Joint Action or Aiding and Abetting)

114. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

115. This Count is brought on behalf of the nationwide Class and all Subclasses.

116. Defendants are jointly and severally liable for Plaintiffs' and Class and Subclass members' injuries because they acted in concert to cause those injuries.

117. Defendants are also liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with each other and with others, including but not limited to the other defendants, dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this First Amended Complaint, to inflict those injuries and to conceal their actions from Plaintiffs, Class and Subclass members and others. By these agreements, Defendants conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

118. Defendants each committed overt acts in furtherance of the conspiracy.

119. Defendants knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

120. Defendants gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

121. Defendants were aware that their assistance and encouragement of the wrongful acts herein complained of substantially assisted the wrongful acts herein complained of.

122. The wrongful acts herein complained of harmed plaintiffs.

123. All defendants are therefore liable under civil conspiracy and civil aiding and abetting for all harm to plaintiffs and class members as described in this complaint.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

124. As of the date of the filing of this Complaint, GM concedes that some 6.5 million GM products have safety related defects that create an unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

125. Despite purporting to come clean about its campaign of concealment and deceit in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. Tens of thousands of GM vehicles with safety related defect threatening moving stalls and other dangerous conditions are driven within the District of Columbia by D.C. resident and commuters.

126. GM has recklessly endangered the public health and safety of the People of the District of Columbia.

127. One of the main purposes of the "representative action" authorized by the law of the District of Columbia is to allow private citizens such has Mr. and Mrs. Elliott to who are

entitled to relief in this representative action to assist public authorities in protecting the public interest.

PRAYER FOR RELIEF

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

E. Determine that the Elliotts may act as representatives of the public on behalf of the People of the District of Columbia;

F. Declare, adjudge and decree that Defendants have recklessly endangered the public safety of the People of the District of Columbia and order specific steps that Defendants must take to restore public safety, including but not limited to preliminary relief aimed at removing the unreasonably dangerous GM vehicles from the public streets and thoroughfares of the District forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related defects; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly admitted its years-long campaign of concealment and deceit, the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its business of manufacturing for sale to the public complex products that can so easily be a threat of death of serious bodily injury if not manufactured properly.

G. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

H. Declare, adjudge and decree that the ignition switches in Plaintiffs' and Class and Subclass Members vehicles are defective;

I. Declare, adjudge and decree that the fuel pumps in Plaintiffs' and Class and Subclass Members' vehicles are defective;

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

K. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the ignition switch and fuel pump defects or, in the case of Class and Subclass Members who purchased their vehicles after October 9, 2009, declare GM in total breach of contract for its failure to tender a merchantable vehicle, and order GM to return the full purchase price paid upon surrender of the vehicle at the election of the Class and Subclass member;

L. Declare, adjudge and decree that Defendants are financially responsible for notifying all Class Members about the defective nature of the Class Vehicles;

M. Declare, adjudge and decree that Defendants must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members all or part of the ill-gotten gains it received

from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

N. Award Plaintiffs, Class Members, and Subclass Members the greater of actual, compensatory damages or statutory damages, or treble damages under the CPPA, as proven at trial;

O. Award Plaintiff and the nation-wide Class Members treble damages pursuant to 18 U.S.C. § 1964(c);

P. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

Q. Award Plaintiff, Class Members and Subclass Members their reasonable attorneys' fees, costs, and prejudgment and postjudgment interest; and

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

JURY TRIAL DEMAND

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

Respectfully submitted,

/s/

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Attorney for Plaintiffs

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION **14-MD-2543 (JMF)**

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ISHMAIL SESAY, and JOANNE YEARWOOD, **14-cv-06018**

for themselves, on behalf of all others similarly situated,

Plaintiffs,

CLASS ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

v.

GENERAL MOTORS LLC, DELPHI AUTOMOTIVE PLC, and DPH-DAS LLC f/k/a DELPHI AUTOMOTIVE SYSTEMS, LLC,

JURY TRIAL DEMANDED

Defendants.

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FIRST AMENDED COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs ISHMAIL SESAY and JOANNE YEARWOOD bring this action for themselves, and on behalf of all persons similarly situated who own or lease or have owned or leased the substandard and dangerous vehicles identified below at any time since October 2009.

1. Ishmail Sesay lives with his wife in Maryland. The couple own a single car: a 2007 Chevrolet Impala, purchased from a friend on December 20, 2012. Mr. Sesay and his wife depend on the car to get to and from work, to run daily errands, and, most importantly, to provide a safe means of transportation for their one-year-old son.

2. Mr. Sesay has been alarmed that his car has been shutting off while he has been driving it. This has occurred at the rate of some three times per week for many months. These "moving stalls" are particularly dangerous because the Mr. Sesay loses control over power steering and brakes, and, because the electrical system is off, the airbags would not deploy in the event of a collision.

3. Mr. Sesay's 2007 Chevrolet Impala has a dangerous ignition switch that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable. This and the related ignition switch hazards in GM vehicles have already helped kill or seriously injure hundreds of people across the United States. Rather than disclose the risk, GM employees, lawyers, and others concealed it.

4. General Motors LLC ("GM") knew but failed to disclose to him, governmental officials, or putative class members that Mr. Sesay's car was dangerous to operate, until it finally issued a recall for the car on June 23, 2014, NHTSA Campaign No. 14V355000.

5. On June 20, 2014 GM issued a Stop-Delivery Order to dealers in preparation for an upcoming safety recall. It instructed dealers to stop delivery in 2006-2014 Chevrolet Impala (Fleet Only) vehicles in new or used vehicle inventory. It described the problem: "The ignition switch on these vehicles may inadvertently move out of the "run" position if the key is carrying added weight and the vehicle goes off the road or experiences some other jarring event."

6. On the same date GM issued notice of its decision to conduct a safety recall to the NHTSA. However, GM failed to disclose the history of its awareness of the ignition key problem. Instead, GM simply described the potential for the ignition key to move away from the "run" position should it the vehicle go off-road or experience a "jarring" event. It warned that

should the key move away from the "run" position, "engine power, power steering and power breaking will be affected, increasing the risk of crash." More over, this could result in "airbags not deploying increasing the potential for occupant injury in certain kinds of crashes."

7. On June 24, 2014 the NHTSA acknowledged the recall in letter to the Director of Field Product Investigations and Evaluations at General Motors, which carried the subject "Ignition Switch may Turn Off."

8. The NHTSA described the problem as concerning the "electrical system: ignition." It described the problem: "This defect can affect the safe operation of the airbag system. Until this recall is performed, customers should remove all items from their key rings, leaving only the ignition key… In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine."

9. In "consequence," according to the recall papers, "if the key is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury. Additionally, a key knocked out of the run position will cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash.

10. The "Remedy" in the recall provides: "GM will notify owners, and dealers will install two 13mm key rings and key insert into the vehicle's ignition keys, free of charge. The manufacturer has not yet provided a notification schedule."

11. On June 25, 2014 GM issued a notice to GM dealers explaining vehicles involved in three upcoming safety recalls. It listed the following: Recall 14172 – Ignition Switch recall for 2003 – 2014 Cadillac CTS and 2004 -2006 Cadillac SRX, Recall 14299- Ignition Switch for,

among other vehicles, the 2014 Chevrolet Impala Limited (Fleet Only), and Recall 14250-Ignition Key for, among other vehicles, the 2005 – 2006 Chevrolet Impala.

12. On July 2, 2014, in a letter meant to supersede its previous correspondence, GM notified the NHTSA that it had possession of information regarding the ignition key problem since its inception on July 10, 2009, that consisted of a reliable report that "the vehicle stalled after hitting a large bump when going from gravel road to pavement while driving at about 45 mph." Since October 2009, GM did not take appropriate measures to investigate the serious risk the information it possessed suggested, particularly when considered with other information GM possessed regarding ignition switch related risks.

13. In the same July 2 letter, GM claimed that during a document review related to a Cobalt ignition switch problem in 2014, it discovered information in its possession that led it to the recall for Mr. Sesay's 2007 Impala and other vehicles with the same hazard. GM revealed that the issue was brought to the Product Investigation group on April 30, 2014. Between May 1, 2014 and June 6, 2014 "the investigator worked with GM subject matter experts to gather and analyze data relating to the ignition switch used on the 2006 Impala." GM reported that "although ignition switches themselves performed below the target specification, the ignition switch system as a whole as installed in the vehicles' steering columns performed approximately at the target specification." GM also reviewed its databases including its TREAD, warranty, customer satisfaction, and Engineering Analysis database, and NHTSA's Vehicle Owner's Questionnaire database; after which the investigator made a presentation regarding the ignition switch at an Open Investigation review meeting.

14. In the same July 2nd letter, GM then revealed that only after the presentation and meeting did do road testing of the Impala using the ignition switches under review. These tests

revealed that: "when a slotted key is carrying added weight, the torque performance of the ignition system may be insufficient to resist energy generated when a vehicle goes off road or experiences some other jarring event, potentially resulting in the unintentional movement of the key away from the 'run' position." After review of GM and NHTSA data the investigator presented to the SFADA. The SFAHA then "directed the investigator to work with other GM personnel to further refine the potential recall population so that it accurately included the vehicles using the identified ignition switches that were subject to the condition identified in the road tests. On July 15, 2014 the SFASA decided to conduct a recall of that population.

15. Finally, on June 14, 2014 GM announced its safety recall. GM issued a 572 letter for the NHTSA on June 20, referenced above.

16. On April 13, 2010, Joanne Yearwood purchased a new 2010 Chevrolet Cobalt from a dealership. Unbeknownst to her, the car contained an "ignition switch defect" that GM knew about but failed to disclose to her, governmental authorities, or putative class members until it began confessing its wrongdoing by bits and pieces since February 2014, issuing an ever expanding series of recalls related to the defective ignition switch like the one that appears to be in Ms. Yearwood's 2010 Cobalt amd Mr. Sesay's 2007 Impala.

17. GM has recently begun to distinguish between ignition switch defects, such as the one in Mr. Sesay's car, that purportedly can be remedied with a replacement of keys, from ignition switch defects, such as the one in Ms. Yearwood's car, that require replacement of the entire ignition switch cylinder. Plaintiffs do not concede by their description of GM's recall that they agree that such a distinction exists. Plaintiffs believe that the claims that ignition switch issues can be remedied by mere key replacement amy be another attmpt by GM to seek a cheap but ineffective response to the hazards in GM vehicles.

18. GM has issued and failed to close three separate recalls on Ms. Yearwood's 2010 Chevrolet Cobalt. It failed to issue a recall for her car when it first confessed that it had known about the ignition switch defect in other vehicles in February 2014.

19. On April 2, 2014, as part of its expansion of its initial ignition switch recall, NHTSA Recall Campaign 14V04700, GM issued a recall for Ms. Yearwood's car, claiming that defective ignition switches "may have been used as service replacement parts on [her] vehicle," and as a result General Motors is recalling certain model year 2008-2010 Chevrolet Cobalt.

20. On April 10, 2014, however, GM then issued an additional recall for Ms. Yearwood's 2010 Cobalt (and over two million other vehicles), NHTSA Recall Campaign 14V17100, stating that the key could be removed from the ignition while the car remained on and that a new ignition cylinder would be necessary unless the vehicle already had a redesigned part, in which case only new keys would be made.

21. On March 31, 2014, GM recalled Ms. Yearwood's 2010 Chevrolet Cobalt because "the affected vehicles, there may be a sudden loss of electric power steering (EPS) assist that could occur at any time while driving." NHTSA Recall Campaign 14V15300. GM submitted papers in connection with the recall that detail its knowledge of this hazard from its first day of existence on July 10, 2009.

22. In this Season of Shame, GM has publicly admitted, in many cases after years of knowingly false denials and active concealment by its engineers, lawyers, and other employees, that some 28 million GM vehicles are so dangerous that they must be recalled, and that it has, for every single day of its existence as a new entity that came into existence on July 10, 2009, systematically failed to disclose—and its employees and attorneys in fact actively concealed--the

dangers that use of millions of GM vehicles entails to their drivers, passengers, and anyone unlucky enough to be in the vicinity when these risk manifest.

23. The begrudging admissions began in February 2014, when GM admitted that it had concealed an ignition switch hazard in some 1.6 million vehicles. The danger it concealed was that car could turn off without warning, rendering the brakes and steering and airbags inoperable. GM admits that the ignition switch hazard has killed or seriously injured hundreds while GM knew but failed to disclose its danger. Since purporting to come clean about its wrongdoing, and after promising to transform a culture that let greed trump the dictates of responsible corporate conduct, GM has been forced to admit that its wrongdoing was far more widespread than it initially confessed. The recall number for 2014 is now 28 million vehicles and counting, a boggling tally of corporate irresponsibility, and a frighteningly sharp reflection of how widespread GM's reckless endangerment of the public safety has been. Now, beyond the some 16 million or so ignition-related recalls GM has begrudgingly finally issued since February 2014, GM has issued recalls for a range of other safety related defects described below.

24. The National Highway Traffic Safety Administration (NHTSA) fined GM $28,000,000, the maximum permissible under applicable law, for GM's failure to disclose risks related to the ignition switches in Plaintiffs' and class members' cars.

25. For nearly five years after its inception, GM failed to disclose to, and actively concealed from, Plaintiffs, class members, investors, litigants, courts, law enforcement and other government officials including the NHTSA, the risks of death, personal injury, and property damage posed by its products. Instead, conspiring with Delphi, GM's dealers nationwide, outside lawyers, and various others, GM engaged in, and may still be engaging in, an extensive, aggressive and complex campaign to conceal and minimalize the safety-related risks that exist in

Plaintiffs' and class members' vehicles. That campaign is designed to mislead Plaintiffs, class members, consumers, investors, courts, law enforcement officials, and other governmental officials, including the NHTSA, that the value of the company and the worth and safety of its products are greater than they are. With those same co-conspirators, GM directed an unlawful and continuing enterprise calculated to gain an unfair advantage over competitor automakers conducting their businesses within the bounds of the law. GM's corporate culture has engulfed GM's cost-containment approach to risk issues presented by GM vehicles: deny any hazard exists; if forced to concede the hazard, minimize its significance; and if nevertheless forced to act, insist on cheap rather than appropriate remediation

26. Defendants first deployed their campaign of deception on the day that GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, Defendants recklessly endangered the safety of Plaintiffs, their families, and members of the public. Defendants' wrongful acts and omissions harmed Plaintiffs and class members by exposing them to increased risk of death or serious bodily injury, by depriving them of the full use and enjoyment of their vehicles, and by causing a substantial diminution in the value of the vehicles to Plaintiffs and class members, and a substantial diminution in value of their vehicles on the open automobile market.

27. The ("NHTSA") has failed to carry out its statutory mandate to act for the public safety. Its failure to properly regulate GM's conduct with respect to the safety risks its vehicles pose provide reasonable grounds to doubt that the agency can be relied on to act to protect the public safety.

28. As of the date of the filing of this Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

29. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that GM employees knew about safety-related risks in millions of vehicles, including Mr. Sesay's 2007 Impala and Ms. Yearwood's 2010 Cobalt, and that GM did not disclose those risks as it was required to do by law. Ms. Barra attributed GM's "failure to disclose critical pieces of information," in her words, to GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks.

30. In executing their scheme to conceal the dangerous character of Plaintiffs' vehicles, Defendants violated a multitude of laws:

a) In furtherance of their common design to prevent Plaintiffs, class members, other consumers, law enforcement and other governmental officials, litigants, courts, and investors from learning of the safety risks in GM cars, GM, Delphi, and GM's dealers conducted a racketeering enterprise and engaged in a pattern of racketeering activities, including repeated and continuous acts of mail and wire fraud, television and radio fraud, and tampering with witnesses and victims in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, causing the harm to Plaintiffs and class members described above.

b) By concealing the material fact of the dangerousness of the Plaintiffs' and class members' vehicles, by failing properly to repair the safety risks in the cars in a timely manner, and by engaging in other unconscionable and/or unlawful behavior, GM and Delphi violated the Maryland Consumer Protection Act,. Md. Code, Com. Law § 13-408 *et seq.*, causing the harm described above to Plaintiffs and class members.

c) GM and Delphi also violated their duties to warn Plaintiffs and class members about the dangers that their vehicles posed, resulting in economic loss and increased risk of personal injury for which Defendants are liable to Plaintiffs and Class members under the law of negligence common to the District of Columbia and the States of Maryland, California, Florida, Ohio, and New Jersey.

d) Because they intentionally concealed a material fact from Plaintiffs and Class members, Defendants are liable to Plaintiffs for the harm Plaintiffs and class members have suffered and for punitive damages under the law of fraud common to the several States.

e) By civilly conspiring to conceal the safety-related risks of GM vehicles, both among themselves and among nonparties to this litigation, and because they acted jointly to harm Plaintiffs and class members, Defendants are jointly and severally liable for all harm they or any co-conspirator caused.

f) Defendants aided and abetted the conduct of each other and of nonparties in concealing the safety-related risks of GM vehicles.

PARTIES

31. Plaintiffs Ishmail Sesay and Joanne Yearwood are both citizens and residents of Maryland.

32. Mr. Sesay owns a 2007 Chevrolet Impala he purchased second-hand in December 2010. Although Mr. Sesay is the primary driver of the vehicle, his wife depends upon the car for transportation to and from work, and the couple rely on the car to transport their one-year-old son..

33. Ms. Yearwood owns a 2010 Chevrolet Cobalt purchased on April 13, 2010.

34. General Motors LLC is a limited liability corporation. On July 10, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout the United States. Plaintiffs' claims and allegations against GM refer solely to this entity. In this First Amended Complaint, Plaintiffs are not making any claim against General Motors Corporation ("Defunct GM") whatsoever, and Plaintiffs are not making any claim against GM based on its having purchased assets from Defunct GM or based on its having continued the business or succeeded Defunct GM. Plaintiffs disavow any claim based on the design or sale of vehicles by defunct GM, or based on any retained liability of Defunct GM. Plaintiffs seek relief from GM solely for claims that have arisen after October 19, 2009, and solely based on actions and omissions of GM, the Non-Debtor entity that began operations on July 10, 2009.

35. Delphi Automotive PLC is headquartered in Gillingham, Kent, United Kingdom, and is the parent company of Delphi Automotive Systems LLC, headquartered in Troy, Michigan. At all times relevant herein, Delphi, through its various entities, designed, manufactured, and supplied GM with motor vehicle components, including the dangerous ignition switches contained in the Cobalts owned by Plaintiffs, and millions of other vehicles.

36. GM and Delphi are collectively referred to in this Complaint as "Defendants."

JURISDICTION AND VENUE

37. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331, because the claims under the Racketeer Influenced and Corrupt Organizations Act present a federal question. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiff Class are citizens of states different from

Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

38. Venue is proper in this Court pursuant to 28 U.S.C. § 1404, by the consent of both parties.

FACTUAL BACKGROUND

GM's Commitment to Cost-cutting Over Safety

39. GM has publicly admitted that the ignition switches in Plaintiffs' and class members' cars are dangerous and pose a safety hazard. It has also admitted that, from its inception in 2009, various GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch risk and/or diminish its significance. GM has been found guilty of failing to disclose the risk to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined GM the maximum penalty that agency is authorized to impose.

40. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety risk, the manufacturer must disclose the risk to appropriate government officials and registered owners of the vehicle in question.

41. Upon its inception, GM maintained policies and practices intended to conceal safety related risks in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product risks:

a) GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related risks by limiting the action that GM would take with respect to such risks to the issuance of a Technical Service Bulletin or an Information Service Bulletin.

b) GM directed its engineers and other employees to falsely characterize safety-related risks – including the risks described in this complaint – in their reports, business and technical records as "customer convenience" issues, to avoid being forced to recall vehicles as the relevant law requires.

c) GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by risks in GM products.

d) GM directed its employees to avoid the word "stall" in describing vehicles experiencing a moving stall, because it was a "hot word" that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.

i. A "moving stall" is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.

e) GM directed its engineering and other personnel to avoid the word "problem," and instead use a substitute terms, such as "issue," "concern," or "matter," with the intent of deceiving plaintiffs and the public.

f) GM instructed its engineers and other employees not to use the term "safety" and refer instead to "potential safety implications."

g) GM instructed its engineers and other employees to avoid the term "defect" and substitute the phrase "does not perform to design."

h) GM instituted and/or continued managerial practices designed to ensure that its employees and officials would not investigate or respond to safety-related risks, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public. In a practice GM management labeled "the GM nod," GM managers were trained to feign engagement in safety related product risks issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.

i) GM's lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related risks and GM's refusal to respond to and/or GM's continuing concealment of those risks. GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. GM did not describe the "no-notes policy" in writing to evade detection of their campaign of concealment.

j) GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was risk. GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. GM knew from its inception that the part

number irregularity was intended to conceal the faulty ignition switches in Plaintiffs' and class members' vehicles.

42. GM followed a practice and policy of intentionally mischaracterizing safety issues as "customer convenience" issues to avoid recall costs, and it enlisted its dealership network in its campaign of concealment by minimizing the safety aspects of the "technical service bulletins" and "information service bulletins" it sent to dealers. GM directed dealers to misrepresent the safety risks associated with the product risks of its vehicles. GM followed this practice with respect to the dangerous ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch risk began to unravel in February 2014.

43. GM followed a practice or policy of minimizing and mischaracterizing safety related risks in its cars in its communications with Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials

44. Upon the inception of GM in October 2009, GM and Delphi agreed to conceal safety related risks from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors. Both GM and Delphi knew since October 2009 that the design of the faulty ignition switch in Plaintiffs and class members' cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety risks.

45. Since GM's inception in October 2009, both GM and Delphi have known that the faulty ignition switch in the Plaintiffs' Impala and Cobalt and class members' vehicles posed a serious safety and public health hazard because the faulty ignition switch caused moving stalls.

Each Defendant had legal duties to disclose the safety related risks. Rather than notifying the NHTSA, Defendants instead decided that Plaintiffs and class members, and millions of drivers and pedestrians should face imminent risk of injury and death due to the dangerous ignition switches in Plaintiffs' and class members' vehicles. Delphi and GM entered into an agreement to conceal the alteration of the part without simultaneously changing the part number, and concealed the risks associated with the dangerous ignition switches.

46. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the risk.

47. In April 2013, GM hired an outside engineering-consulting firm to investigate the ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Risk until 2014.

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

49. GM explicitly directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related risks – including the ignition switch risk – in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against GM by falsely claiming such suits are barred by Order of the Bankruptcy Court,

and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their veneer of ignorance concerning the safety related risks. In one case, GM threatened the family of an accident victim with liability for GM's legal fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated by means of mail and wire to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product risks GM concealed.

50. GM led the world and U.S. customers to believe that after bankruptcy it was a new company. GM repeatedly proclaimed that it was a company committed to innovation, safety, and maintaining a strong brand.

51. GM was successful. Sales of all of its models went up and GM became profitable. Seemingly, a GM was born and the GM brand once again stood strong in the eyes of consumers.

52. GM's image was an illusion. This case arises from GM's concerted and systematic practice and policy of denying, diminishing, and failing to remediate safety related hazards that GM vehicles pose. GM has now begun to admit to the egregious failure to disclose, and the affirmative concealment of, at least 35 separate known defects in GM-brand vehicles. By concealing the existence of the many known defects plaguing many models and years of GM-branded vehicles and the fact that GM values cost-cutting over safety, and concurrently marketing the GM brand as "safe" and "reliable," and claiming that it built the "world's best

vehicles," GM has caused the Plaintiffs' vehicles to diminish in value as the truth about the GM brand emerged, and a stigma has attached to all GM-branded vehicles.

53. A vehicle made by a reputable manufacturer of safe and reliable products is worth more than an otherwise similar vehicle made by a disreputable manager that is known to devalue safety and conceal defects from consumers and regulators. GM Vehicle Safety Chief, Jeff Boyer, recently stated that: "Nothing is more important than the safety of our customers in the vehicles they drive." Yet GM failed to live up to this commitment, instead choosing to conceal at least 35 serious defects in over 17 million GM branded vehicles sold in the United States. GM's concealment of those defects, and its seemingly never-ending series of recalls so far this year, evidence the degree of misconduct that passed, and may continue to pass, for standard procedure at the company.

54. The systematic concealment of known defects was deliberate, as GM followed a consistent pattern of endless "investigation" and delay each time it became aware of a given defect. Recently revealed documents show that GM valued cost-cutting over safety, trained its personnel to never use the word "defect" or other words suggesting that GM-branded vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

55. GM has recently been forced to disclose that it had been concealing a staggering and unprecedented number of known safety defects in GM-branded vehicles ever since its inception in 2009, and that other defects arose on its watch apparently due in large measure to GM's focus on cost-cutting over safety. It was further forced to disclose its discouragement of raising safety issues and its training of employees to avoid using language such as "defect" or "safety issue" in order to avoid attracting the attention of regulators.

56. The array of defects is astounding and includes: (1) ignition switch defect, (2) power steering defect, (3) airbag defect (4) brake light defect, (5) shift cable defect, (6) safety belt defect, (7) ignition lock cylinder defect, (8) key design defect, (9) ignition key defect, (10) transmission oil cooler line defect, (11) power management mode software defect, (12) substandard front passenger airbags, (13) light control module defect, (14) front axle shaft defect, (15) brake boost defect, (16) low-beam headlight defect, (17) vacuum line brake booster defect, (18) fuel gauge defect, (19) acceleration defect, (20) flexible flat cable airbag defect, (21) windshield wiper defect, (22) brake rotor defect, (23) passenger-side airbag defect, (24) electronic stability control defect, (25) steering tie-rod defect, (26) automatic transmission shift cable adjuster, (27) fuse block defect, (28) diesel transfer pump defect, (29) base radio defect, (30) shorting bar defect, (31) front passenger airbag end cap defect, (32) sensing and diagnostic module ("SDM") defect, (33) sonic turbine shaft, (34) electrical system defect, and (35) seatbelt tensioning system defect.

57. GM has received reports of crashes and injuries that put GM on notice of the serious safety issues presented by many of these defects. GM was aware of the defects from the very date of its inception on July 10, 2009.

58. Despite the dangerous nature of many of the defects and their effects on critical safety systems, GM concealed the existence of the defects and failed to remedy the problems in an appropriate or timely manner.

TOLLING OF THE STATUTE OF LIMITATIONS

37. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

38. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the safety related risks described herein.

39. Plaintiffs and Class Members had no reason to know that their products were dangerous because of Defendants' active concealment.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this lawsuit as a class action on their own behalves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. All proposed Class and Subclass periods run from the inception of GM in October 2009 and continue until judgment or settlement of this case.

41. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering hazard. As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerous ignition switches, ignition related safety hazards or steering hazards:

- 2005-2011 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2006-2010 Pontiac Solstice
- 2007-2010 Pontiac G5
- 2005-2006 Pontiac Pursuit

- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2009 Buick Lacrosse
- 2006-2011 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2006-2014 Chevrolet Impala
- 2006-2008 Chevrolet Monte Carlo
- 2000-2005 Cadillac Deville
- 2004-2011 Cadillac DTS
- 2004-2006; 2008-2009 Chevrolet Malibu (steering)
- 2004-2—6 Malubu Marx (steering)
- 2009-2010 HHR (non-turbo) (steering)
- 2010 Chevrolet Cobalt (steering and ignition switch and key hazards)
- 2008-2009 Saturn Aura
- 2004-2007 Saturn Ion (steering and ignition switch)
- 2005-2009 Pontiac G6 (steering)

42. Plaintiffs also bring this action on behalf of the following Subclasses:

a. Mr. Sesay and Ms. Yearwood bring this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a

legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering related hazard (the "Maryland Subclass");

b. Plaintiffs also bring this action on behalf of residents of the District of Columbia and the States of California, Florida, Maryland, New Jersey and Ohio who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering related hazard(the "Multi-State Negligence Subclass").

43. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

44. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM's possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

45. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a GM vehicle during the Class Period that contained a dangerous ignition switch

manufactured by Delphi. Plaintiffs, like all class and subclass members, have been damaged by Defendants' misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles. Furthermore, the factual bases of Defendants' misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

46. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

47. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. Whether the vehicles owned by class or subclass members during the class periods suffer from the dangerous ignition switch or steering related hazard described herein?

b. Whether the dangerous ignition switch or steering related hazard posed an unreasonable danger of death or serious bodily injury?

c. Whether GM and/or Delphi imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?

d. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?

e. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?

f. Whether GM and Delphi had a legal duty to disclose the ignition switch danger to class and subclass members?

g. Whether GM and/or Delphi had a legal duty to disclose the ignition switch danger to the NHTSA?

h. Whether either GM and/or Delphi breached duties to disclose the ignition switch risk?

i. Whether class and subclass members suffered legally compensable harm?

j. Whether Defendants violated Maryland's consumer protection statute by concealing the ignition switch and/or steering related hazards from Plaintiffs and governmental officials?

k. Whether the fact that the ignition switch and/or steering related hazard was dangerous was a material fact?

l. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

m. Whether GM should be declared responsible for notifying all Class Members of the risk and ensuring that all GM vehicles with the ignition switch and/or steering related hazards are recalled and repaired?

n. Whether a mandatory injunction should issue to direct GM to protect the public safety in the interim until is repairs the vehicles described herein, to remove the dangerous vehicles from the roadwats and to provide their owners with suitable substitute transportation?

o. Whether Defendants conducted a criminal enterprise in violation of RICO?

p. Whether Defendants engaged in a pattern or practice of racketeering?

q. Whether Defendants committed mail or wire fraud in connection with their concealment of the dangerous ignition switch.

r. Whether class members were harmed by Defendants' violations of RICO?

s. Whether class and subclass members are entitled to recover punitive damages from Defendants, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

48. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for Defendants' misconduct. Absent a class action, class and subclass members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also

be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is also superior for defendants, who could be forced to litigate thousands of separate actions.

49. Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members.

CAUSES OF ACTION

COUNT I
VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. § 1962(c) and (d))

50. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

51. This claim is brought by all Plaintiffs on behalf of the nationwide Class.

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

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

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

55. At all times relevant, GM and Delphi are and were each a "person" who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While GM and Delphi each participated in the RICO Enterprise, they each exist separately and distinctly from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which GM and Delphi have engaged and are engaging.

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

The RICO Enterprise

57. Defendants participated in the operation and management of an association-in-fact enterprise whose aim was to conceal safety related risks in Delphi products installed in GM vehicles from Plaintiffs, class members, the NHTSA, litigants, courts, law enforcement officials, consumers, and investors. The Enterprise was motivated by the common design of concealing the true value of the defendant companies and their products, and it constituted an unlawful, continuing enterprise calculated to gain an unfair advantage over competitor automakers who conduct their business within the bounds of the law. The Enterprise was partly embodied in practices and procedures intended to mischaracterize safety related risks – such as the ignition switch – as "customer convenience issues" to avoid incurring the costs of a recall.

58. The RICO Enterprise began with the inception of GM, on October 19, 2009. The following persons, and others presently unknown, have been members of and constitute the association-in-fact enterprise with the following roles:

a) GM, which mandated its employees take the various measures, described above at paragraph 26, to conceal safety related risks, including the ignition switch risks.

b) GM's engineers (including but not limited to Ray DeGiorgio, Gary Altman, a program engineering manager, Michael Robinson, vice president for environmental sustainability and regulatory affairs, Gay Kent, general director of product investigations and safety regulations) who have carried out GM's directives since the inception of GM in October 2009 by minimizing and misrepresenting the safety aspects of the ignition switch risk – enabling GM to avoid its legal obligations to recall vehicles with safety related risks. GM's engineers (including but not limited to Mr. DeGiorgio, Mr. Altman, Mr. Robinson and Ms. Kent) have also concealed the part-number-labeling fraud of which they have known since GM's inception in October 2009.

c) GM's in-house lawyers (including but not limited to Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo, and Jennifer Sevigny), who knowingly assisted GM in evading its legal responsibilities by taking measures allowing GM management to claim ignorance about the increasing number of accidents and personal injuries that the ignition switches were causing throughout the Class period. GM's in-house lawyers, as described in Paragraph 36, also took measures to ensure that lawsuits filed by victims of the ignition switch risk and their surviving families were settled confidentially – preventing them from revealing the risk to other Plaintiffs, class members, law

enforcement officials, or other government authorities, including the NHTSA – for amounts below the threshold that would trigger closer scrutiny within GM.

d) GM's outside lawyers, retained to defend the Company against lawsuits filed by victims with injuries allegedly caused by the ignition switch risk, who were directed to play, and played, the same roles as those of in-house counsel described above – taking analagous measures to help GM conceal the ignition switch risk.

e) Delphi, who, since the inception of the GM in October 2009, has participated in the Enterprise to conceal the dangerous ignition switch system and its knowledge that ignition switch part numbers on vehicles driven by class members during the class period were misleading or fraudulent and would hinder any attempt to investigate or learn about the ignition switch risk.

f) GM's Dealers, whom GM instructed, explicitly or implicitly, to present false and misleading information regarding the ignition switch risks to Plaintiffs and Class members, through, *inter alia*, Technical Service Bulletins and Information Service Bulletins, and who did, in fact, present such false and misleading information to Plaintiffs and Class members during the Class period.

58. GM and Delphi conducted and participated in the affairs of this RICO Enterprise through a continuous pattern of racketeering activity that began with the inception of the GM in October 2009, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and 18 U.S.C. § 1512 (tampering with witnesses and victims).

Predicate Acts of Wire and Mail Fraud

59. Since its inception in October 2009 and in furtherance of its scheme to defraud, GM, its engineers and its lawyers communicated with Delphi on a regular basis via the mail and/or wires regarding the dangerous ignition switch. Through those communications, GM instructed Delphi to continue concealing the ignition switch risk and to continue to produce ignition mislabeled or fraudulently labeled switches to help GM evade detection of GM's unlawful failure to recall vehicles with dangerous ignition switches by the NHTSA or other law enforcement officials. GM's and Delphi's communications constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

60. Since GM's inception in October 2009, in furtherance of its scheme to defraud, GM's lawyers communicated with those claiming injuries caused by the ignition switch risks on a regular basis via the mail and/or wires. Upon information and belief, GM's lawyers utilized the mail and wires to insist that litigants agree to confidentiality agreements forbidding disclosure that the ignition switch risks caused their injuries, and to communicate with supervisors and each other about ensuring that the cases settled below the threshold that would trigger scrutiny that might endanger Defendants' concealment of the ignition switch risks.

61. Since its inception in October 2009, GM has routinely used the wires and mail to disseminate false and fraudulent advertising about Plaintiffs' and Class members' vehicles, misrepresenting the vehicles as safe and dependable and failing to disclose the ignition switch risks in its advertising.

Predicate Acts of Tampering With Witnesses and Victims

62. GM engaged in an ongoing scheme to tamper with witnesses and victims as described in 18 U.S.C. § 1512(b) by using misleading conduct to influence, delay and prevent the testimony of victims in official proceedings and by entering into a campaign of intimidation

and false statements to discourage victims from pursuing their claims against GM, as described elsewhere in the complaint. GM also corruptly encouraged its employees and engaged in misleading conduct to prevent said employees from reporting safety risks and therefore delay or prevent their testimony about said risks. GM accomplished this by, inter alia, punishing employees who raised red flags about safety risks, thus intentionally intimidating and threatening employees who otherwise could have raised red flags.

63. Defendants' conduct in furtherance of this scheme to conceal and/or minimize the significance of the ignition switch risk was intentional. Plaintiff, Class and Subclass members were harmed in that they were forced to endure increased risk of death or serious bodily injury, they lost use and enjoyment of their vehicles, and their vehicles' values have diminished because of Defendants' participation in conducting the RICO Enterprise. The predicate acts committed in furtherance of the enterprise each had a significant impact on interstate commerce.

COUNT II
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

64. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

65. At the time of GM's inception in 2009, Defendants knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. This fact was material to Plaintiffs and class members. GM also knew about the steering hazards described herein.

66. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and steering

related hazards, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

67. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

68. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III
Asserted on Behalf of Plaintiffs and on Behalf of the Multi-State Negligence Subclass
(Negligent Infliction of Economic Loss and Increased Risk under the Common Law of the District of Columbia and Florida, Maryland, New Jersey, and Ohio)

69. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

70. This claim is brought on behalf of Plaintiffs and the District of Columbia, Florida, Maryland, New Jersey and Ohio Classes.

71. Because the dangerous ignition switch and steering related hazards created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the risk as soon as soon as they learned of the problem – upon the inception of GM in October 2009.

72. Rather than alerting vehicle owners to the danger, Defendants actively concealed and suppressed knowledge of the problem.

73. Defendants created an unreasonable risk of death or serious bodily injury to Plaintiffs and Subclass members. Plaintiffs and Subclass members were particularly identifiable and foreseeable victims of Defendants' negligence, and their injuries in terms of the diminution in the value of their vehicles and the loss of use and enjoyment of the vehicles was particularly foreseeable.

74. Defendants created an unreasonable risk of death or serious bodily injury through a pattern and practice of negligent hiring and training of its employees, and by creating and allowing to continue a culture at GM which encouraged the minimizing and hiding of safety risks from the public. GM negligently increased this risk by firing or otherwise retaliating against employees who did attempt to convince GM to fix safety problems.

75. As a result of Defendants' failure to warn them about the risks or repair their vehicles, Plaintiffs and Class Members sustained, and continue to sustain, damages arising from the increased risk of driving vehicles with safety related risks, from the loss of use and enjoyment of their vehicles, and from the diminished value of their vehicles attributable to Defendants' wrongful acts.

76. Plaintiffs and class members seek compensatory damages in an amount to be proved at trial, including compensation for any pain and suffering they endured.

COUNT IV
Asserted on Behalf of Mr. Sesay, Ms. Yearwood, and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"),
Md. Code, Comm. Law § 13-101 *et seq.*)

77. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

78. This Count is brought on behalf of Plaintiffs, the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3) and the portion of the Maryland Class who purchased vehicles after October 19, 2009, with respect to violations of MDCPA §§ 13-301(2)(i), 13-301(2)(iv), and 13-301(3).

79. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

80. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

81. Upon the inception of GM in 2009, Defendants knew the Plaintiffs and Subclass members' vehicles, due to the ignition switch risk, are prone to engine and electrical failure during normal and expected driving conditions. GM also knew since its inception of the steering hazards Plaintiffs' vehicles present. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. Because of the life threatening nature of the risk, its existence was a material fact that Defendants concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily injury, and diminution of the value of each of their vehicles.

82. At no time during the Class Period did Mr. Sesay, Ms. Yearwood, or Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their

vehicles from similar vehicles without the ignition switch risk, and the Defendants' failure to do so tended to mislead consumers into believing no distinctive risk was present in their vehicles.

83. With respect to the Subclass, Defendants violated Md. Code, Comm. Laws § 13-301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch risk from Plaintiffs and Subclass members.

84. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT V
Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses
(Civil Conspiracy and Joint Action or Aiding and Abetting)

85. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

86. This Count is brought on behalf of the nationwide Class and all Subclasses.

87. Defendants are jointly and severally liable for Plaintiffs' and Class and Subclass members' injuries because they acted in concert to cause those injuries.

88. Defendants are liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with each other and with others, including but not limited to the other defendants, dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this First Amended Complaint, to inflict those injuries and to conceal their actions from Plaintiffs, Class and Subclass members and others. By these agreements, Defendants conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

89. Defendants each committed overt acts in furtherance of the conspiracy.

90. Defendants knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

91. Defendants gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

92. Defendants were aware that their assistance and encouragement of the wrongful acts herein complained of substantially assisted the wrongful acts herein complained of.

93. The wrongful acts herein complained of harmed plaintiffs.

94. All defendants are therefore liable under civil conspiracy and civil aiding and abetting for all harm to plaintiffs and class members as described in this complaint.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

95. As of the date of the filing of this Complaint, GM concedes that it knew but did not disclose that some 20 million GM products have safety related risks that create an unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

96. Despite purporting to come clean about its campaign of concealment and deceit in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. GM has recklessly endangered the public safety and the safety of Plaintiffs and class members. GM has not effectively remedied its policies and practices to ensure that this misconduct does not continue, and accordingly its business practices continue to threaten the public safety, warranting that this Court impose preliminary and permanent relief to ensure that all elements of the enterprise alleged in this Complaint are identified and eliminated.

PRAYER FOR RELIEF

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

A. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge and decree that Defendants have recklessly endangered the public safety and order specific steps that Defendants must take to restore public safety, including but not limited to preliminary relief aimed at removing unreasonably dangerous GM vehicles from the public streets and thoroughfares forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related risks; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly admitted its years-long campaign of concealment and deceit, providing continuing judicial management over GM through the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its

business of marketing to the public complex products that can so easily be a threat of death or serious bodily injury if not manufactured properly;

C. Declare, adjudge and decree that the ignition switches in Plaintiffs' and Class and Subclass Members vehicles are unreasonably dangerous, and/or that the vehicles themselves are unreasonably dangerous;

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

E. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the ignition switch danger;

F. Declare, adjudge and decree that Defendants are financially responsible for notifying all Class Members about the dangerous nature of the Class Vehicles;

G. Declare, adjudge and decree that Defendants must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members all or part of the ill-gotten gains it received from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

H. Award Plaintiffs, Class Members, and Subclass Members the greater of actual compensatory damages or statutory damages as proven at trial;

I. Award Plaintiff and the nation-wide Class Members treble damages pursuant to 18 U.S.C. § 1964 (c);

J. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

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

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

JURY TRIAL DEMAND

Plaintiffs request a trial by jury on all the legal claims alleged in this First Amended Complaint.

Respectfully submitted

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Exhibit C

UNITED STATES DISTRICT COURT **SOUTHERN DISTRICT OF NEW YORK**		
IN RE: **GENERAL MOTORS LLC** **IGNITION SWITCH LITIGATION**	:	**14-MD-2543 (JMF)**
		CASE NO.
SHARON BLEDSOE, CELESTINE ELLIOTT, LAWRENCE ELLIOTT, CINA FARMER, PAUL FORDHAM, MOMOH KANU, TYNESIA MITCHELL, DIERRA THOMAS, and JAMES TIBBS, **Plaintiffs,** **ACTION** **v.** **GENERAL MOTORS LLC,** **Defendant.**	:	**CLASS ACTION FOR DECLARATIVE, INJUNCTIVE, AND MONETARY RELIEF** **REPRESENTATIVE** **FOR DECLARATIVE, INJUNCTIVE, AND MONETARY RELIEF ON BEHALF OF THE PEOPLE OF THE DISTRICT OF COLUMBIA** **JURY TRIAL DEMANDED**

COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs SHARON BLEDSOE, CELESTINE ELLIOTT, LAWRENCE ELLIOTT, CINA FARMER, PAUL FORDHAM, MOMOH KANU, TYNESIA MITCHELL, DIERRA THOMAS, and JAMES TIBBS (collectively "Plaintiffs') bring this action for themselves, and on behalf of all persons similarly situated, who own or have owned the substandard and dangerous vehicles identified below.

Lawrence Elliott, Celestine Elliott, and James Tibbs also bring this action as representatives of the People of the District of Columbia ("the District"), to vindicate the public interest in safety, to protect themselves and other residents of and commuters and other

visitors to the District from the unreasonable and imminent danger of death, serious bodily injury, and property damage that the historic misconduct of General Motors LLC ("GM") has loosed upon the City, as well as to seek all other available relief.

In February 2014, GM publicly admitted that--for every single day of its existence as a new entity, distinct from General Motors Corporation ("Old GM")—GM failed to disclose—and its engineers, lawyers, and other employees actively concealed--the dangers that use of millions of GM vehicles entails. GM's season of shame began with its admission that it had concealed an ignition switch defect in some 1.6 million vehicles, a defect, described in greater detail below, causing death serious injury to hundreds while GM knew but failed to disclose its danger. Since purporting to come clean about its wrongdoing, and after promising to transform a culture that let greed trump the dictates of responsible corporate conduct, GM has been forced to admit that its misconduct was far more widespread than its initial confession revealed. GM has since issued expanded recalls for more and more vehicles that present the same ignition switch danger. GM has also issued or expanded prior recalls for a wide range of other safety hazards that Plaintiffs' vehicles and others present and that GM had concealed or minimized, some 28 million vehicles since February 2014 and counting, a boggling tally of corporate irresponsibility, and a frighteningly sharp reflection of how widespread GM's reckless endangerment of the Plaintiffs and the public, in America and abroad, has been. Plaintiffs seek redress for GM's wrongdoing.

PARTIES

1. Plaintiffs Sharon Bledsoe, Cina Farmer, Paul Fordham, Momoh Kanu, Tynesia Mitchell, and Dierra Thomas, are each citizens and residents of Maryland.

2. Plaintiffs Celestine Elliott, Lawrence Elliott, and James Tibbs are each citizens and residents of the District of Columbia.

3. Ms Bledsoe owns a 2008 Chevrolet Cobalt that she purchased new from a Chevrolet dealer in December 2007, in the state of Georgia. As described below, she suffered personal injury, emotional distress, and property damage in two accidents caused by the dangerous ignition switch in the vehicle while driving in and a resident of Georgia.

4. Mr. and Mrs. Elliott jointly own a 2006 Chevrolet Trailblazer that they purchased new in 2006 from a Chevrolet dealer in the District of Columbia.

5. Ms. Farmer owns a 2005 Chevrolet Cobalt that she purchased new in 2007 in the state of Maryland. As described below, she suffered personal injury, emotional distress, and property damage in an accident in December 2013 caused by the dangerous ignition switch in her vehicle while driving in and a resident of the state of Maryland.

6. Mr. Fordham owns a 2006 Pontiac G6 that he purchased used in November 2012 from a Chevrolet Dealership in Maryland.

7. Mr. Kanu currently owns a 2000 Chevrolet Impala. He is a former owner of a 2006 Chevrolet Impala. He bought both cars from private parties in the state of Maryland. He suffered property damage and economic loss when he was involved an accident caused by the dangerous ignition switch in the 2006 Impala and he had to take a total loss on the car after the accident.

8. Ms. Mitchell owns a 2007 Chevrolet HHR that she purchased in 2010 from a used car dealer in Maryland.

9. Ms. Thomas owns a 2006 Chevrolet Cobalt that she purchased from a private party in 2006.

10. Mr. Tibbs owns a 2007 Chevrolet Impala that he purchased in 2011 from a private party in the District of Columbia. He was involved in an accident caused by the dangerous ignition related hazard that his car presents.

11. General Motors LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Detroit, Michigan. Each of its members is a citizen and/or resident of the state of Michigan. On July 10, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout the United States. Plaintiffs' claims and allegations against GM refer solely to this entity.

JURISDICTION AND VENUE

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

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1404, by the consent of both parties.

FACTUAL BACKGROUND

1. GM's Practice of Concealing and Minimizing Safety Risks

14. GM instituted its own and continued policies and practices of its predecessor intended to conceal and minimize safety related risks in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product risks.

15. Defendants first deployed their campaign of deception on the day that GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, GM recklessly endangered the safety of Plaintiffs, their families, and members of

the public. Defendants' wrongful acts and omissions harmed and continues to harm Plaintiffs and the public by exposing them to increased risk of death or serious bodily injury.

16. As of the date of the filing of this Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

17. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that GM employees knew about safety-related defects in millions of vehicles and that GM did not disclose those defects as it was required to do by law. Ms. Barra attributed GM's "failure to disclose critical pieces of information," in her words, to GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks. For example, GM chose to use and then conceal defective ignition switches in vehicles in order to save less than ten dollars per vehicle.

18. This case arises from GM's concerted and systematic practice and policy of denying, diminishing, and failing to remediate safety related hazards that GM vehicles pose.

19. GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related risks by limiting the action that GM would take with respect to such risks to the issuance of a Technical Service Bulletin or an Information Service Bulletin.

20. GM directed its engineers and other employees to falsely characterize safety-related risks – including the risks described in this complaint – in their reports, business and technical records as "customer convenience" issues, to avoid being forced to recall vehicles as the relevant law requires, and/or to issue narrower recalls than the circumstances warranted.

21. GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by risks in GM products.

22. GM directed its employees to avoid the word "stall" in describing vehicles experiencing a moving stall, because it was a "hot word" that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.

a. A "moving stall" is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.

23. GM directed its engineering and other personnel to avoid the word "problem," and instead use a substitute terms, such as "issue," "concern," or "matter," with the intent of deceiving plaintiffs and the public.

24. GM instructed its engineers and other employees not to use the term "safety" and refer instead to "potential safety implications."

25. GM instructed its engineers and other employees to avoid the term "defect" and substitute the phrase "does not perform to design."

26. GM's managerial practices were designed to ensure that its employees and officials would not investigate or respond to safety-related risks, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public.

27. In a practice GM management labeled "the GM nod," GM managers were trained to feign engagement in safety related product risks issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.

28. GM's lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related risks and GM's

refusal to respond to and/or GM's continuing concealment of those risks. GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. GM did not describe the "no-notes policy" in writing to evade detection of their campaign of concealment.

29. GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was risk. GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. GM knew from its inception that the part number irregularity was intended to conceal the faulty ignition switches in Plaintiffs' and class members' vehicles.

30. GM directed dealers to misrepresent the safety risks associated with the product risks of its vehicles. New GM followed this practice with respect to the dangerous ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch risk began to unravel in February 2014.

31. GM directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related risks in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against New GM by falsely claiming such suits are barred by Order of the Bankruptcy Court, and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their veneer of ignorance concerning the safety related risks.

32. In one case, GM threatened the family of an accident victim with liability for GM's legal fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated

to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product risks GM concealed.

33. The systematic concealment of known defects was deliberate, as GM followed a consistent pattern of endless "investigation" and delay each time it became aware of a given defect. GM routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

34. Under the Transportation Recall Enhancement, Accountability and Documentation Act, 49 U.S.C. § 30101, et seq. ("TREAD Act"), and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety defect, the manufacturer must properly disclose the defect. If it is determined that the vehicle is defective, the manufacturer may be required to notify vehicle owners, purchasers, and dealers of the defect, and may be required to remedy the defect.

35. When a manufacturer with TREAD Act responsibilities is aware of safety defects and fails to disclose them as GM has done, the manufacturer's vehicles are not safe.

36. The array of defects that GM had failed to disclose and has only in the past few months revealed includes: (1) ignition switch defect, (2) power steering defect, (3) airbag defect (4) brake light defect, (5) shift cable defect, (6) safety belt defect, (7) ignition lock cylinder defect, (8) key design defect, (9) ignition key defect, (10) transmission oil cooler line defect, (11) power management mode software defect, (12) substandard front passenger airbags, (13) light control module defect, (14) front axle shaft defect, (15) brake boost defect, (16) low-beam headlight defect, (17) vacuum line brake booster defect, (18) fuel gauge defect, (19)

acceleration defect, (20) flexible flat cable airbag defect, (21) windshield wiper defect, (22) brake rotor defect, (23) passenger-side airbag defect, (24) electronic stability control defect, (25) steering tie-rod defect, (26) automatic transmission shift cable adjuster, (27) fuse block defect, (28) diesel transfer pump defect, (29) base radio defect, (30) shorting bar defect, (31) front passenger airbag end cap defect, (32) sensing and diagnostic module ("SDM") defect, (33) sonic turbine shaft, (34) electrical system defect, (35) seatbelt tensioning system defect, and (36) master power door switch defect.

37. GM has received reports of crashes and injuries that put GM on notice of the serious safety issues presented by many of these defects. Given the continuity of engineers, corporate counsel, and other key personnel from Old GM to GM, GM was aware of many of the defects from the very date of its inception on July 10, 2009.

38. GM advanced its culture of concealment by actively denying liability for fatal accidents. In 2005, Defunct GM customer Adam Powledge lost control of his vehicle, slamming into a highway median and killing himself and his four children. In the ensuing suit GM nefariously framed the incident as a suicide, disavowing any connection between the accident and an electrical failure, despite GM's knowledge that the Malibu Mr. Powledge drove had a steering defect that likely was the real cause of the tragedy. Then, in April 2014, GM finally admitted that Adam Powledge's Chevrolet Malibu had a steering defect—the same one that Mr. Fordham's vehicles possesses-that was consistent with the loss of control over the vehicle that led to his death and that of his four children. The Powledge saga is but one dramatic example of the lengths that GM, its attorneys, risk personnel, and others went to further the GM campaign of denial and deceit.

39. Despite the dangerous nature of many of the defects and their effects on critical safety systems, GM concealed the existence of the defects and failed to remedy the problems in an

appropriate or timely manner. The continuation of GM's deceptive practices has created a public safety hazard. GM instituted and continued policies and practices intended to conceal safety related defects in GM products from Plaintiffs, the public, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product defects.

2. Failure to Disclose and Concealment of Ignition Switch Hazard (Bledsoe, Farmer, Mitchell, Thomas vehicles; NHTSA Campaign Numbers 14V047000; 14V171000; 14E021000

40. GM has admitted that the ignition switches in the vehicles owned by Mses. Bledsoe, Farmer, Mitchell, and Thomas and models with the same design of ignition switch owned by class members are dangerous and pose a safety hazard. It has recalled all the vehicles pursuant to NHTSA recall campaign 14V047000, covering models: CHEVROLET COBALT 2005-2010; CHEVROLET HHR 2006-2011; PONTIAC G5 2007-2010; PONTIAC SOLSTICE 2006-2010; SATURN ION 2003-2007; SATURN SKY 2007-2010.

41. GM has also admitted that, from its inception in 2009, various New GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch risk and/or diminish its significance. GM has been found guilty of failing to disclose this risk to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined New GM the maximum penalty that agency is authorized to impose.

42. GM has known since June 10, 2009, that the faulty ignition switch in the Plaintiffs' and class members' vehicles poses or posed a serious safety and public health hazard because the faulty ignition switch causes moving stalls in which the driver loses power steering, power brakes, and in the increased likelihood of an accident, the airbag will not deploy.

43. Rather than notifying the NHTSA, GM instead decided that Plaintiffs and class members, and millions of drivers and pedestrians, would face imminent risk of injury and death due to the dangerous ignition switches in Plaintiffs' and class members' vehicles. GM and other parties associated with it, including parts suppliers, agreed to conceal safety related risks presented by the ignition switches from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors.

44. GM and other parties associated with it knew that the design of the faulty ignition switch in Plaintiffs and class members' cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety risks.

45. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the risk.

46. In April 2013, GM hired an outside engineering-consulting firm to investigate the ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Risk until 2014.

47. NHTSA's Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in 2005-07 Cobalts and 2003-07 Ions where the airbags failed to deploy in non-rear impact crashes, models of GM vehicles owned by Ms. Bledsoe, Farmer, Mitchell, and Thomas.

48. On April 10, 2014, GM issued another recall for the same vehicles, this time because the ignition key can be removed while ignition is not in the off position, creating a risk of "rollaway" and risks to pedestrians and property damage. NHTSA Recall Campaign 14V171000.

49. On April 30, 2014, GM issued yet another recall for these same vehicles, this time because the after-market ignition switches that were used to replace the faulty ignition switches pursuant to the prior recalls were themselves faulty and presented the same risks. NHTSA Recall Campaign 14E021000.

3. Failure to Disclose and Concealment of "Ignition Key" Hazard (Kanu, Tibbs 2007; 2006 Impala) NHTSA Recall Campaign 14V355000; (Kanu) (2000 Impala) NHTSA Recall Campaign 14V40000

50. Mr. Kanu's 2006 Chevrolet Impala and Mr. Tibbs' 2007 Chevrolet Impala have a dangerous ignition switch related hazard that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable. This hazard is the subject of NHTSA Recall campaign 14V355000, and exists in the following models: BUICK LACROSSE 2005-2009; BUICK LUCERNE 2006-2011; CADILLAC DEVILLE 2000-2005; CADILLAC DTS 2006-2011; CHEVROLET IMPALA 2006-2014; CHEVROLET MONTE CARLO 2006-2007.

51. Mr. Tibbs has already been involved in an accident, in October 2013, in which his car turned off while he was driving when the vehicle hit a pothole in the road, and, because of the dangerous ignition switch related defect, Mr. Tibbs lost control of the vehicle and the vehicle only stopped when it hit a tree. The airbag did not deploy despite the impact. This and the related ignition switch hazards in GM vehicles have already helped kill or seriously injure hundreds of people across the United States. Rather than disclose the risk, GM employees,

lawyers, and others concealed it.

52. Mr. Kanu's 2000 Chevrolet Impala has a dangerous ignition switch related hazard that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable. This hazard is the subject of NHTSA Recall campaign 14V40000, and covers the following models: CHEVROLET IMPALA 2000-2005; CHEVROLET MALIBU CLASSIC 1997-2005; CHEVROLET MONTE CARLO 2000-2005; OLDSMOBILE ALERO 1999-2004; OLDSMOBILE INTRIGUE 1998-2002; PONTIAC GRAND AM 2000-2005; PONTIAC GRAND PRIX 2004-2008.

53. GM claims that this hazard is distinct from the "ignition switch" hazard described above and requires remediation of key replacement rather than ignition switch replacement.

54. GM knew but failed to disclose to Mr. Tibbs, Mr. Kanu, governmental officials, or putative class members that their cars were dangerous to operate, until it finally issued the recalls described above.

55. In connection with NHTSA Campaign No. 14V355000, on June 20, 2014 GM issued a Stop-Delivery Order to dealers in preparation for an upcoming safety recall. It instructed dealers to stop delivery in 2006-2014 Chevrolet Impala (Fleet Only) vehicles in new or used vehicle inventory. It described the problem: "The ignition switch on these vehicles may inadvertently move out of the 'run' position if the key is carrying added weight and the vehicle goes off the road or experiences some other jarring event."

56. On the same date GM issued notice of its decision to conduct a safety recall to the NHTSA. However, GM failed to disclose the history of its awareness of the ignition key problem. Instead, GM simply described the potential for the ignition key to move away from

the "run" position should it the vehicle go off-road or experience a "jarring" event. It warned that should the key move away from the "run" position, "engine power, power steering and power breaking will be affected, increasing the risk of crash." More over, this could result in "airbags not deploying increasing the potential for occupant injury in certain kinds of crashes."

57. On June 24, 2014 the NHTSA acknowledged the recall in letter to the Director of Field Product Investigations and Evaluations at General Motors, which carried the subject "Ignition Switch may Turn Off."

58. The NHTSA described the problem as concerning the "electrical system: ignition." It described the problem: "This defect can affect the safe operation of the airbag system. Until this recall is performed, customers should remove all items from their key rings, leaving only the ignition key… In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine."

59. In "consequence," according to the recall papers, "if the key is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury. Additionally, a key knocked out of the run position will cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash.

60. The "Remedy" in the recall provides: "GM will notify owners, and dealers will install two 13mm key rings and key insert into the vehicle's ignition keys, free of charge. The manufacturer has not yet provided a notification schedule."

61. On June 25, 2014 GM issued a notice to GM dealers explaining vehicles involved in three upcoming safety recalls. It listed the following: Recall 14172 – Ignition Switch recall for 2003 – 2014 Cadillac CTS and 2004 -2006 Cadillac SRX, Recall 14299- Ignition Switch for,

among other vehicles, the 2014 Chevrolet Impala Limited (Fleet Only), and Recall 14250-Ignition Key for, among other vehicles, the 2005 – 2006 Chevrolet Impala.

62. On July 2, 2014, in a letter meant to supersede its previous correspondence, GM notified the NHTSA that it had possession of information regarding the ignition key problem since its inception on July 10, 2009, that consisted of a reliable report that "the vehicle stalled after hitting a large bump when going from gravel road to pavement while driving at about 45 mph." Since October 2009, GM did not take appropriate measures to investigate the serious risk the information it possessed suggested, particularly when considered with other information GM possessed regarding ignition switch related risks.

63. In the same July 2 letter, GM claimed that during a document review related to a Cobalt ignition switch problem in 2014, it discovered information in its possession that led it to the recall for Mr. Kanu's 2006 Impala and Mr. Tibbs's 2007 Impala and other vehicles with the same hazard. GM revealed that the issue was brought to the Product Investigation group on April 30, 2014. Between May 1, 2014 and June 6, 2014 "the investigator worked with GM subject matter experts to gather and analyze data relating to the ignition switch used on the 2006 Impala." GM reported that "although ignition switches themselves performed below the target specification, the ignition switch system as a whole as installed in the vehicles' steering columns performed approximately at the target specification." GM also reviewed its databases including its TREAD, warranty, customer satisfaction, and Engineering Analysis database, and NHTSA's Vehicle Owner's Questionnaire database; after which the investigator made a presentation regarding the ignition switch at an Open Investigation review meeting.

64. In the same July 2nd letter, GM then revealed that only after the presentation and meeting did do road testing of the Impala using the ignition switches under review. These tests revealed that: "when a slotted key is carrying added weight, the torque performance of the

ignition system may be insufficient to resist energy generated when a vehicle goes off road or experiences some other jarring event, potentially resulting in the unintentional movement of the key away from the 'run' position." After review of GM and NHTSA data the investigator presented to the SFADA. The SFAHA then "directed the investigator to work with other GM personnel to further refine the potential recall population so that it accurately included the vehicles using the identified ignition switches that were subject to the condition identified in the road tests. On July 15, 2014 the SFASA decided to conduct a recall of that population.

65. Finally, on June 14, 2014 GM announced its safety recall. GM issued a 573 letter for the NHTSA on June 20, referenced above, admitting its knowledge of the hazard and its failure to disclose the risk to NHTSA.

66. In a separate recall for an "ignition key" risk presenting identical hazards, on July 3, 2014, GM notified NHTSA that it was recalling Mr. Kanu's 2000 Impala and some 6.7 million other GM vehicles, encompassing the following models: CHEVROLET IMPALA 2000-2005; CHEVROLET MALIBU CLASSIC 1997-2005; CHEVROLET MONTE CARLO 2000-2005;

OLDSMOBILE ALERO 1999-2004; OLDSMOBILE INTRIGUE 1998-2002; PONTIAC GRAND AM 2000-2005; PONTIAC GRAND PRIX 2004-2008.

67. In this recall, NHTSA Recall Campaign 14V400, GM described the defect as involving the "detent plunger force on the ignition switch" and admitted that it had information regarding the hazard as soon as it began its business on July 10, 2009. GM failed to disclose, and actively concealed, this hazard from Plaintiffs and government officials. GM admits that in 2004 when the detent plunger force was redesigned, GM did not change the part number to reflect the change.

4. Failure to Disclose and Concealment of Power Steering Defects (Fordham vehicle); NHTSA Recall Campaigns 14V15300; 14E04400

68. Mr. Fordham's 2006 Pontiac G6 vehicle has two dangerous power steering defects that are currently the subject of recalls. On March 21, 2014, GM issued a recall for and disclosed that Mr. Fordham's vehicle was subject to a sudden loss of power steering, increasing the risk of a crash. NHTSA Campaign 14V15300 covers Mr. Fordham's car and the following models: CHEVROLET COBALT 2010; CHEVROLET HHR 2009-2010; CHEVROLET MALIBU 2004-2006; 2008-2009; CHEVROLET MALIBU MAXX 2004-2006; PONTIAC G6 2005-2006, 2008-2009; SATURN AURA 2008-2009; SATURN ION 2004-2007. GM admits that it knew of the power steering defect in related models since its inception but it did not disclose the risks and issue a recall until March 2014.

69. On July 21, 2014, GM issued another recall relating to dangers in Mr. Fordham's steering, this time for a yoke providing inadequate support for a u-joint bearing resulting in premature failure and a complete loss of steering control. The NHTSA Recall Campaign14E04400 encompasses Mr. Fordham's vehicle and the following models: CHEVROLET MALIBU 2004-2012; PONTIAC G6 2005-2010; SATURN AURA 2007-2009.

5. Failure to Disclose and Concealment of Transmission Shift Cable Defect (Fordham vehicle); NHTSA Recall Campaign 14V22400 (Fordham)

70. On April 30, 2014, GM disclosed that Mr. Fordham's vehicle has a defective transmission shift cable design that that poses a risk that the cable may fracture, resulting in driver loss of control or the risk of rollaways resulting in crashes. The related NHTSA Recall Campaign 14V22400 encompasses models CHEVROLET MALIBU 2004-2008;

CHEVROLET MALIBU MAXX 2004-2007; PONTIAC G6 2005-2008; SATURN AURA 2007-2008.

GM admits that it knew of the risk of transmission cable fracture in similarly designed models at least since May 2011.

6. Failure to Disclose and Concealment of Brake Light Defect (Fordham vehicle); NHTSA Recall Campaign 14V25200

71. On May 14, 2014, GM disclosed that Mr. Fordham's vehicle has an electrical system defect resulting in the brake lights not functioning properly, affecting various systems and increasing the likelihood of a crash. The NHTSA Recall Campaign 14V25200 encompasses models CHEVROLET MALIBU 2004-2012; CHEVROLET MALIBU MAXX 2004-2007; PONTIAC G6 2005-2010; SATURN AURA 2007-2010.

72. GM admits that it knew of brake light failures in these model cars since its inception.

7. Failure to Disclose and Concealment of Master Power Door Switch Defect (Elliotts' vehicle); NHTSA Campaign 14V404000)

73. Lawrence Elliott, 78 years of age, and Celestine Elliott, 73 years of age, own a 2006 Chevrolet Trailblazer for which they paid full sticker price when they purchased it from a now defunct dealership in the District. The vehicles has had a host of problems, including two dangerous and frightening "moving stalls," in which the Trailblazer's electrical system turned off while Ms. Elliott was driving, resulting in loss of control over steering, braking, and the loss of power to the airbag system

74. The Trailblazer has a Master Power Door Module Switch that is so dangerous GM is advising owners that the vehicles must be parked outdoors to avoid unreasonable risks of fire. GM's treatment of the Trailblazer dangers has been consistent with the corporate culture that has engulfed GM's cost-containment approach to risk issues presented by GM vehicles: deny

any hazard exists; if forced to concede the hazard, minimize its significance; and if nevertheless forced to act, insist on cheap rather than appropriate remediation.

75. This is the third recall GM has conducted for this very same hazard, a process of denial and avoidance going back at least to 2012. In the previous two recalls, GM convinced governmental officials that its remediation—consisting of spraying the part with silicate rather than removing and replacing the dangerous part to eliminate the fire risk--would render the vehicles safe. GM failed to disclose the true nature of the risk to such officials, however. After years of denial, GM has finally admitted that the Elliotts' 2006 Chevrolet Trailblazer was and may remain dangerous because of the risk that its electrical components will short and start a fire inside the driver's door.

76. After years of denial, then false claims that it had repaired the vehicles and rendered them safe to drive, GM has admitted to the NHTSA that its prior two recalls and purported repairs—when it tried to take the cheap way out, and spay the switch with a chemical coating rather than actually replace and repair the faulty switch—were failures. GM admits that the dangerous Master Power Door Switch rendered the Elliotts' SUV dangerous to drive or even to leave unattended after driving, because of the serious risk of a short in the switch causing a fire in the driver door. GM failed to disclose, concealed, and misrepresented the significant risk of electrical fires developing in the faulty Master Power Door Switch.

77. On August 16, 2012, GM notified the NHTSA that it was recalling "certain model year 2006 Chevrolet Trailblazer EXT and GMC Envoy XL and 2006-2007 Chevrolet Trailblazer, GMC Envoy, Buick Rainier, SAAB 9-7x, and Isuzu Ascender vehicles, originally sold or currently registered in Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin, and the District of

Columbia" (NHTSA Report Campaign No. 12V406000). The reason for the recall was that "[f]luid may enter the driver's door module, causing corrosion that could result in a short in the circuit board." The consequence of this defect was listed in the report as follows: "A short may cause the power door lock and power window switches to function intermittently or become inoperative. The short may also cause overheating, which could melt components of the door module, producing odor, smoke, or a fire." Due to the fire risk created by the defect, GM recommended that owners park their vehicles outside. GM stated it would install a new door module if the switches did not function properly. If the switches did function properly, GM would apply a protective coating to the door module.

78. The August 16, 2012 recall was limited to vehicles in the twenty aforementioned states and the District of Columbia. To owners outside of the aforementioned states, GM sent an Owner Notification Letter to owners of the affected vehicles instructing them to bring their vehicle to a GM service center only if they noticed switches that functioned "uncommanded, intermittently or become inoperative" or they noticed "an odor or overheated/hot switches." The letter stated that owners should seek not repairs unless they observed these symptoms their vehicle.

79. The NHTSA was not satisfied with GM's geographic limitation of the August 16, 2012 driver door switch recall (NHTSA Action No. EA12004), and on June 13, 2013 GM notified the NHTSA that they were expanding the recall to cover the aforementioned vehicles in all states (NHTSA Report Campaign No. 13V248000). As part of the expanded recall GM notified consumers that unattended vehicle fire may occur in rare instances, yet also stated that the affected vehicles remained safe to drive.

80. On September 18, 2013, Plaintiffs' 2006 Trailblazer was serviced pursuant to the previously issued recalls and a "protective coating" was applied as an attempt to address the

defective driver door switch. The Plaintiffs' relied upon GM's assurance that the protective coating would address the defect and eliminate the risk of personal injury or property damage. On April 1, 2014, Plaintiffs filed a pro se complaint notifying GM that critical electrical components of the car had continued to operate ineffectively and presented risk of personal injury and property damage.

81. On July 2, 2014, GM issued a third recall concerning the defective driver door switch in the same vehicle models for the same defect and fire risk (NHTSA Campaign No. 14V404000). This new recall required additional remedy for vehicles "whose modules were modified but not replaced" under the previous two recalls. GM conceded that "[v]ehicles that were repaired by having a protective coating applied to the driver's door module may continue to have a safety related defect." This recall encompasses the following models: BUICK RAINIER 2006-2007; CHEVROLET TRAILBLAZER 2006-2007; CHEVROLET TRAILBLAZER EXT 2006; GMC ENVOY 2006-2007; GMC ENVOY XL 2006; ISUZU ASCENDER 2006-2007; SAAB 9-7X 2005-2007.

82. Since at least August 16, 2012, GM has been aware that the driver door switches in Plaintiffs' and consumers' vehicles are defective because of their propensity to experience thermal events such as smoke, melting, and fire, which can occur in any car regardless of what state it is registered in. Failure of the driver door switch threatens the kind of short-circuiting and door lock malfunction that Plaintiffs and consumers have detected, and creates an unreasonable danger of fire, personal injury and/or property damage. GM concealed the safety defect and risk of death or severe personal and property damage from vehicle owners outside the recall states. GM failed to notify Plaintiffs, consumers, and governmental officials of the full scope of the defect, and materially misled consumers.

83. NHTSA's Office of Defect Investigations (ODI) has received 170 reports alleging a thermal event in the driver door switch in vehicles identified by GM's August 2012 recall. GM acknowledged the receipt of 619 unique consumer complaints related to the driver door switch, 77 of which led to fire with flame.

CLASS ACTION ALLEGATIONS

84. Plaintiffs bring this lawsuit as a class action for themselves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. All proposed Class and Subclass periods run from the inception of GM in October 2009 and continue until judgment or settlement of this case.

85. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with an ignition switch hazards, an ignition key hazard, a power steering hazard, a transmission cable hazard, a brake light failure hazard, and/or a master power door switch hazard, as described in the various recalls for these conditions above.

86. Plaintiffs also bring this action on behalf of the following Subclasses:

a. Mses. Bledsoe, Farmer, Mitchell and Thomas, and Mrrs. Fordham and Kanu, bring this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a legal or equitable interest in the dangerous vehicles described above (the "Maryland Subclass");

b. Mr. Tibbs and Mr. and Mrs. Elliott also bring this action on behalf of residents of the District of Columbia who, since October 2009, hold or have held a legal or equitable interest in the dangerous vehicles described above (the "D.C. Subclass").

87. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

88. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM's possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

89. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a dangerous GM vehicle during the Class Plaintiffs, like all class and subclass members, have been damaged by Defendants' misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles.

Furthermore, the factual bases of Defendants' misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

90. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

91. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. Whether the vehicles owned by class or subclass members during the class periods suffer from the dangerous hazards described herein?

b. Whether the hazards posed an unreasonable danger of death or serious bodily injury?

c. Whether GM imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?

d. Whether GM caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?

e. Whether GM caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?

f. Whether GM had a legal duty to disclose the dangers described above to class and subclass members?

g. Whether GM had a legal duty to disclose the dangers described above to the NHTSA?

h. Whether class and subclass members suffered legally compensable harm?

i. Whether GM violated Maryland's consumer protection statute by concealing safety related hazards from Plaintiffs and governmental officials?

j. Whether GM violated the District's consumer protection law by concealing safety hazards in Plaintiffs' vehicles?

k. Whether the safety related hazards were material?

l. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

m. Whether GM should be declared responsible for notifying all Class Members of the risk and ensuring that all GM vehiclesare recalled and repaired?

n. Whether a mandatory injunction should issue to direct GM to protect the public safety in the interim until is repairs the vehicles described herein, to remove the dangerous vehicles from the roadways and to provide their owners with suitable substitute transportation?

o. Whether class and subclass members are entitled to recover punitive damages from GM, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

92. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of GMs' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for GMs' misconduct. Absent a class action, class and subclass members will continue to incur damages, and GMs' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is also superior for defendants, who could be forced to litigate thousands of separate actions.

Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because GM has acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members

COUNT I
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

93. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

94. At the time of its inception, GM knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. GM also knew since its inception about the ignition key hazard, steering hazards, and brake light hazards described above. GM knew since August 2012 about the master power door switch hazard described above. GM knew since May 2011 about the transmission cable hazard described above.

95. The facts that their vehicles presented the above described safety hazards was material to Plaintiffs and class members. Plaintiffs and class member s had no reasonable way of learnig of the hazards that GM knew about but failed to disclose.

96. GM's failure to disclose the risks, and its affirmative misrepresentations regarding the safety of Plaintiffs' and class members' vehicles, were intentional.

97. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and steering related hazards, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

98. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

99. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT II
Asserted on Behalf of Ms. Bledsoe, Farmer, Mitchell, Thomas, and Mr. Fordham and Kanu and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"), Md. Code, Comm. Law § 13-101 *et seq.*)

100. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

101. This Count is brought on behalf of Plaintiffs and the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3).

102. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

103. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

104. Defendants knew the Plaintiffs and Subclass members' vehicles were dangerous. Because of the life threatening nature of the risks, their existence was a material fact that GM concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily injury, and diminution of the value of each of their vehicles.

105. At no time during the Class Period did Mr. Sesay, Ms. Yearwood, or Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their vehicles from similar vehicles without the ignition switch risk, and the Defendants' failure to

do so tended to mislead consumers into believing no distinctive risk was present in their vehicles.

106. With respect to the Subclass, Defendants violated Md. Code, Comm. Laws § 13-301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch risk from Plaintiffs and Subclass members.

107. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT III
Asserted on Behalf of Mr. and Mrs. Elliott, for themselves, and as representatives of the public, and for the D.C. Subclass
(Violation of the District of Columbia's Consumer Protection Procedures Act, "CPPA", D.C. Code § 28-3901 et seq.)

108. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

109. This Count is brought on behalf of Mr. and Mrs. Elliott, Mr. Tibbs, and the people of the District of Columbia.

110. Plaintiffs are "consumers" within the meaning of the CPPA, § 28-3901(a)(2).

111. GM is a "person" and a "merchant" within the meaning of the CPPA, § 28-3901(a)(1).

112. The CPPA, § 28-3904(d), makes it unlawful for any merchant to represent that goods or services are of a particular standard, quality, grade, style or model, if in fact they are another. The CPPA, § 28-3904(e), makes it unlawful for any merchant to misrepresent as to a material fact that has a tendency to mislead. The CPPA, § 28-3904(f), makes it unlawful for any merchant to fail to state a material fact if such failure tends to mislead.

113. Since its inception in 2009, GM violated § 28-3904 by representing that its vehicles were safe and adequately engineered when in fact GM failed to disclose and actively concealed an unprecedented number of safety defeats due in large part to Defendant's focus on cost-cutting over safety. Plaintiffs had no reason to believe that their vehicles possessed distinctive shortcomings; they relied on GM to identify latent features that distinguished Plaintiffs' and consumers' vehicles from similar vehicles without the safety related defects, and the Defendant's failure to do so tended to mislead consumers into believing the Plaintiffs' and consumers' vehicles.

114. Plaintiffs seek treble damages, or $1,500 per violation, whichever is greater, payable to the consumer, for each act in violation of the CPPA, an order enjoining GMs' unfair or deceptive acts, practices, and omissions, attorneys' fees, punitive damages, treble damages, and any other just and proper relief available under D.C. Code § 28-3905(k)(2), including preliminary and permanent injunctive relief aimed at providing protection for the People of the District of Columbia from Defendant's reckless endangerment of the public health and their wanton disregard for the law.

COUNT IV
Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses
(Civil Conspiracy, Joint Action and Aiding and Abetting)

115. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

116. This Count is brought on behalf of the nationwide Class and all Subclasses.

117. GM is liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with others, including but not limited to the dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this Complaint, to inflict those injuries and to conceal their actions from

Plaintiffs, Class and Subclass members and others. By these agreements, GM conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

118. GM committed overt acts in furtherance of the conspiracy.

119. GM knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

120. GM gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

121. The wrongful acts herein complained of harmed plaintiffs.

COUNT V
Asserted on behalf of Plaintiffs Ms. Bledsoe, Ms. Farmer, and Mr. Kanu
(Negligence under the common law of Georgia, Maryland, and the District)

122. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

123. GM had a duty to use reasonable care in the manufacture of vehicles for sale, and in warning Plaintiffs regarding the risks that use of their GM vehicles pose.

124. By failing properly to consider and address safety risks posed by the hazards described above, GM breached its duty to use reasonable care.

125. GM's breach of its duty to use reasonable care caused Ms. Farmer to have an accident on December 8, 2013, in which she suffered personal injury, property damage, and emotional distress.

126. GM's breach of its duty to use reasonable care caused Mr. Kanu to have an accident in October 2013, in which he suffered property damage.

127. GM's breach of its duty to use reasonable care caused Ms. Bledsoe to have two accidents, both in the state of Georgia. One accident occurred on February 1, 2008, in which

Ms. Bledsoe suffered personal injury, property damage, and emotional distress. The second occurred on May 17, 2009, in which Ms. Bledsoe again suffered personal injury, property damage, and emotional distress.

128. To the extent that any of the allegation of wrongdoing alleged in this count involve wrongdoing by Old GM, GM is responsible for that conduct because it is a successor in manufacturing to Old GM and liable for Old GM's wrongdoing.

TOLLING OF THE STATUTE OF LIMITATIONS

129. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

130. The causes of action alleged herein did not accrue until Plaintiffs discovered that their vehicles had the safety related defects described herein.

131. Plaintiffs had no reason to know that their products were defective and dangerous because of Defendants' active concealment.

REPRESENTATIVE ACTION

132. To remedy real and potential risks to public safety, the CPPA empowers the Plaintiffs to bring this civil action on behalf of themselves and the public against GM for its violation of District of Columbia consumer protection law. The relief Plaintiffs seek protects consumers and mitigates dangers posed by GM's reckless endangerment of the public safety. Plaintiffs bring this lawsuit as an action on their own behalves and as a representative action on behalf of the People of the District of Columbia exposed to life-threatening conditions made manifest by GM's concealment of the dangerousness of vehicles that carry a defective driver door switch.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

133. As of the date of the filing of this Complaint, GM concedes that it knew but did not disclose that some 20 million GM products have safety related risks that create an

unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

134. Despite purporting to come clean about its campaign of concealment and deceit in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. GM has recklessly endangered the public safety and the safety of Plaintiffs and class members. GM has not effectively remedied its policies and practices to ensure that this misconduct does not continue, and accordingly its business practices continue to threaten the public safety, warranting that this Court impose preliminary and permanent relief to ensure that all elements of the enterprise alleged in this Complaint are identified and eliminated.

PRAYER FOR RELIEF

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

A. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge and decree that Gm has recklessly endangered the public safety and order specific steps that GM must take to restore public safety, including but not limited to preliminary relief aimed at removing unreasonably dangerous GM vehicles from the public streets and thoroughfares forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related risks; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully

caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly admitted its years-long campaign of concealment and deceit, providing continuing judicial management over GM through the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its business of marketing to the public complex products that can so easily be a threat of death or serious bodily injury if not manufactured properly;

C. Declare, adjudge and decree the conduct of GM as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the dangers they pose;

D. Declare, adjudge and decree that GM is financially responsible for notifying all Class Members about the dangerous nature of the Class Vehicles;

E. Declare, adjudge and decree that GM must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members, all or part of the ill-gotten gains it received from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

F. Award Plaintiffs, Class Members, and Subclass Members the greater of actual compensatory damages or statutory damages as proven at trial;

G. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

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

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

JURY TRIAL DEMAND

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

Respectfully submitted

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Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:
GENERAL MOTORS LLC IGNITION SWITCH LITIGATION **14-MD-2543 (JMF)**

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ISHMAIL SESAY, and JOANNE YEARWOOD, **14-cv-06018**

for themselves, on behalf of all others similarly situated, **CLASS ACTION FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF**

Plaintiffs,

v.

GENERAL MOTORS LLC, DELPHI AUTOMOTIVE PLC, and DPH-DAS LLC f/k/a DELPHI AUTOMOTIVE SYSTEMS, LLC, **JURY TRIAL DEMANDED**

Defendants.

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FIRST AMENDED COMPLAINT

INTRODUCTORY STATEMENT

Plaintiffs ISHMAIL SESAY and JOANNE YEARWOOD bring this action for themselves, and on behalf of all persons similarly situated who own or lease or have owned or leased the substandard and dangerous vehicles identified below at any time since October 2009.

1. Ishmail Sesay lives with his wife in Maryland. The couple own a single car: a 2007 Chevrolet Impala, purchased from a friend on December 20, 2012. Mr. Sesay and his wife depend on the car to get to and from work, to run daily errands, and, most importantly, to provide a safe means of transportation for their one-year-old son.

2. Mr. Sesay has been alarmed that his car has been shutting off while he has been driving it. This has occurred at the rate of some three times per week for many months. These "moving stalls" are particularly dangerous because the Mr. Sesay loses control over power steering and brakes, and, because the electrical system is off, the airbags would not deploy in the event of a collision.

3. Mr. Sesay's 2007 Chevrolet Impala has a dangerous ignition switch that could, unexpectedly and without warning, shut down the car's engine and electrical systems while the car is in motion - rendering the power steering, anti-lock brakes and airbags inoperable. This and the related ignition switch hazards in GM vehicles have already helped kill or seriously injure hundreds of people across the United States. Rather than disclose the risk, GM employees, lawyers, and others concealed it.

4. General Motors LLC ("GM") knew but failed to disclose to him, governmental officials, or putative class members that Mr. Sesay's car was dangerous to operate, until it finally issued a recall for the car on June 23, 2014, NHTSA Campaign No. 14V355000.

5. On June 20, 2014 GM issued a Stop-Delivery Order to dealers in preparation for an upcoming safety recall. It instructed dealers to stop delivery in 2006-2014 Chevrolet Impala (Fleet Only) vehicles in new or used vehicle inventory. It described the problem: "The ignition switch on these vehicles may inadvertently move out of the "run" position if the key is carrying added weight and the vehicle goes off the road or experiences some other jarring event."

6. On the same date GM issued notice of its decision to conduct a safety recall to the NHTSA. However, GM failed to disclose the history of its awareness of the ignition key problem. Instead, GM simply described the potential for the ignition key to move away from the "run" position should it the vehicle go off-road or experience a "jarring" event. It warned that

should the key move away from the "run" position, "engine power, power steering and power breaking will be affected, increasing the risk of crash." More over, this could result in "airbags not deploying increasing the potential for occupant injury in certain kinds of crashes."

7. On June 24, 2014 the NHTSA acknowledged the recall in letter to the Director of Field Product Investigations and Evaluations at General Motors, which carried the subject "Ignition Switch may Turn Off."

8. The NHTSA described the problem as concerning the "electrical system: ignition." It described the problem: "This defect can affect the safe operation of the airbag system. Until this recall is performed, customers should remove all items from their key rings, leaving only the ignition key… In the affected vehicles, the weight on the key ring and/or road conditions or some other jarring event may cause the ignition switch to move out of the run position, turning off the engine."

9. In "consequence," according to the recall papers, "if the key is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury. Additionally, a key knocked out of the run position will cause loss of engine power, power steering, and power braking, increasing the risk of a vehicle crash.

10. The "Remedy" in the recall provides: "GM will notify owners, and dealers will install two 13mm key rings and key insert into the vehicle's ignition keys, free of charge. The manufacturer has not yet provided a notification schedule."

11. On June 25, 2014 GM issued a notice to GM dealers explaining vehicles involved in three upcoming safety recalls. It listed the following: Recall 14172 – Ignition Switch recall for 2003 – 2014 Cadillac CTS and 2004 -2006 Cadillac SRX, Recall 14299- Ignition Switch for,

among other vehicles, the 2014 Chevrolet Impala Limited (Fleet Only), and Recall 14250-Ignition Key for, among other vehicles, the 2005 – 2006 Chevrolet Impala.

12. On July 2, 2014, in a letter meant to supersede its previous correspondence, GM notified the NHTSA that it had possession of information regarding the ignition key problem since its inception on July 10, 2009, that consisted of a reliable report that "the vehicle stalled after hitting a large bump when going from gravel road to pavement while driving at about 45 mph." Since October 2009, GM did not take appropriate measures to investigate the serious risk the information it possessed suggested, particularly when considered with other information GM possessed regarding ignition switch related risks.

13. In the same July 2 letter, GM claimed that during a document review related to a Cobalt ignition switch problem in 2014, it discovered information in its possession that led it to the recall for Mr. Sesay's 2007 Impala and other vehicles with the same hazard. GM revealed that the issue was brought to the Product Investigation group on April 30, 2014. Between May 1, 2014 and June 6, 2014 "the investigator worked with GM subject matter experts to gather and analyze data relating to the ignition switch used on the 2006 Impala." GM reported that "although ignition switches themselves performed below the target specification, the ignition switch system as a whole as installed in the vehicles' steering columns performed approximately at the target specification." GM also reviewed its databases including its TREAD, warranty, customer satisfaction, and Engineering Analysis database, and NHTSA's Vehicle Owner's Questionnaire database; after which the investigator made a presentation regarding the ignition switch at an Open Investigation review meeting.

14. In the same July 2nd letter, GM then revealed that only after the presentation and meeting did do road testing of the Impala using the ignition switches under review. These tests

revealed that: “when a slotted key is carrying added weight, the torque performance of the ignition system may be insufficient to resist energy generated when a vehicle goes off road or experiences some other jarring event, potentially resulting in the unintentional movement of the key away from the ‘run’ position.” After review of GM and NHTSA data the investigator presented to the SFADA. The SFAHA then “directed the investigator to work with other GM personnel to further refine the potential recall population so that it accurately included the vehicles using the identified ignition switches that were subject to the condition identified in the road tests. On July 15, 2014 the SFASA decided to conduct a recall of that population.

15. Finally, on June 14, 2014 GM announced its safety recall. GM issued a 572 letter for the NHTSA on June 20, referenced above.

16. On April 13, 2010, Joanne Yearwood purchased a new 2010 Chevrolet Cobalt from a dealership. Unbeknownst to her, the car contained an “ignition switch defect” that GM knew about but failed to disclose to her, governmental authorities, or putative class members until it began confessing its wrongdoing by bits and pieces since February 2014, issuing an ever expanding series of recalls related to the defective ignition switch like the one that appears to be in Ms. Yearwood’s 2010 Cobalt amd Mr. Sesay’s 2007 Impala.

17. GM has recently begun to distinguish between ignition switch defects, such as the one in Mr. Sesay’s car, that purportedly can be remedied with a replacement of keys, from ignition switch defects, such as the one in Ms. Yearwood’s car, that require replacement of the entire ignition switch cylinder. Plaintiffs do not concede by their description of GM’s recall that they agree that such a distinction exists. Plaintiffs believe that the claims that ignition switch issues can be remedied by mere key replacement amy be another attmpt by GM to seek a cheap but ineffective response to the hazards in GM vehicles.

18. GM has issued and failed to close three separate recalls on Ms. Yearwood's 2010 Chevrolet Cobalt. It failed to issue a recall for her car when it first confessed that it had known about the ignition switch defect in other vehicles in February 2014.

19. On April 2, 2014, as part of its expansion of its initial ignition switch recall, NHTSA Recall Campaign 14V04700, GM issued a recall for Ms. Yearwood's car, claiming that defective ignition switches "may have been used as service replacement parts on [her] vehicle," and as a result General Motors is recalling certain model year 2008-2010 Chevrolet Cobalt.

20. On April 10, 2014, however, GM then issued an additional recall for Ms. Yearwood's 2010 Cobalt (and over two million other vehicles), NHTSA Recall Campaign 14V17100, stating that the key could be removed from the ignition while the car remained on and that a new ignition cylinder would be necessary unless the vehicle already had a redesigned part, in which case only new keys would be made.

21. On March 31, 2014, GM recalled Ms. Yearwood's 2010 Chevrolet Cobalt because "the affected vehicles, there may be a sudden loss of electric power steering (EPS) assist that could occur at any time while driving." NHTSA Recall Campaign 14V15300. GM submitted papers in connection with the recall that detail its knowledge of this hazard from its first day of existence on July 10, 2009.

22. In this Season of Shame, GM has publicly admitted, in many cases after years of knowingly false denials and active concealment by its engineers, lawyers, and other employees, that some 28 million GM vehicles are so dangerous that they must be recalled, and that it has, for every single day of its existence as a new entity that came into existence on July 10, 2009, systematically failed to disclose—and its employees and attorneys in fact actively concealed--the

dangers that use of millions of GM vehicles entails to their drivers, passengers, and anyone unlucky enough to be in the vicinity when these risk manifest.

23. The begrudging admissions began in February 2014, when GM admitted that it had concealed an ignition switch hazard in some 1.6 million vehicles. The danger it concealed was that car could turn off without warning, rendering the brakes and steering and airbags inoperable. GM admits that the ignition switch hazard has killed or seriously injured hundreds while GM knew but failed to disclose its danger. Since purporting to come clean about its wrongdoing, and after promising to transform a culture that let greed trump the dictates of responsible corporate conduct, GM has been forced to admit that its wrongdoing was far more widespread than it initially confessed. The recall number for 2014 is now 28 million vehicles and counting, a boggling tally of corporate irresponsibility, and a frighteningly sharp reflection of how widespread GM's reckless endangerment of the public safety has been. Now, beyond the some 16 million or so ignition-related recalls GM has begrudgingly finally issued since February 2014, GM has issued recalls for a range of other safety related defects described below.

24. The National Highway Traffic Safety Administration (NHTSA) fined GM $28,000,000, the maximum permissible under applicable law, for GM's failure to disclose risks related to the ignition switches in Plaintiffs' and class members' cars.

25. For nearly five years after its inception, GM failed to disclose to, and actively concealed from, Plaintiffs, class members, investors, litigants, courts, law enforcement and other government officials including the NHTSA, the risks of death, personal injury, and property damage posed by its products. Instead, conspiring with Delphi, GM's dealers nationwide, outside lawyers, and various others, GM engaged in, and may still be engaging in, an extensive, aggressive and complex campaign to conceal and minimalize the safety-related risks that exist in

Plaintiffs' and class members' vehicles. That campaign is designed to mislead Plaintiffs, class members, consumers, investors, courts, law enforcement officials, and other governmental officials, including the NHTSA, that the value of the company and the worth and safety of its products are greater than they are. With those same co-conspirators, GM directed an unlawful and continuing enterprise calculated to gain an unfair advantage over competitor automakers conducting their businesses within the bounds of the law. GM's corporate culture has engulfed GM's cost-containment approach to risk issues presented by GM vehicles: deny any hazard exists; if forced to concede the hazard, minimize its significance; and if nevertheless forced to act, insist on cheap rather than appropriate remediation

26. Defendants first deployed their campaign of deception on the day that GM began operating. The scheme continued at least until its exposure began in early 2014. Through their deception, Defendants recklessly endangered the safety of Plaintiffs, their families, and members of the public. Defendants' wrongful acts and omissions harmed Plaintiffs and class members by exposing them to increased risk of death or serious bodily injury, by depriving them of the full use and enjoyment of their vehicles, and by causing a substantial diminution in the value of the vehicles to Plaintiffs and class members, and a substantial diminution in value of their vehicles on the open automobile market.

27. The ("NHTSA") has failed to carry out its statutory mandate to act for the public safety. Its failure to properly regulate GM's conduct with respect to the safety risks its vehicles pose provide reasonable grounds to doubt that the agency can be relied on to act to protect the public safety.

28. As of the date of the filing of this Complaint, the United States Department of Justice has opened, and is pursuing, a criminal investigation into GM's campaign of deceit.

29. GM's Chief Executive Officer Mary Barra admitted on behalf of the company that GM employees knew about safety-related risks in millions of vehicles, including Mr. Sesay's 2007 Impala and Ms. Yearwood's 2010 Cobalt, and that GM did not disclose those risks as it was required to do by law. Ms. Barra attributed GM's "failure to disclose critical pieces of information," in her words, to GM's policies and practices that mandated and rewarded the unreasonable elevation of cost concerns over safety risks.

30. In executing their scheme to conceal the dangerous character of Plaintiffs' vehicles, Defendants violated a multitude of laws:

a) In furtherance of their common design to prevent Plaintiffs, class members, other consumers, law enforcement and other governmental officials, litigants, courts, and investors from learning of the safety risks in GM cars, GM, Delphi, and GM's dealers conducted a racketeering enterprise and engaged in a pattern of racketeering activities, including repeated and continuous acts of mail and wire fraud, television and radio fraud, and tampering with witnesses and victims in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, causing the harm to Plaintiffs and class members described above.

b) By concealing the material fact of the dangerousness of the Plaintiffs' and class members' vehicles, by failing properly to repair the safety risks in the cars in a timely manner, and by engaging in other unconscionable and/or unlawful behavior, GM and Delphi violated the Maryland Consumer Protection Act,. Md. Code, Com. Law § 13-408 *et seq.*, causing the harm described above to Plaintiffs and class members.

c) GM and Delphi also violated their duties to warn Plaintiffs and class members about the dangers that their vehicles posed, resulting in economic loss and increased risk of personal injury for which Defendants are liable to Plaintiffs and Class members under the law of negligence common to the District of Columbia and the States of Maryland, California, Florida, Ohio, and New Jersey.

d) Because they intentionally concealed a material fact from Plaintiffs and Class members, Defendants are liable to Plaintiffs for the harm Plaintiffs and class members have suffered and for punitive damages under the law of fraud common to the several States.

e) By civilly conspiring to conceal the safety-related risks of GM vehicles, both among themselves and among nonparties to this litigation, and because they acted jointly to harm Plaintiffs and class members, Defendants are jointly and severally liable for all harm they or any co-conspirator caused.

f) Defendants aided and abetted the conduct of each other and of nonparties in concealing the safety-related risks of GM vehicles.

PARTIES

31. Plaintiffs Ishmail Sesay and Joanne Yearwood are both citizens and residents of Maryland.

32. Mr. Sesay owns a 2007 Chevrolet Impala he purchased second-hand in December 2010. Although Mr. Sesay is the primary driver of the vehicle, his wife depends upon the car for transportation to and from work, and the couple rely on the car to transport their one-year-old son..

33. Ms. Yearwood owns a 2010 Chevrolet Cobalt purchased on April 13, 2010.

34. General Motors LLC is a limited liability corporation. On July 10, 2009, it began conducting the business of designing, manufacturing, constructing, assembling, marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the vehicles of class members, and other motor vehicles and motor vehicle components throughout the United States. Plaintiffs' claims and allegations against GM refer solely to this entity. In this First Amended Complaint, Plaintiffs are not making any claim against General Motors Corporation ("Defunct GM") whatsoever, and Plaintiffs are not making any claim against GM based on its having purchased assets from Defunct GM or based on its having continued the business or succeeded Defunct GM. Plaintiffs disavow any claim based on the design or sale of vehicles by defunct GM, or based on any retained liability of Defunct GM. Plaintiffs seek relief from GM solely for claims that have arisen after October 19, 2009, and solely based on actions and omissions of GM, the Non-Debtor entity that began operations on July 10, 2009.

35. Delphi Automotive PLC is headquartered in Gillingham, Kent, United Kingdom, and is the parent company of Delphi Automotive Systems LLC, headquartered in Troy, Michigan. At all times relevant herein, Delphi, through its various entities, designed, manufactured, and supplied GM with motor vehicle components, including the dangerous ignition switches contained in the Cobalts owned by Plaintiffs, and millions of other vehicles.

36. GM and Delphi are collectively referred to in this Complaint as "Defendants."

JURISDICTION AND VENUE

37. Jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331, because the claims under the Racketeer Influenced and Corrupt Organizations Act present a federal question. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiff Class are citizens of states different from

Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

38. Venue is proper in this Court pursuant to 28 U.S.C. § 1404, by the consent of both parties.

FACTUAL BACKGROUND

GM's Commitment to Cost-cutting Over Safety

39. GM has publicly admitted that the ignition switches in Plaintiffs' and class members' cars are dangerous and pose a safety hazard. It has also admitted that, from its inception in 2009, various GM engineers, attorneys, and management officials knew of, and took measures to conceal, the ignition switch risk and/or diminish its significance. GM has been found guilty of failing to disclose the risk to Plaintiffs, class members, and governmental officials as required by law, and the NHTSA has fined GM the maximum penalty that agency is authorized to impose.

40. Under the Transportation Recall Enhancement, Accountability and Documentation Act ("TREAD Act"), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer learns that a vehicle contains a safety risk, the manufacturer must disclose the risk to appropriate government officials and registered owners of the vehicle in question.

41. Upon its inception, GM maintained policies and practices intended to conceal safety related risks in GM products from Plaintiffs, class members, investors, litigants, courts, law enforcement officials, the NHTSA, and other governmental officials. In furtherance of its illegal scheme, GM trained and directed its employees and dealers to take various measures to avoid exposure of safety related product risks:

a) GM mandated that its personnel avoid exposing GM to the risk of having to recall vehicles with safety-related risks by limiting the action that GM would take with respect to such risks to the issuance of a Technical Service Bulletin or an Information Service Bulletin.

b) GM directed its engineers and other employees to falsely characterize safety-related risks – including the risks described in this complaint – in their reports, business and technical records as "customer convenience" issues, to avoid being forced to recall vehicles as the relevant law requires.

c) GM trained its engineers and other employees in the use of euphemisms to avoid disclosure to the NHTSA and others of the safety risks posed by risks in GM products.

d) GM directed its employees to avoid the word "stall" in describing vehicles experiencing a moving stall, because it was a "hot word" that could alert the NHTSA and others to safety risks associated with GM products, and force GM to incur the costs of a recall.

i. A "moving stall" is a particularly dangerous condition because the driver of a moving vehicle in such circumstances no longer has control over key components of steering and/or braking, and air bags will not deploy in any, increasingly likely, serious accident.

e) GM directed its engineering and other personnel to avoid the word "problem," and instead use a substitute terms, such as "issue," "concern," or "matter," with the intent of deceiving plaintiffs and the public.

f) GM instructed its engineers and other employees not to use the term "safety" and refer instead to "potential safety implications."

g) GM instructed its engineers and other employees to avoid the term "defect" and substitute the phrase "does not perform to design."

h) GM instituted and/or continued managerial practices designed to ensure that its employees and officials would not investigate or respond to safety-related risks, and thereby avoid creating a record that could be detected by governmental officials, litigants or the public. In a practice GM management labeled "the GM nod," GM managers were trained to feign engagement in safety related product risks issues in meetings by nodding in response to suggestions about steps that they company should take. Protocol dictated that, upon leaving the meeting room, the managers would not respond to or follow up on the safety issues raised therein.

i) GM's lawyers discouraged note-taking at critical product safety meetings to avoid creation of a written record and thus avoid outside detection of safety-related risks and GM's refusal to respond to and/or GM's continuing concealment of those risks. GM employees understood that no notes should be taken during meetings about safety related issues, and existing employees instructed new employees in this policy. GM did not describe the "no-notes policy" in writing to evade detection of their campaign of concealment.

j) GM would change part design without a corresponding change in part number, in an attempt to conceal the fact that the original part design was risk. GM concealed the fact that it manufactured cars with intentionally mislabeled part numbers, making the parts difficult for GM, Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials to identify. GM knew from its inception that the part

number irregularity was intended to conceal the faulty ignition switches in Plaintiffs' and class members' vehicles.

42. GM followed a practice and policy of intentionally mischaracterizing safety issues as "customer convenience" issues to avoid recall costs, and it enlisted its dealership network in its campaign of concealment by minimizing the safety aspects of the "technical service bulletins" and "information service bulletins" it sent to dealers. GM directed dealers to misrepresent the safety risks associated with the product risks of its vehicles. GM followed this practice with respect to the dangerous ignition switches from its inception in October 2009 until its campaign of concealment of the ignition switch risk began to unravel in February 2014.

43. GM followed a practice or policy of minimizing and mischaracterizing safety related risks in its cars in its communications with Plaintiffs, class members, law enforcement officials, the NHTSA, and other governmental officials

44. Upon the inception of GM in October 2009, GM and Delphi agreed to conceal safety related risks from Plaintiffs, class members, law enforcement officials, other governmental officials, litigants, courts, and investors. Both GM and Delphi knew since October 2009 that the design of the faulty ignition switch in Plaintiffs and class members' cars had been altered without a corresponding change in part number, in gross violation of normal engineering practices and standards. Part labeling fraud is particularly dangerous in vehicle parts potentially related to safety because it makes tracing and identifying faulty parts very difficult, and will delay the detection of critical safety risks.

45. Since GM's inception in October 2009, both GM and Delphi have known that the faulty ignition switch in the Plaintiffs' Impala and Cobalt and class members' vehicles posed a serious safety and public health hazard because the faulty ignition switch caused moving stalls.

Each Defendant had legal duties to disclose the safety related risks. Rather than notifying the NHTSA, Defendants instead decided that Plaintiffs and class members, and millions of drivers and pedestrians should face imminent risk of injury and death due to the dangerous ignition switches in Plaintiffs' and class members' vehicles. Delphi and GM entered into an agreement to conceal the alteration of the part without simultaneously changing the part number, and concealed the risks associated with the dangerous ignition switches.

46. In 2012, more GM employees learned that the ignition switches in vehicles from model years 2003, 2004, 2005, 2006, and 2007 exhibited torque performance below the specifications originally established by GM. Rather than notify Plaintiffs, class members, or the NHTSA, GM continued to conceal the nature of the risk.

47. In April 2013, GM hired an outside engineering-consulting firm to investigate the ignition switch system. The resulting report concluded that the ignition switches in early model Cobalt and Ion vehicles did not meet GM's torque specification. Rather than notify Plaintiffs, class members, or the NHTSA, GM still continued to conceal the nature of the Ignition Switch Risk until 2014.

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

49. GM explicitly directed its lawyers and any outside counsel it engaged to act to avoid disclosure of safety related risks – including the ignition switch risk – in GM products. These actions included settling cases raising safety issues, demanding that GM's victims agree to keep their settlements secret, threatening and intimidating potential litigants into not bringing litigation against GM by falsely claiming such suits are barred by Order of the Bankruptcy Court,

and settling cases for amounts of money that did not require GM managerial approval, so management officials could maintain their veneer of ignorance concerning the safety related risks. In one case, GM threatened the family of an accident victim with liability for GM's legal fees if the family did not withdraw its lawsuit, misrepresenting to the family that their lawsuit was barred by Order of GM's Bankruptcy Court. In another case, GM communicated by means of mail and wire to the family of the victim of a fatal accident caused by the faulty ignition switch that their claim has no basis, even though GM knew that its communication was false and designed to further GM's campaign of concealment and deceit. In other cases, GM falsely claimed that accidents or injuries were due to the driver when it knew the accidents were likely caused by the dangerous product risks GM concealed.

50. GM led the world and U.S. customers to believe that after bankruptcy it was a new company. GM repeatedly proclaimed that it was a company committed to innovation, safety, and maintaining a strong brand.

51. GM was successful. Sales of all of its models went up and GM became profitable. Seemingly, a GM was born and the GM brand once again stood strong in the eyes of consumers.

52. GM's image was an illusion. This case arises from GM's concerted and systematic practice and policy of denying, diminishing, and failing to remediate safety related hazards that GM vehicles pose. GM has now begun to admit to the egregious failure to disclose, and the affirmative concealment of, at least 35 separate known defects in GM-brand vehicles. By concealing the existence of the many known defects plaguing many models and years of GM-branded vehicles and the fact that GM values cost-cutting over safety, and concurrently marketing the GM brand as "safe" and "reliable," and claiming that it built the "world's best

vehicles," GM has caused the Plaintiffs' vehicles to diminish in value as the truth about the GM brand emerged, and a stigma has attached to all GM-branded vehicles.

53. A vehicle made by a reputable manufacturer of safe and reliable products is worth more than an otherwise similar vehicle made by a disreputable manager that is known to devalue safety and conceal defects from consumers and regulators. GM Vehicle Safety Chief, Jeff Boyer, recently stated that: "Nothing is more important than the safety of our customers in the vehicles they drive." Yet GM failed to live up to this commitment, instead choosing to conceal at least 35 serious defects in over 17 million GM branded vehicles sold in the United States. GM's concealment of those defects, and its seemingly never-ending series of recalls so far this year, evidence the degree of misconduct that passed, and may continue to pass, for standard procedure at the company.

54. The systematic concealment of known defects was deliberate, as GM followed a consistent pattern of endless "investigation" and delay each time it became aware of a given defect. Recently revealed documents show that GM valued cost-cutting over safety, trained its personnel to never use the word "defect" or other words suggesting that GM-branded vehicles are defective, routinely chose the cheapest part supplier without regard to safety, and discouraged employees from acting to address safety issues.

55. GM has recently been forced to disclose that it had been concealing a staggering and unprecedented number of known safety defects in GM-branded vehicles ever since its inception in 2009, and that other defects arose on its watch apparently due in large measure to GM's focus on cost-cutting over safety. It was further forced to disclose its discouragement of raising safety issues and its training of employees to avoid using language such as "defect" or "safety issue" in order to avoid attracting the attention of regulators.

56. The array of defects is astounding and includes: (1) ignition switch defect, (2) power steering defect, (3) airbag defect (4) brake light defect, (5) shift cable defect, (6) safety belt defect, (7) ignition lock cylinder defect, (8) key design defect, (9) ignition key defect, (10) transmission oil cooler line defect, (11) power management mode software defect, (12) substandard front passenger airbags, (13) light control module defect, (14) front axle shaft defect, (15) brake boost defect, (16) low-beam headlight defect, (17) vacuum line brake booster defect, (18) fuel gauge defect, (19) acceleration defect, (20) flexible flat cable airbag defect, (21) windshield wiper defect, (22) brake rotor defect, (23) passenger-side airbag defect, (24) electronic stability control defect, (25) steering tie-rod defect, (26) automatic transmission shift cable adjuster, (27) fuse block defect, (28) diesel transfer pump defect, (29) base radio defect, (30) shorting bar defect, (31) front passenger airbag end cap defect, (32) sensing and diagnostic module ("SDM") defect, (33) sonic turbine shaft, (34) electrical system defect, and (35) seatbelt tensioning system defect.

57. GM has received reports of crashes and injuries that put GM on notice of the serious safety issues presented by many of these defects. GM was aware of the defects from the very date of its inception on July 10, 2009.

58. Despite the dangerous nature of many of the defects and their effects on critical safety systems, GM concealed the existence of the defects and failed to remedy the problems in an appropriate or timely manner.

TOLLING OF THE STATUTE OF LIMITATIONS

37. Any applicable statute of limitation has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

38. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the safety related risks described herein.

39. Plaintiffs and Class Members had no reason to know that their products were dangerous because of Defendants' active concealment.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this lawsuit as a class action on their own behalves and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. All proposed Class and Subclass periods run from the inception of GM in October 2009 and continue until judgment or settlement of this case.

41. Plaintiffs bring this action on behalf of a proposed nationwide class defined as follows: All persons in the United States who, since the inception of GM in October 2009, hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering hazard. As of the time of the filing of this First Amended Complaint, Plaintiffs are aware that the following GM models contain dangerous ignition switches, ignition related safety hazards or steering hazards:

- 2005-2011 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2006-2010 Pontiac Solstice
- 2007-2010 Pontiac G5
- 2005-2006 Pontiac Pursuit

- 2003-2007 Saturn Ion
- 2007-2010 Saturn Sky
- 2005-2009 Buick Lacrosse
- 2006-2011 Buick Lucerne
- 2004-2005 Buick Regal LS & GS
- 2006-2014 Chevrolet Impala
- 2006-2008 Chevrolet Monte Carlo
- 2000-2005 Cadillac Deville
- 2004-2011 Cadillac DTS
- 2004-2006; 2008-2009 Chevrolet Malibu (steering)
- 2004-2—6 Malubu Marx (steering)
- 2009-2010 HHR (non-turbo) (steering)
- 2010 Chevrolet Cobalt (steering and ignition switch and key hazards)
- 2008-2009 Saturn Aura
- 2004-2007 Saturn Ion (steering and ignition switch)
- 2005-2009 Pontiac G6 (steering)

42. Plaintiffs also bring this action on behalf of the following Subclasses:

a. Mr. Sesay and Ms. Yearwood bring this action on behalf of all persons in the State of Maryland who, since October 2009, purchased or hold or have held a

legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering related hazard (the "Maryland Subclass");

b. Plaintiffs also bring this action on behalf of residents of the District of Columbia and the States of California, Florida, Maryland, New Jersey and Ohio who, since October 2009, hold or have held a legal or equitable interest in a GM vehicle with a dangerous ignition switch or steering related hazard(the "Multi-State Negligence Subclass").

43. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein.

NUMEROSITY AND ASCERTAINABILITY

44. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder for each Class or Subclass is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in GM's possession, custody, or control, and/or from public vehicular registration records.

TYPICALITY

45. The claims of the Plaintiffs are typical of the claims of each member of the class and subclasses in that the representative Plaintiffs, like all class members, legally or equitably own or owned a GM vehicle during the Class Period that contained a dangerous ignition switch

manufactured by Delphi. Plaintiffs, like all class and subclass members, have been damaged by Defendants' misconduct, namely, in being wrongfully exposed to an increased risk of death or serious bodily injury, in suffering diminished use and enjoyment of their vehicles, and in suffering the diminished market value of their vehicles. Furthermore, the factual bases of Defendants' misconduct are common to all class and subclass members.

ADEQUATE REPRESENTATION

46. Plaintiffs will fairly and adequately represent and protect the interests of the class and subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions and in prosecuting complex federal litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class and subclasses, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the class of subclasses.

PREDOMINANCE OF COMMON ISSUES

47. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. Whether the vehicles owned by class or subclass members during the class periods suffer from the dangerous ignition switch or steering related hazard described herein?

b. Whether the dangerous ignition switch or steering related hazard posed an unreasonable danger of death or serious bodily injury?

c. Whether GM and/or Delphi imposed an increased risk of death or serious bodily injury on Plaintiffs and class and subclass members during the Class period?

d. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer economic loss during the Class period?

e. Whether GM and/or Delphi caused Plaintiffs and class and subclass members to suffer the loss of the use and enjoyment of their vehicles during the class period?

f. Whether GM and Delphi had a legal duty to disclose the ignition switch danger to class and subclass members?

g. Whether GM and/or Delphi had a legal duty to disclose the ignition switch danger to the NHTSA?

h. Whether either GM and/or Delphi breached duties to disclose the ignition switch risk?

i. Whether class and subclass members suffered legally compensable harm?

j. Whether Defendants violated Maryland's consumer protection statute by concealing the ignition switch and/or steering related hazards from Plaintiffs and governmental officials?

k. Whether the fact that the ignition switch and/or steering related hazard was dangerous was a material fact?

l. Whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction?

m. Whether GM should be declared responsible for notifying all Class Members of the risk and ensuring that all GM vehicles with the ignition switch and/or steering related hazards are recalled and repaired?

n. Whether a mandatory injunction should issue to direct GM to protect the public safety in the interim until is repairs the vehicles described herein, to remove the dangerous vehicles from the roadwats and to provide their owners with suitable substitute transportation?

o. Whether Defendants conducted a criminal enterprise in violation of RICO?

p. Whether Defendants engaged in a pattern or practice of racketeering?

q. Whether Defendants committed mail or wire fraud in connection with their concealment of the dangerous ignition switch.

r. Whether class members were harmed by Defendants' violations of RICO?

s. Whether class and subclass members are entitled to recover punitive damages from Defendants, and, if so, what amount would be sufficient to deter Defendants from engaging in such conduct in the future and to punish Defendants for their recklessness regarding the public health and safety and their campaign of concealment?

SUPERIORITY

48. Plaintiffs and class and subclass members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most class and subclass members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual class and subclass member's claims, it is likely that few could afford to seek legal redress for Defendants' misconduct. Absent a class action, class and subclass members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also

be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication. The class action is also superior for defendants, who could be forced to litigate thousands of separate actions.

49. Defendants have acted in a uniform manner with respect to the Plaintiffs and class and subclass members. Class and subclass wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class and subclass members to protect their interests. Class and subclass wide relief assures fair, consistent, and equitable treatment and protection of all class and subclass members.

CAUSES OF ACTION

COUNT I
VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. § 1962(c) and (d))

50. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

51. This claim is brought by all Plaintiffs on behalf of the nationwide Class.

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

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

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

55. At all times relevant, GM and Delphi are and were each a "person" who participated in or conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described below. While GM and Delphi each participated in the RICO Enterprise, they each exist separately and distinctly from the Enterprise. Further, the RICO Enterprise is separate and distinct from the pattern of racketeering activity in which GM and Delphi have engaged and are engaging.

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

The RICO Enterprise

57. Defendants participated in the operation and management of an association-in-fact enterprise whose aim was to conceal safety related risks in Delphi products installed in GM vehicles from Plaintiffs, class members, the NHTSA, litigants, courts, law enforcement officials, consumers, and investors. The Enterprise was motivated by the common design of concealing the true value of the defendant companies and their products, and it constituted an unlawful, continuing enterprise calculated to gain an unfair advantage over competitor automakers who conduct their business within the bounds of the law. The Enterprise was partly embodied in practices and procedures intended to mischaracterize safety related risks – such as the ignition switch – as "customer convenience issues" to avoid incurring the costs of a recall.

58. The RICO Enterprise began with the inception of GM, on October 19, 2009. The following persons, and others presently unknown, have been members of and constitute the association-in-fact enterprise with the following roles:

a) GM, which mandated its employees take the various measures, described above at paragraph 26, to conceal safety related risks, including the ignition switch risks.

b) GM's engineers (including but not limited to Ray DeGiorgio, Gary Altman, a program engineering manager, Michael Robinson, vice president for environmental sustainability and regulatory affairs, Gay Kent, general director of product investigations and safety regulations) who have carried out GM's directives since the inception of GM in October 2009 by minimizing and misrepresenting the safety aspects of the ignition switch risk – enabling GM to avoid its legal obligations to recall vehicles with safety related risks. GM's engineers (including but not limited to Mr. DeGiorgio, Mr. Altman, Mr. Robinson and Ms. Kent) have also concealed the part-number-labeling fraud of which they have known since GM's inception in October 2009.

c) GM's in-house lawyers (including but not limited to Jaclyn Palmer, Ron Porter, William Kemp, Lawrence Buonomo, and Jennifer Sevigny), who knowingly assisted GM in evading its legal responsibilities by taking measures allowing GM management to claim ignorance about the increasing number of accidents and personal injuries that the ignition switches were causing throughout the Class period. GM's in-house lawyers, as described in Paragraph 36, also took measures to ensure that lawsuits filed by victims of the ignition switch risk and their surviving families were settled confidentially – preventing them from revealing the risk to other Plaintiffs, class members, law

enforcement officials, or other government authorities, including the NHTSA – for amounts below the threshold that would trigger closer scrutiny within GM.

d) GM's outside lawyers, retained to defend the Company against lawsuits filed by victims with injuries allegedly caused by the ignition switch risk, who were directed to play, and played, the same roles as those of in-house counsel described above – taking analagous measures to help GM conceal the ignition switch risk.

e) Delphi, who, since the inception of the GM in October 2009, has participated in the Enterprise to conceal the dangerous ignition switch system and its knowledge that ignition switch part numbers on vehicles driven by class members during the class period were misleading or fraudulent and would hinder any attempt to investigate or learn about the ignition switch risk.

f) GM's Dealers, whom GM instructed, explicitly or implicitly, to present false and misleading information regarding the ignition switch risks to Plaintiffs and Class members, through, *inter alia*, Technical Service Bulletins and Information Service Bulletins, and who did, in fact, present such false and misleading information to Plaintiffs and Class members during the Class period.

58. GM and Delphi conducted and participated in the affairs of this RICO Enterprise through a continuous pattern of racketeering activity that began with the inception of the GM in October 2009, and that consisted of numerous and repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and 18 U.S.C. § 1512 (tampering with witnesses and victims).

Predicate Acts of Wire and Mail Fraud

59. Since its inception in October 2009 and in furtherance of its scheme to defraud, GM, its engineers and its lawyers communicated with Delphi on a regular basis via the mail and/or wires regarding the dangerous ignition switch. Through those communications, GM instructed Delphi to continue concealing the ignition switch risk and to continue to produce ignition mislabeled or fraudulently labeled switches to help GM evade detection of GM's unlawful failure to recall vehicles with dangerous ignition switches by the NHTSA or other law enforcement officials. GM's and Delphi's communications constitute repeated violations of 18 U.S.C. §§ 1341 and 1343.

60. Since GM's inception in October 2009, in furtherance of its scheme to defraud, GM's lawyers communicated with those claiming injuries caused by the ignition switch risks on a regular basis via the mail and/or wires. Upon information and belief, GM's lawyers utilized the mail and wires to insist that litigants agree to confidentiality agreements forbidding disclosure that the ignition switch risks caused their injuries, and to communicate with supervisors and each other about ensuring that the cases settled below the threshold that would trigger scrutiny that might endanger Defendants' concealment of the ignition switch risks.

61. Since its inception in October 2009, GM has routinely used the wires and mail to disseminate false and fraudulent advertising about Plaintiffs' and Class members' vehicles, misrepresenting the vehicles as safe and dependable and failing to disclose the ignition switch risks in its advertising.

Predicate Acts of Tampering With Witnesses and Victims

62. GM engaged in an ongoing scheme to tamper with witnesses and victims as described in 18 U.S.C. § 1512(b) by using misleading conduct to influence, delay and prevent the testimony of victims in official proceedings and by entering into a campaign of intimidation

and false statements to discourage victims from pursuing their claims against GM, as described elsewhere in the complaint. GM also corruptly encouraged its employees and engaged in misleading conduct to prevent said employees from reporting safety risks and therefore delay or prevent their testimony about said risks. GM accomplished this by, inter alia, punishing employees who raised red flags about safety risks, thus intentionally intimidating and threatening employees who otherwise could have raised red flags.

63. Defendants' conduct in furtherance of this scheme to conceal and/or minimize the significance of the ignition switch risk was intentional. Plaintiff, Class and Subclass members were harmed in that they were forced to endure increased risk of death or serious bodily injury, they lost use and enjoyment of their vehicles, and their vehicles' values have diminished because of Defendants' participation in conducting the RICO Enterprise. The predicate acts committed in furtherance of the enterprise each had a significant impact on interstate commerce.

COUNT II
Asserted on Behalf of Plaintiffs and the Nationwide Class
(Common Law Fraud)

64. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs of this Complaint.

65. At the time of GM's inception in 2009, Defendants knew that the ignition switch used or which would be placed in the Plaintiffs' and class members' vehicles could inadvertently move from "run" to "accessory" or "off," under regular driving conditions. This fact was material to Plaintiffs and class members. GM also knew about the steering hazards described herein.

66. Between October 2009 and February 2014, Defendants actively and intentionally concealed and/or suppressed the existence and true nature of the ignition switch and steering

related hazards, and minimized the extent of the danger they posed in direct and indirect communications with Plaintiffs, class and subclass members, dealers, the NHTSA, and others.

67. Plaintiffs and class members reasonably relied on GM's communications and material omissions to their detriment. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain injuries, consisting of the diminished value of their GM vehicles and the lost use and enjoyment of the vehicles that Defendants actions have caused, and exposure to increased risk of death or serious bodily injury.

68. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and with reckless disregard to Plaintiffs' and Class Members' rights and well-being, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III
Asserted on Behalf of Plaintiffs and on Behalf of the Multi-State Negligence Subclass (Negligent Infliction of Economic Loss and Increased Risk under the Common Law of the District of Columbia and Florida, Maryland, New Jersey, and Ohio)

69. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

70. This claim is brought on behalf of Plaintiffs and the District of Columbia, Florida, Maryland, New Jersey and Ohio Classes.

71. Because the dangerous ignition switch and steering related hazards created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the risk as soon as soon as they learned of the problem – upon the inception of GM in October 2009.

72. Rather than alerting vehicle owners to the danger, Defendants actively concealed and suppressed knowledge of the problem.

73. Defendants created an unreasonable risk of death or serious bodily injury to Plaintiffs and Subclass members. Plaintiffs and Subclass members were particularly identifiable and foreseeable victims of Defendants' negligence, and their injuries in terms of the diminution in the value of their vehicles and the loss of use and enjoyment of the vehicles was particularly foreseeable.

74. Defendants created an unreasonable risk of death or serious bodily injury through a pattern and practice of negligent hiring and training of its employees, and by creating and allowing to continue a culture at GM which encouraged the minimizing and hiding of safety risks from the public. GM negligently increased this risk by firing or otherwise retaliating against employees who did attempt to convince GM to fix safety problems.

75. As a result of Defendants' failure to warn them about the risks or repair their vehicles, Plaintiffs and Class Members sustained, and continue to sustain, damages arising from the increased risk of driving vehicles with safety related risks, from the loss of use and enjoyment of their vehicles, and from the diminished value of their vehicles attributable to Defendants' wrongful acts.

76. Plaintiffs and class members seek compensatory damages in an amount to be proved at trial, including compensation for any pain and suffering they endured.

COUNT IV
Asserted on Behalf of Mr. Sesay, Ms. Yearwood, and the Maryland Subclass
(Violation of Maryland's Consumer Protection Act ("MDCPA"),
Md. Code, Comm. Law § 13-101 *et seq.*)

77. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

78. This Count is brought on behalf of Plaintiffs, the Maryland Class generally with respect to the alleged violations of MDCPA § 13-301(3) and the portion of the Maryland Class who purchased vehicles after October 19, 2009, with respect to violations of MDCPA §§ 13-301(2)(i), 13-301(2)(iv), and 13-301(3).

79. Plaintiffs are "consumers" within the meaning of MDCPA, § 13-101(c)(1).

80. Defendants are "merchants" within the meaning of MDCPA, § 13-101(g)(1).

81. Upon the inception of GM in 2009, Defendants knew the Plaintiffs and Subclass members' vehicles, due to the ignition switch risk, are prone to engine and electrical failure during normal and expected driving conditions. GM also knew since its inception of the steering hazards Plaintiffs' vehicles present. The potential concurrent loss of control of the vehicle and shut down of safety mechanisms such as air bags and anti-lock brakes makes Subclass Vehicles less reliable, less safe, and less suitable for normal driving activities inhibiting their proper and safe use of their vehicles, reducing their protections from injury during reasonably foreseeable driving conditions, and endangering Subclass members, other vehicle occupants, and bystanders. Because of the life threatening nature of the risk, its existence was a material fact that Defendants concealed from plaintiffs and class members in violation of Md. Code, Comm. Laws § 13-301(3). Plaintiffs were injured thereby having to endure unreasonable risk of death, serious bodily injury, and diminution of the value of each of their vehicles.

82. At no time during the Class Period did Mr. Sesay, Ms. Yearwood, or Subclass members have access to the pre-release design, manufacturing, and field-testing data, and they had no reason to believe that their vehicles possessed distinctive shortcomings. Throughout the Class Period, they relied on Defendants to identify any latent features that distinguished their

vehicles from similar vehicles without the ignition switch risk, and the Defendants' failure to do so tended to mislead consumers into believing no distinctive risk was present in their vehicles.

83. With respect to the Subclass, Defendants violated Md. Code, Comm. Laws § 13-301(3) throughout the Class Period by failing to state a material fact, the omission of which tended to mislead consumers, by concealing the ignition switch risk from Plaintiffs and Subclass members.

84. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices, and attorney's fees, and any other just and proper relief available under Md. Code, Com. Laws § 13-408.

COUNT V
Asserted on Behalf of Plaintiffs and the Nationwide and all Subclasses
(Civil Conspiracy and Joint Action or Aiding and Abetting)

85. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

86. This Count is brought on behalf of the nationwide Class and all Subclasses.

87. Defendants are jointly and severally liable for Plaintiffs' and Class and Subclass members' injuries because they acted in concert to cause those injuries.

88. Defendants are liable for Plaintiffs' and class and subclass members' injuries because they entered into specific agreement, explicit and implied, with each other and with others, including but not limited to the other defendants, dealers, engineers, accountants and lawyers (the co-conspirators) described in the preceding paragraphs of this First Amended Complaint, to inflict those injuries and to conceal their actions from Plaintiffs, Class and Subclass members and others. By these agreements, Defendants conspired to violate each of the laws that form the basis for the claims in the preceding Counts of this Complaint.

89. Defendants each committed overt acts in furtherance of the conspiracy.

90. Defendants knew that the conduct of the co-conspirators constituted a breach of duties to the plaintiffs.

91. Defendants gave substantial assistance and encouragement to the co-conspirators in their course of conduct in violation of the rights of the plaintiffs.

92. Defendants were aware that their assistance and encouragement of the wrongful acts herein complained of substantially assisted the wrongful acts herein complained of.

93. The wrongful acts herein complained of harmed plaintiffs.

94. All defendants are therefore liable under civil conspiracy and civil aiding and abetting for all harm to plaintiffs and class members as described in this complaint.

ALLEGATIONS IN SUPPORT OF PRELIMINARY RELIEF

95. As of the date of the filing of this Complaint, GM concedes that it knew but did not disclose that some 20 million GM products have safety related risks that create an unreasonable danger of death or serious bodily harm to their drivers, vehicle occupants, nearby drivers, and bystanders.

96. Despite purporting to come clean about its campaign of concealment and deceit in February 2014, GM has failed to take measures to ensure that these vehicles do not remain on the roads as a source of further death and injury. GM has recklessly endangered the public safety and the safety of Plaintiffs and class members. GM has not effectively remedied its policies and practices to ensure that this misconduct does not continue, and accordingly its business practices continue to threaten the public safety, warranting that this Court impose preliminary and permanent relief to ensure that all elements of the enterprise alleged in this Complaint are identified and eliminated.

PRAYER FOR RELIEF

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

A. Determine that this action may be maintained as a Class action and certify it as such under Fed. R. Civ. P. 23(a) and 23(b)(3) and/or Fed. R. Civ. P. 23(b)(2), and/or Fed. R. Civ. 23(c)(2), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiffs as Class and Subclass Representatives and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge and decree that Defendants have recklessly endangered the public safety and order specific steps that Defendants must take to restore public safety, including but not limited to preliminary relief aimed at removing unreasonably dangerous GM vehicles from the public streets and thoroughfares forthwith; providing safe replacement vehicles for Plaintiffs and Class and Subclass members that do not contain safety related risks; and, in light of the nature of GM's wrongdoing, the substantial threat to the public health it has wrongfully caused, its apparent management recalcitrance or incompetence as evidenced by GM's failure to take significant remedial steps for the past six months since it has publicly admitted its years-long campaign of concealment and deceit, providing continuing judicial management over GM through the appointment of a Special Master with expertise in the automobile industry and ethical risk management practices to assist in the judicial supervision of GM's management reforms designed to ensure that the Company does not continue to threaten the public safety in the future; and permanent injunctive relief aimed at ensuring that GM deploys reasonable and responsible management controls with respect to safety or cease its

business of marketing to the public complex products that can so easily be a threat of death or serious bodily injury if not manufactured properly;

C. Declare, adjudge and decree that the ignition switches in Plaintiffs' and Class and Subclass Members vehicles are unreasonably dangerous, and/or that the vehicles themselves are unreasonably dangerous;

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

E. Declare, adjudge and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, enjoin any such future conduct, and direct Defendants to permanently, expeditiously, and completely repair the Plaintiffs', Class and Subclass Members' vehicles to eliminate the ignition switch danger;

F. Declare, adjudge and decree that Defendants are financially responsible for notifying all Class Members about the dangerous nature of the Class Vehicles;

G. Declare, adjudge and decree that Defendants must disgorge, for the benefit of Plaintiffs, Class Members, and Subclass Members all or part of the ill-gotten gains it received from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

H. Award Plaintiffs, Class Members, and Subclass Members the greater of actual compensatory damages or statutory damages as proven at trial;

I. Award Plaintiff and the nation-wide Class Members treble damages pursuant to 18 U.S.C. § 1964 (c);

J. Award Plaintiff, Class Members, and Subclass Members punitive damages in such amount as proven at trial;

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

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

JURY TRIAL DEMAND

Plaintiffs request a trial by jury on all the legal claims alleged in this First Amended Complaint.

Respectfully submitted

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Attorney for Plaintiffs Ishmail Sesay
and Joanne Yearwood

United States District Court
Southern District of New York

Ishmail Sesay and Joanne Yearwood

Plaintiffs,

-against-

General Motors, Delphi Automotive PLC, and DPH-DAS LLC

Defendants.

AFFIDAVIT OF SERVICE

Civil Action No. 14 CV 6018

State of New York)
ss:
County of Albany)

Mary M. Bonville, being duly sworn, deposes and says:

Deponent is over the age of eighteen and is a resident of New York State and is not a party to this action. That on August 8, 2014 at approximately 3:45 PM deponent served the following specific papers pursuant to Section 303 of the Limited Liability Company Law: Summons in a Civil Action, Class Action Complaint for Declaratory, Injunctive, and Monetary Relief with Demand for Jury Trial, and Civil Cover Sheet, that the party served was General Motors LLC, a foreign limited liability company, one of the defendants in this action, by personally serving two copies of the aforesaid papers at the office of the NYS Secretary of State located at 99 Washington Avenue, 6th Floor, in the City of Albany, New York by delivering to and leaving the papers with Chad Matice, a white male with black hair, being approximately 30 years of age; height of 6'0", weight of 180 lbs., being an authorized person in the Corporation Division of the Department of State and empowered to receive such service. That at the time of making such service, deponent paid the fee prescribed by Law in the amount of $40.00.

Mary M. Bonville

Sworn to before me this 8th day of August, 2014

Ruth A. Dennehey
Notary Public — State of New York
Qualified in Albany County
Registration No. 01DE4729775
Commission Expires: 11-30-2014

Exhibit D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al., f/k/a General Motors Corp., et al.	:	Case No.: 09-50026 (REG)
Debtors.	:	

BRIEF OF PLAINTIFFS REGARDING PUNITIVE DAMAGES ISSUE

In re: *James Walter Moore v. General Motors, LLC, et al.*
Case No.: 2011-CP-42-3625 (Spartanburg Co. Cir. Ct., SC)

Jaimie Reda Moore v. General Motors, LLC, et al.
Case No.: 2011-CP-42-3627 (Spartanburg Co. Cir. Ct., SC)

The above-referenced actions are currently pending in the Court of Common Pleas in Spartanburg County, South Carolina. See attached Exhibits A and B. Plaintiffs' claims are based on an incident which occurred on August 8, 2011, after the closing of the sale by which General Motors, LLC (hereinafter "New GM") purchased assets and assumed liabilities of Motors Liquidation Company (f/k/a "Old GM") (hereinafter "363 Sale"). Plaintiffs allege that the incident and Plaintiffs' injuries were caused by a defective spare tire hoist mechanism installed on a vehicle manufactured prior to the 363 Sale.

On Tuesday, September 8, 2015, at 6:03PM, Plaintiffs received via e-mail a letter and various attachments from counsel for General Motors, LLC (hereinafter "General Motors") informing Plaintiffs that various allegations and causes of actions contained in Plaintiffs' Fourth Amended Complaint were improper or proscribed by the orders and judgments of this Court. See attached Exhibits C and D. Plaintiffs had received no prior communication from General Motors

regarding this issue and had not previously received a "Demand Letter," as referenced in the Scheduling Order entered September 3, 2015 (hereinafter "Scheduling Order").

Plaintiffs have reviewed the various letters and filings preceding the Scheduling Order and now submit this brief regarding the Punitive Damages Issue. Plaintiffs regret any duplication of arguments or issues with briefs submitted by other plaintiffs, but due to the fact that Plaintiffs were only notified of this matter within the last few days, Plaintiffs have been unable to coordinate with other counsel.

BACKGROUND

On August 8, 2011, Plaintiff James Moore was injured when a spare tire, which fell from another vehicle, crashed into the top of his vehicle. Mr. Moore was paralyzed as a result. It was determined that the tire fell from a 1996 GMC pickup truck and that the cable on the spare tire hoist mechanism had broken.

Plaintiff James Moore filed suit against New GM, the driver of the vehicle, and two manufacturers who may have produced the hoist mechanism. Plaintiff Jaimie Moore – Mr. Moore's wife – filed a consortium claim against the same parties. Plaintiffs asserted causes of action for: (1) failing to design the vehicle properly; (2) failing to manufacture the vehicle properly; (3) failing to inspect the vehicle properly; (4) failing to test the vehicle properly; (5) failing to warn owners and the public as to the dangerous defect in the vehicle; (6) failing to recall the vehicle; (7) failing to retrofit the vehicle; and (8) producing/selling a product unreasonably dangerous to the consumer.

Plaintiffs' claims included both compensatory and punitive damages. Plaintiffs' claims for compensatory damages are founded on the actions/inaction and product produced by Old GM, based on New GM's assumption of liabilities for such claims pursuant to § 2.3(a)(ix) of the Master

Sale and Purchase Agreement (hereinafter "Sale Agreement"). And, while Plaintiffs believe they have claims for punitive damages against New GM based on the conduct of Old GM, Plaintiffs assert that they need not amend their pleadings as we have independent claims for punitive damages based solely on the conduct of New GM. Such claims are based on the actions and inaction of New GM, which failed to recall or retrofit the GMC truck in question or to warn of the danger posed by the defective product at any point between the 363 Sale and the date of the accident, despite notice of the danger.

ISSUE

Plaintiffs' claims against New GM for punitive damages are not barred by the Sale Agreement, as such claims are based, not on the actions or inaction of Old GM, but on the actions and inaction of New GM.[1]

DISCUSSION

GM argues that the Plaintiffs may not seek punitive damages against New GM based on the conduct of Old GM. Yet the Plaintiffs' have independent claims for punitive damages based on the conduct of New GM. Such claims are not barred.

A. Punitive Damages Based on Conduct of New GM

In its letter to Plaintiffs, New GM contends that Plaintiffs' claims for punitive damages – as alleged in Plaintiffs' Fourth Amended Complaint – are barred by the Sale Agreement: "To the extent that the Pleading . . . requests punitive damages based on Old GM conduct, they are proscribed." See Exhibit B. Yet even assuming this point *arguendo*, Plaintiffs should be allowed to proceed with punitive damages claims based on New GM conduct – specifically, a failure to

[1] Again, Plaintiffs do not concede that New GM is not subject to punitive damages based on the conduct of Old GM. Plaintiffs believe that the broad assumption of Liabilities in the Sale Agreement includes an assumption of liability for punitive damages. However, Plaintiffs argue that, regardless of the Court's ruling on this point, Plaintiffs should still be allowed to proceed with punitive damage claims based on the conduct of New GM.

recall and/or retrofit the 1996 GMC truck, which is the subject of the suit, or to warn of the defective condition, from the 363 Sale closing to the date of the accident.

B. New GM is Responsible to Warn, Recall, or Retrofit Defective Condition

New GM must admit that it is responsible for recalling and retrofitting Old GM products if it is aware of the need for such action. This responsibility is evidenced by New GM's recall of Old GM vehicles with ignition switch problems and was expressly assumed in § 6.15 of the Sale Agreement, which provides that New GM "shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, the Transportation Recall Enhancement Accountability and Documentation Act . . . and similar laws . . . to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by Seller." Additionally, under South Carolina law, New GM has a duty to warn consumers if it discovers a product to be defective. See Hubbard & Felix, *The South Carolina Law of Torts* 292 (1997) (when a company discovers dangers or defects in its product, "the weight of authority clearly imposes a duty of due care" on the company). Indeed, to hold that New GM assumed no such duty would endanger the public, as such a holding would allow companies to merely disregard information showing a product to be dangerously defective.

As New GM has this responsibility, it may be punished – through punitive damages – for abdicating this responsibility. To hold otherwise would eviscerate § 6.15 and allow New GM to turn a blind eye to any problems with Old GM vehicles.

C. Allowing Punitive Claims Against New GM Comports with the Policy Behind Punitive Awards

Claims for punitive damages against New GM *based on the conduct of New GM* are perfectly proper and comport with the goals and policy behind punitive damages. As has been stated by the Supreme Court of the United States, punitive damages, "are private fines levied by

civil juries to punish reprehensible conduct and to deter its future occurrence." See Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974). While there has been a split of opinion among courts as to whether a successor corporation should be responsible for the actions of the predecessor corporation with regard to punitive damages, there is no such debate with regard to a corporation's own actions. Certainly, if a jury finds that New GM has acted egregiously in failing to recall or retrofit the hoist mechanism, then punitive damages will serve the purpose of deterring and punishing such wrongful conduct.

Even if it wished to do so, it is unlikely that New GM could insulate itself from punitive damages *for its own actions* through language in the Sale Agreement. Certainly, were this possible, such a clause would be included in every corporate asset purchase or merger. Yet the question is unnecessary as the Sale Agreement makes no such allowance. Instead, the Sale Agreement provides that New GM assumes "all Liabilities to third parties for . . . personal injury . . . caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers . . . which arise directly out of . . . personal injury . . . caused by accidents occurring on or after the Closing Date . . . ." See § 2.3(a)(ix). The Sale Agreement defines "Liabilities" as follows: "Liabilities means any and all liabilities of every kind and description whatsoever . . . ." See Sale Agreement, § 1.1.

CONCLUSION

In summary, Plaintiffs seek compensatory damages against New GM for various causes of action based on its assumption of such liabilities under § 2.3 of the Sale Agreement. While Plaintiffs believe they have punitive claims against New GM based on the actions of Old GM, Plaintiffs also have independent claims for punitive damages against New GM based solely on the conduct of New GM and its failure to recall or retrofit the 1996 GMC truck or to warn of the

dangerous condition from the time of the 363 Sale to the time of the accident which injured Plaintiff James Moore.[2]

Respectfully Submitted,

ANTHONY LAW FIRM, P.A.

s/Kenneth C. Anthony, Jr.
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ATTORNEYS FOR THE PLAINTIFF

Spartanburg, South Carolina
September 13, 2015

[2] In presenting evidence regarding the conduct of New GM to justify a punitive award, Plaintiffs may cite to documents, including testing and complaints, created during the time of Old GM. Such documents were transferred to New GM pursuant to § 2.2(a)(xiv) of the Sale Agreement and Plaintiffs may cite the same as notice of the problem with the hoist mechanism to New GM or insofar as New GM employees can be shown to have notice and knowledge of the same.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG James Walter Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3625 **FOURTH AMENDED SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint, herewith served upon you, (which was filed in the Office of the Clerk of Court), and to serve a copy of your answer to same upon the subscriber at 250 Magnolia Street, Post Office Box 3565, Spartanburg, South Carolina, 29304, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiffs will move before the Court for the relief demanded in the Complaint.

THE ANTHONY LAW FIRM, P.A.

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ATTORNEYS FOR THE PLAINTIFF

July 29, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG James Walter Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3625 **FOURTH AMENDED COMPLAINT** (Jury Trial Demanded)

Plaintiff would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.

2. Plaintiff is informed and believes that the Defendant Anthony Wade Ross is a citizen and resident of Spartanburg County, South Carolina.

3. Plaintiff is informed and believes that Defendant General Motors, LLC is a Delaware corporation, doing business in Spartanburg County, South Carolina, and is legally responsible for vehicles manufactured by General Motors Corporation (n/k/a Motors Liquidation Company).

4. Plaintiff is informed and believes that the Defendant Dura Automotive Systems, Inc., is a corporation organized and existing under and by virtue of the laws of the state of Michigan or one of the other states of the United States of America, doing business throughout the United States.

5. Plaintiff is informed and believes that Dura Operating, LLC is a corporation organized and existing under and by virtue of the laws of the state of Delaware or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Dura Automotive Systems, Inc.

6. Plaintiff is informed and believes that the Defendant Sparton Corporation is a corporation organized and existing under and by virtue of the laws of the state of Ohio or one of the other states of the United States of America, doing business throughout the United States.

7. Plaintiff is informed and believes that Defendant Sparton Engineered Products, Inc. – Flora Group, is a corporation organized and existing under and by virtue of the laws of the state of Illinois or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Sparton Corporation.

8. On or about August 8, 2011, the Plaintiff was traveling in a northeasterly direction on Interstate Highway 85 when the spare tire of the Defendant Ross fell from the 1996 GMC pickup truck that the Defendant Ross was driving, into the path of the Plaintiff. In attempting to avoid the tire, the vehicle of the Plaintiff struck a barrier and overturned. The truck being operated by the Defendant Ross was manufactured by General Motors Corporation (n/k/a Motors Liquidation Company), for whose acts the Defendant General Motors, LLC, is responsible. Upon information and belief, the spare wheel retaining device (device) on this vehicle was designed, manufactured, and/or distributed by one or more of the Defendants: Dura Automotive Systems, Inc.; Dura Operating, LLC; Sparton Corporation; and Sparton Engineered Products, Inc. – Flora Group.

9. As a direct and proximate result, the Plaintiff suffered severe disabling and incapacitating injuries, all of which have caused and will in the future cause the Plaintiff to endure great physical and mental pain and suffering, to require extensive medical treatment and care for the rest of his life, and will prevent him from working and earning an income.

10. The injuries and damages suffered by the Plaintiff herein were the direct and proximate result of the following negligent, wilful, wanton, careless, reckless, and grossly negligent acts of the Defendants herein at the time and place above mentioned:

AS TO THE DEFENDANT ANTHONY WADE ROSS

a) Failing to maintain his vehicle in a proper condition;

b) Failing to have his vehicle properly secured and serviced; and

c) Operating his vehicle in an unsafe manner.

All of which are in violation of the common statutory laws of the state of South Carolina as wel as the rules and regulations of the South Carolina Department of Transportation.

AS TO THE DEFENDANT
GENERAL MOTORS, LLC

a) Failing to design the vehicle properly;

b) Failing to manufacture the vehicle properly;

c) Failing to inspect the vehicle properly;

d) Failing to test the vehicle properly;

e) Failing to warn owners and the public as to the dangerous defect in this vehicle;

f) Failing to recall vehicles with this dangerous condition; and

g) Failing to retrofit vehicles with this dangerous condition.

AS TO THE DEFENDANTS
DURA AUTOMOTIVE SYSTEMS, INC.,
DURA OPERATING, LLC,
SPARTON CORPORATION, AND

SPARTON ENGINEERED PRODUCTS, INC. – FLORA GROUP

a) Failing to design the device properly;

b) Failing to manufacture the device properly;

c) Failing to test the device properly;

d) Failing to warn owners of the vehicles and the public as to the dangerous defect in this device;

e) Failing to recall the device; and

f) Failing to retrofit vehicles using the device.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANTS GENERAL MOTORS, LLC, DURA AUTOMOTIVE SYSTEMS, INC., DURA OPERATING, LLC SPARTON CORPORATION, AND SPARTON ENGINEERED PRODUCTS, INC. – FLORA GROUP

11. Plaintiff reiterates and realleges all of the allegations contained in Paragraphs One (1) through Nine (9) of the First Cause of Action as fully as though set forth verbatim.

12. The 1996 pickup truck and the device were in defective condition and unreasonably dangerous to the consumer.

13. As a direct and proximate result, the Plaintiff suffered severe disabling and incapacitating injuries, all of which have caused and will in the future cause the Plaintiff to endure great physical and mental pain and suffering, to require extensive medical treatment and care for the rest of his life, and will prevent him from working and earning an income.

14. Plaintiff is informed and believes that he is entitled to such actual damages from the Defendants General Motors, LLC, Dura Automotive Systems, Inc., Dura Operating, LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, as the jury may determine.

WHEREFORE, Plaintiff prays judgment against the Defendants for such actual and punitive damages as the jury may determine, for the costs of this action and for such other and further relief as may seem just and proper.

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr., S.C. Bar No. 0404
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ATTORNEYS FOR THE PLAINTIFF

Spartanburg, South Carolina
July 29, 2014

Jury Trial Demanded:

Kenneth C. Anthony, Jr.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG Jaimie Reda Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC Dura Automotive Systems, Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. – Flora Group, Defendants.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C.A. No. 2011-CP-42-3627 **FOURTH AMENDED SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint, herewith served upon you, (which was filed in the Office of the Clerk of Court), and to serve a copy of your answer to same upon the subscriber at 250 Magnolia Street, Post Office Box 3565, Spartanburg, South Carolina, 29304, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, you will be considered to be in default and the Plaintiff will move before the Court for the relief demanded in the Complaint.

THE ANTHONY LAW FIRM, P.A.

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kanthony@anthonylaw.com

ATTORNEYS FOR THE PLAINTIFF

July 29, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF SPARTANBURG)	IN THE COURT OF COMMON PLEAS
Jaimie Reda Moore, Plaintiff, vs. Anthony Wade Ross, General Motors, LLC, Dura Automotive Systems Inc., Dura Operating LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group, Defendants.	**FOURTH AMENDED COMPLAINT** Case No.: 2011-CP-42-3627 (Jury Trial Demanded)

Plaintiff would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.

2. Plaintiff is informed and believes that the Defendant Anthony Wade Ross is a citizen and resident of Spartanburg County, South Carolina.

3. Plaintiff is informed and believes that the Defendant General Motors, LLC, is a Deleware corporation, doing business in Spartanburg County, South Carolina, and is a legally responsible for vehicles manufactured by General Motors Corporation (n/ka Motors Liquidation Company).

4. Plaintiff is informed and believes that the Defendant Dura Automotive Systems, Inc., is a corporation organized and existing under and by virtue of the laws the state of Michigan or one of the other states of the United States of America, doing business throughout the United States.

5. Plaintiff is informed and believes that Dura Operating, LLC is a corporation organized and existing under and by virtue of the laws of the state of Delaware or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Dura Automotive Systems, Inc.

6. Plaintiff is informed and believes that the Defendant Sparton Corporation is a corporation organized and existing under and by virtue of the laws of the state of Ohio or one of the other states of the United States of America, doing business throughout the United States.

7. Plaintiff is informed and believes that Defendant Sparton Engineered Products, Inc. – Flora Group, is a corporation organized and existing under and by virtue of the laws of the state of Illinois or one of the other states of the United States of America, doing business throughout the United States, and is a wholly-owned subsidiary of Defendant Sparton Corporation.

8. On or about August 8, 2011, the Plaintiff's husband was traveling in a northeasterly direction on Interstate Highway 85 when the spare tire of the Defendant Ross fell from the 1996 GMC pickup truck that the Defendant Ross was driving, into the path of Plaintiff's husband. In attempting to avoid the tire, the vehicle in which the Plaintiff's husband was driving, struck a barrier and overturned. The truck being operated by the Defendant Ross was manufactured by General Motors Corporation (n/k/a Motors Liquidation Company), for whose acts for the Defendant General Motors, LLC, is responsible. Upon information and belief, the spare wheel retaining device (device) on this vehicle was designed, manufactured and/or distributed by one or more of the Defendants: Dura Automotive Systems, Inc.; Dura Operating, LLC; Sparton Corporation; and Sparton Engineered Products, Inc. - Flora Group.

9. As a direct and proximate result, the Plaintiff's husband suffered severe disabling and incapacitating injuries.

10. As a further direct and proximate result, the Plaintiff has suffered as follows:

a) Experiencing shock, grief and anguish from having seen her husband so injured, watching and assisting in his protracted recovery and viewing the disability with which he now suffers;

b) Losing the care and companionship normally received from her husband;

c) Losing the services and assistance in household chores, repairs, maintenance and other activities usually provided by her husband;

d) Having to care for and assist her husband during his recovery and after to a greater extent than before.

11. The injuries and damages suffered by the Plaintiff herein were the direct and proximate result of the following negligent, willful, wanton, careless, reckless and grossly negligent acts on the part of the Defendants herein at the time and place above mentioned:

AS TO THE DEFENDANT
ANTHONY WADE ROSS

a) Failing to maintain his vehicle in proper condition;

b) Failing to have his vehicle properly secured and serviced;

c) Operating his vehicle in an unsafe manner.

All of which are in violation of the common and statutory laws of the state of South Carolina as well as the rules and regulations of the South Carolina Department of Transportation.

AS TO THE DEFENDANT
GENERAL MOTORS, LLC

a) Failing to design the vehicle properly;

b) Failing to manufacture the vehicle properly;

c) Failing to inspect the vehicle properly;

d) Failing to test the vehicle properly;

e) Failing to warn owners and the public as to the dangerous defect in this vehicle;

f) Failing to recall vehicles with this dangerous condition; and

g) Failing to retrofit vehicles with this dangerous condition.

**AS TO THE DEFENDANTS
AS TO DEFENDANTS GENERAL MOTORS, LLC,
DURA AUTOMOTIVE SYSTEMS, INC.
DURA OPERATING, LLC
SPARTON ENGINEERED PRODUCTS,
INC. - FLORA GROUP**

a) Failing to design the device properly;

b) Failing to manufacture the device properly;

c) Failing to test the device properly;

d) Failing to warn owners of vehicles and the public as to the dangerous defect in this device;

e) Failing to recall the device; and

f) Failing to retrofit vehicles using the device.

**FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANTS GENERAL MOTORS, LLC,
DURA AUTOMOTIVE SYSTEMS, INC.
DURA OPERATING, LLC
SPARTON ENGINEERED PRODUCTS,
INC. - FLORA GROUP**

12. Plaintiff reiterates and realleges all of the allegations contained in Paragraphs One (1) through Ten (10) of the First Cause of Action as fully as though set forth verbatim.

13. The 1996 pickup truck and the device were in defective condition and unreasonably dangerous to the consumer.

14. As a direct and proximate result, the Plaintiff's husband suffered severe disabling and incapacitating injuries.

15. Plaintiff is informed and believes that she is entitled to such actual damages from the Defendants General Motors, LLC, Dura Automotive Systems, Inc., Dura Operating, LLC, Sparton Corporation, and Sparton Engineered Products, Inc. - Flora Group, as the jury may determine.

WHEREFORE, Plaintiff prays judgment against the Defendants for such actual damages as the jury may determine, for the costs of this action and for such other and further relief as the Court may deem just and proper.

THE ANTHONY LAW FIRM, P.A.

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ATTORNEYS FOR PLAINTIFF

July 29, 2014
Spartanburg, South Carolina

Jury Trial Demanded:

Kenneth C. Anthony, Jr.
Attorney for Plaintiff

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY, *et al*., f/k/a General Motors Corp., *et al*.	:	Case No.: 09-50026 (MG)
Debtors.	:	(Jointly Administered)

DECLARATION OF SCOTT I. DAVIDSON

I, Scott I. Davidson, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief.

1. I am counsel in the law firm of King & Spalding LLP, attorneys for General Motors LLC ("**New GM**") in the above-captioned matter. I am familiar with the statements set forth below based on my personal knowledge, and my review of relevant documents. I submit this declaration in connection with the *Reply Brief By General Motors LLC On The 2016 Threshold Issues Set Forth In The Order To Show Cause, Dated December 13, 2016 (Except For The Late Proof Of Claim Issue)* ("**2016 Threshold Issues Reply Brief**"),[1] filed simultaneously herewith. Specifically, I submit this declaration to refute the contention made by the Pope Plaintiffs in their Supplemental Opening Brief on the 2016 Threshold Issues [ECF No. 13864] that New GM did not respond to their September 15, 2015 letter ("**September 2015 Pope Correspondence**")[2] to the undersigned regarding (i) a demand letter ("**Pope Plaintiffs Demand**

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the 2016 Threshold Issues Reply Brief.

[2] A copy of the September 2015 Pope Correspondence is attached to the Pope Supplemental Brief as Exhibit "4."

Letter")[3] New GM sent the Pope Plaintiffs regarding the Pope Lawsuit on or about September 1, 2015, and (ii) the September 2015 Scheduling Order, which was served on counsel for the Pope Plaintiffs on or about September 4, 2015.

2. I caused to be sent the Pope Plaintiffs Demand Letter to counsel for the Pope Plaintiffs on September 1, 2015. The Pope Plaintiffs Demand Letter was one of over 100 demand letters that New GM sent out in August 2015 and September 2015 to plaintiffs involved in lawsuits asserting claims against New GM based on Old GM vehicles. In addition, I caused to be served the September 2015 Scheduling Order on counsel for the Pope Plaintiffs; the September 2015 Scheduling Order was also served on between 150 and 200 plaintiffs.

3. To keep track of the inquiries I received in response to the numerous demand letters and the service of the September 2015 Scheduling Order, it was my practice to make notes on correspondence I received at that time regarding these documents. That was done in connection with the September 2015 Pope Correspondence.

4. A notation on my copy of the September 2015 Pope Correspondence, attached hereto as **Exhibit "A,"** states as follows: "Called 9/15/15 @ 1:45 p.m. Left message. Spoke to him went through the procedures." As demonstrated by this notation, upon receipt of the September 2015 Pope Correspondence, I called counsel for the Pope Plaintiffs that day and left a message. My telephone call was returned, and during that conversation, I went through the procedures with counsel for the Pope Plaintiffs.

[3] A copy of the Pope Plaintiffs Demand Letter is attached to the Pope Supplemental Brief as Exhibit "2."

5. Accordingly, based on the foregoing and the notated September 2015 Pope Correspondence attached hereto as Exhibit "A," New GM timely responded to the September 2015 Pope Correspondence.

Dated: April 7, 2017

/s/ Scott I. Davidson
SCOTT I. DAVIDSON

Exhibit A

Received
9/15/15 @ 1:43 p.m.
Left message
Spoke to him.
Will work
the
procedures.

LEDFORD LAW FIRM
ATTORNEY AT LAW
Heritage Professional Plaza
425 East 22nd Street, Suite 101
Owasso, OK 74055
Telephone (918) 376-4610
Facsimile (918) 376-4993

Writer's Extension #: 303
Email: kris@ledford-lawfirm.com

September 15, 2015

Via Email (sdavidson@kslaw.com) and Regular Mail
Scott Davidson
King & Spalding
1185 Avenue of the Americas
New York, NY 10036-4003

Re: *Pope v. General Motors, et. al*
Muskogee County Court Case No. CJ-2014-467

Dear Mr. Davidson:

I am writing in response to your correspondence dated September 1, 2015.

Following receipt of your correspondence, I emailed you requesting additional documentation. Thank you for emailing the requested documents. Having now reviewed your September 1st letter, the Decision, the Judgment, the Order authorizing Sale, and the Sale Agreement, I am writing to request an explanation of why you have concluded that the Pope lawsuit is affected by the Decision and Judgment.

As I read the Judgment, it relates to Ignition Switch Plaintiffs, Pre-Closing Accident Plaintiffs, and Non-Ignition Switch Plaintiffs. Ignition Switch Plaintiffs are *non-accident economic loss*[1] claims. Pre-Closing Accident Plaintiffs are claims based on accidents that occurred *prior* to the 363 sale closing which occurred in 2009. Non-Ignition Switch Plaintiffs are plaintiffs who have sued New GM for *economic losses* based on an alleged defect other than the Ignition Switch in an Old GM vehicle. On page 19 of the Decision, the Court further explains this category of claims as follows:

> The other category of Plaintiffs later coming into the picture ("Non-Ignition Switch Plaintiffs") brought actions asserting Economic Loss claims as to

[1] In the Decision, the Court identifies "economic loss" claims as claims "for alleged reduction in the resale value of affected cards, other economic loss (such as unpaid time off from work when getting an ignition switch replaced), and inconvenience." *See* Decision at p. 18. The claims in the Pope case are wrongful death claims brought under Oklahoma law arising out of a fatality accident in which an airbag failed to deploy. Clearly, the wrongful death claims in Pope are not what the Court was contemplating as being within the scope of "economic loss" claims.

> GM branded cars that *did not have* Ignition Switch Defects, including cars made by New GM and Old GM alike. In fact, most of their cars did not have defects, and/or were not the subject of recalls, at all. But they contend, in substance, that the Ignition Switch Defect caused damage to "the brand" resulting in Economic Loss to them.

Please identify which of these categories of claims GM contends the Pope case falls within and explain the basis for GM's position. I do not want to get involved in bankruptcy proceedings without a clear understanding of whether and why my case would be implicated by the bankruptcy proceedings.

On page 2 of your September 1st letter, you make a statement that the Sale Agreement only provided for the assumption of compensatory damages and not punitive damages. Please identify the page number of the Sale Agreement on which you base that statement. In your letter, you reference the Sale Agreement definition of damages but the assumption provision (Section 2.3(a)(ix)) in the First Amended to the Sale Agreement does not reference damage (other than property damage) and instead references "all Liabilities to third parties for death . . ." Is GM now taking the position that "all" does not really mean "all"? Given this language, I do not understand the basis for the statement in your letter. In addition to identifying the references from the Sale Agreement on which you rely, please provide a more detailed explanation for your statement.

Subsequent to receipt of your September 1st letter, I received another letter from a member of your firm dated September 4th which purports to advise me of briefing deadlines in the bankruptcy matter. Upon my review of the September 4th letter, I did not locate any discussion of wrongful death products liability cases such as the Pope case. Please advise what portion of the scheduling order referenced in the September 4th letter which GM contends is applicable to the Pope lawsuit.

I look forward to hearing from you in the near future.

Sincerely,

KRIS TED LEDFORD