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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re | : | Chapter 11 |
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| MOTORS LIQUIDATION COMPANY, <i>et al.</i> , | : | Case No.: 09-50026 (REG) |
| f/k/a General Motors Corp., <i>et al.</i> | : | |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
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**RESPONSE BY GENERAL MOTORS LLC TO
NO STAY PLEADING FILED BY THE ELLIOTT PLAINTIFFS**

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General Motors LLC (“**New GM**”), by its undersigned counsel, respectfully submits this response (“**Response**”) to the “No Stay Pleading” (“**Elliott No Stay Pleading**”) filed by the Plaintiffs (“**Elliott Plaintiffs**”) in the Ignition Switch Action¹ filed by Lawrence and Celestine Elliott (“**Elliott Ignition Switch Action**”), and respectfully represents as follows:

PRELIMINARY STATEMENT

1. Contrary to the assertions in their No Stay Pleading, the Elliott Plaintiffs allege claims similar to those asserted by Plaintiffs in many other Ignition Switch Actions, including, for example, those alleged by the Phaneuf Plaintiffs (who were the only other Plaintiffs – out of 88 groups of Plaintiffs – to file a No Stay Pleading).² The Elliott Plaintiffs are not uniquely situated; their issues are not unique; and their claims are no different from those of other plaintiffs whose cases are stayed, voluntarily or otherwise. The Elliott Plaintiffs have, thus, failed to complete the “hail Mary” pass that they asserted they could at the July 2, 2014 Conference, and the relief requested by them should therefore be denied.

2. Just like the claims alleged by the Phaneuf Plaintiffs, the claims alleged by the Elliott Plaintiffs (“**Elliott Claims**”) are based on Old GM vehicles, and at least in part, on Old GM’s conduct. And, as the Court found with respect to the Phaneuf Plaintiffs’ claims, the claims alleged by the Elliott Plaintiffs clearly implicate the Sale Order and Injunction and are thus subject to the injunction therein.

3. The Elliott Plaintiffs contend otherwise; but that simply means this Court will ultimately need to determine the issue. That determination should be made by this Court as part

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction* (“**Motion to Enforce**”), dated April 21, 2014 [Dkt. No. 12620].

² The relief requested by the Phaneuf Plaintiffs in their No Stay Pleading [Dkt. No. 12712] was denied by the Court on July 2, 2014. See discussion, *infra*, at ¶¶ 29 to 31. The Phaneuf Plaintiffs have filed a letter with the Court indicating their intention to appeal the Court’s ruling.

of its determination of the Four Threshold Issues (as defined in the Court's July 11, 2014 Supplemental Scheduling Order ("**Supplemental Scheduling Order**"). One of the Four Threshold Issues is identical to the one raised by the Elliott No Stay Pleading: specifically, "[w]hether any or all of the claims asserted in the Ignition Switch Actions are claims against the Old GM bankruptcy estate (and/or the GUC Trust)" ("**Old GM Claim Threshold Issue**"). Supplemental Scheduling Order, p. 3. A briefing schedule has been established for the Old GM Claim Threshold Issue (and the other Threshold Issues), and that issue will be resolved in due course by this Court. This is the orderly process the Court set forth in its May 16, 2014 Scheduling Order ("**Scheduling Order**"), as supplemental by the Supplemental Scheduling Order, the process recommended by Designated Counsel (as defined in the Scheduling Order) at the conferences held on May 2, 2014 ("**May Conference**") and July 2, 2014 ("**July Conference**"), and the process agreed to by *all but one other group of Plaintiffs in the 88 Ignition Switch Actions*. The Court-approved procedures should govern the Elliott Plaintiffs and their claims.

4. Despite the length of their No Stay Pleadings, the Elliott Plaintiffs make a critical admission that demonstrates why their request should be denied. Specifically, the Elliott Plaintiffs acknowledge that their "claims do relate to 'pre-petition' vehicles" (Elliott No Stay Pleading, p. 27), but then assert that more is needed to conclude that such claims violated the Sale Order and Injunction. That is true, but the more that is needed is whether the claims are based on the Glove Box Warranty (No), Lemon Law claims (No), or a post-363 Sale accident (No). Since the claims do not fit in any of these categories of Assumed Liabilities, then, by definition, all claims relating to the Elliott Plaintiffs' Old GM vehicles are Retained Liabilities that the Elliott Plaintiffs are barred from pursuing under the Court's Sale Order and Injunction.

5. The Elliott Plaintiffs further concede that this Court has a need for the “orderly disposition of the issues that the Court faces” and that “actions similar[ly] situated with respect to the claims that they assert must be treated similarly, and, in a consolidated proceeding like this, no one group should be permitted unfairly to ‘jump ahead’ of others.” Elliott No Stay Pleading, p. 6. But “jump ahead” is exactly what the Elliott Plaintiffs are attempting to do through their No Stay Pleading.

6. Simply put, there is no reason to overly-complicate the Court’s determination of the Four Threshold Issues by dealing now with the claims raised in the Elliott Ignition Switch Action, claims that are common to numerous other Ignition Switch Actions. The Elliott Claims should, thus, be presented to the Court for determination at the same time as when the other Plaintiffs present such claims.

BACKGROUND RELEVANT TO RESPONSE

A. The Elliott Plaintiffs Were On Notice of the Motion to Enforce Immediately Upon Its Filing

7. The Elliott Plaintiffs, *pro se*, commenced their Ignition Switch Action against New GM on April 1, 2014. While the *pro se* complaint contained a variety of allegations, the complaint on its face (i) concerned vehicles manufactured and sold by Old GM (*i.e.*, a 2006 Chevy Cobalt SS and a 2006 Trailblazer SS), and (ii) alleged claims based on an alleged defective ignition switch. The Elliott Ignition Switch Action is, like all other Ignition Switch Actions, an action seeking economic loss damages, and not damages based on death, personal injury, or other injury to persons or damage to property.

8. On April 21, 2014, New GM filed its Motion to Enforce and listed the Elliott Ignition Switch Action on Schedule “1” to the Motion to Enforce.

9. On April 22, 2014, the Court issued its Scheduling Order (“**April 22 Scheduling Order**”), and scheduled the May Conference. New GM timely served the Elliott Plaintiffs by overnight mail with the Motion to Enforce, the April 22 Scheduling Order and a Notice of the May Conference. *See* Certificate of Service [Dkt. No. 12658].

10. The Elliott Plaintiffs did not file any letter or pleading with the Court prior to the May Conference, and did not make an appearance at the May Conference.

B. The Elliott Plaintiffs’ Initial Compliance with the Stay Procedures

11. At the May Conference, various bankruptcy-related issues were discussed with the Court, and there was a general consensus reached between New GM and counsel speaking on behalf of most of the Plaintiffs that, as part of the process in which the Court would address bankruptcy-related issues, the Plaintiffs would either (i) agree to enter into a stipulation (“**Stay Stipulation**”) with New GM staying their individual Ignition Switch Actions, or (ii) file with the Court a “No Stay Pleading” setting forth why they believed their individual Ignition Switch Actions should not be stayed (collectively, the “**Stay Procedures**”).

12. At the May Conference, the Court directed Counsel for the Identified Parties (as defined in the Scheduling Order) to confer on a proposed form of scheduling order consistent with the Court’s ruling at the May Conference. *See* Hr’g Tr., at 96:9-14, May 2, 2014. A consensual form of scheduling order was agreed to, which was filed under a notice for settlement (“**Notice of Settlement**”) on all Plaintiffs on May 12, 2014, with a presentment date of May 15, 2014.

13. The Elliott Plaintiffs were served via overnight mail with the Notice of Settlement on May 12, 2014. *See* Certificate of Service [Dkt. No. 12692]. They did not file a pleading with respect to the Scheduling Order and the procedures therein.

14. The Stay Procedures were approved by the Scheduling Order. Pursuant to those procedures, all Plaintiffs in the Ignition Switch Actions, including the Elliott Plaintiffs, were required to either (i) agree to enter into a Stay Stipulation by May 23, 2014 (“**Stay Stipulation Deadline**”), or (ii) file with the Court a “No Stay Pleading” by May 26, 2014 (“**No Stay Pleading Deadline**”). The Stay Procedures required plaintiffs to stay “*all* proceedings in their Ignition Switch Action against New GM (including General Motors Holdings LLC and/or General Motors Company) other than the JPML proceedings set forth in paragraph 4 above.” Scheduling Order, at ¶ 5(a) (emphasis added).

15. On May 20, 2014, New GM sent the Elliott Plaintiffs, via overnight delivery (“**May 20 Correspondence**”), a copy of the Scheduling Order and a Stay Stipulation for their Ignition Switch Action (“**Elliott Stay Stipulation**”).³ In its May 20 Correspondence, New GM informed the Elliott Plaintiffs, among other things, that Designated Counsel appeared at the May Conference, that Designated Counsel had agreed to coordinate the efforts of Plaintiffs in this matter, and New GM provided the Elliott Plaintiffs with contact information (e-mail addresses and telephone numbers) for each of the Designated Counsel.

16. The Elliott Plaintiffs did not contact Designated Counsel after receipt of the May 20 Correspondence. Instead, on May 23, 2014 – the Stay Stipulation Deadline – New GM received a facsimile from the Elliott Plaintiffs containing an executed signature page for the Elliott Stay Stipulation.⁴ In their executed stipulation, the Elliott Plaintiffs expressly agreed that “subject to further order of the Bankruptcy Court, [Plaintiffs] shall not seek to further prosecute this Action [until] 30 days after a Final Order(s) is entered resolving all issues raised in the

³ A copy of the May 20 Correspondence is annexed hereto as Exhibit “A.”

⁴ A copy of the Elliott Stay Stipulation is annexed hereto as Exhibit “B.”

Motion to Enforce.” *Id.*, at ¶ 1. The Elliott Plaintiffs did not file a No Stay Pleading with the Court prior to the No Stay Pleading Deadline.

17. On May 28, 2014, New GM filed the fully-executed Elliott Stay Stipulation with the United States District Court for the District of Columbia (“**DC District Court**”) (the court where the Elliott Ignition Switch Action is pending). While the Elliott Stay Stipulation provides that it “may be filed by either Party in the Action and in the Bankruptcy Court” (Elliott Stay Stipulation, ¶ 12), there is no requirement that the Elliott Stay Stipulation be filed with any Court to be valid and binding.

18. On June 11, 2014, the DC District Court entered a notation on the docket of the Elliott Ignition Switch Action, requiring the parties to file a joint motion requesting the Action be stayed.⁵ Numerous other district courts with pending Ignition Switch Actions likewise preferred and requested that the parties submit joint motions rather than stipulations. In each case, Plaintiffs and New GM worked cooperatively to convert the stipulation to a joint motion and to have an order entered providing for the same relief as the Stay Stipulation.

C. After Retaining Counsel, the Elliott Plaintiffs Refused to Comply with the Stay Procedures

19. The Elliott Stay Stipulation expressly provided that “[t]he Parties each agree to execute such documents as may be reasonably necessary to carry out the terms of this Stipulation.” Elliott Stay Stipulation, ¶ 7. Accordingly, counsel for New GM prepared the necessary motion papers (“**DC Stay Motion**”) and, on June 13, 2014, sent them to the Elliott Plaintiffs so that the parties could jointly file the DC Stay Motion with the DC District Court.

⁵ Also on June 11, 2014, the JPML entered a docket entry stating that the Clerk of the Panel had determined, in response to a notice of related action, that the Elliott Ignition Switch Action was not appropriate for inclusion in the MDL, likely because of the confusing nature of the *pro se* complaint filed by the Elliott Plaintiffs. *See* MDL 2543, Dkt. No. 269. Inclusion in the MDL was never a condition of an Ignition Switch Action being subject to the Scheduling Order or a fully-executed stay stipulation. In any event, based on the Elliott Plaintiffs’ filing of a motion to amend their complaint (discussed, *infra*), New GM has filed a motion to transfer the Elliott Ignition Switch Action to the MDL. Briefing on that motion is currently ongoing.

20. On June 13, 2014, New GM, as required by the Scheduling Order, filed with this Court its *Response by General Motors LLC to No Stay Pleading Filed in Connection with the Court's May 16, 2014 Scheduling Order* [Dkt. No. 12724] ("**Phaneuf Response**"), responding to the Phaneuf Plaintiffs' No Stay Pleading.

21. On June 17, 2014, after the Phaneuf Response was filed with the Court, counsel for New GM was contacted by Gary Peller, an attorney who stated he was recently retained by the Elliott Plaintiffs. Although the Elliott Plaintiffs had previously agreed to stay their Ignition Switch Action and had voluntarily executed the Elliott Stay Stipulation, newly-retained counsel for the Elliott Plaintiffs stated that the Elliott Plaintiffs now wished to file an amended complaint and that they believed that only some of their claims should be subject to the stay stipulation, while others should be allowed to proceed. A different attorney, Daniel Hornal, entered an appearance for the Elliott Plaintiffs in the DC District Court

22. In numerous conversations and exchanges of correspondence over the following days, counsel for New GM explained to Mr. Peller the Stay Procedures, which were timely served on the Elliott Plaintiffs, and New GM's position that the Elliott Plaintiffs remained bound by the Stay Stipulation they executed and entered into. Mr. Peller refused to cooperate with the filing of the DC Stay Motion or any joint motion in a form that would stay the Elliott Plaintiffs' entire case; instead, Mr. Peller insisted that the Elliott Plaintiffs should be required to stay only part of their case alleging pre-petition economic loss claims arising from the ignition switch, while being allowed to proceed with other pre-petition economic loss claims not directly related to the ignition switch. To New GM, Mr. Peller was making a distinction without a difference. All pre-petition economic loss claims were Retained Liabilities of Old GM, regardless of whether they related to the ignition switch issue, or some other Old GM part. In any event, the Elliott No

Stay Pleading now asserts that the entire Elliott Ignition Switch Action should be allowed to proceed, and that no part of it should be stayed.

23. On June 19, 2014, the Elliott Plaintiffs filed a motion (“**Motion to Defer**”) in the DC District Court requesting that the District Court defer consideration of New GM’s pending motion to dismiss “until after the Plaintiffs have an opportunity to move for leave to amend the Complaint . . . in order to clarify their factual allegations and the legal bases for relief, and to make other changes in their pleadings.”⁶

**D. New GM is Forced to Seek Court Intervention to
Compel the Elliott Plaintiffs to Comply With the Stay Procedures**

24. Given that the Elliott Plaintiffs were not complying with the terms of the Elliott Stay Stipulation they voluntarily entered into, New GM was forced to file with this Court the *Supplemental Response by General Motors LLC in Connection with Stay Procedures Set Forth in the Court’s May 16, 2014 Scheduling Order*, dated June 24, 2014 [Dkt. No. 12735] (“**Supplemental Response**”). In its Supplemental Response, New GM requested that the Court direct the Elliott Plaintiffs to comply with the Elliott Stay Stipulation, to cooperate with New GM in the filing of the DC Stay Motion, and to refrain from taking any further action in the DC District Court.

25. Thereafter, on June 28, 2014, in violation of the Stay Stipulation and Scheduling Order, the Elliott Plaintiffs, through their counsel, filed in the DC District Court a motion for leave to amend their complaint (“**Motion to Amend**”).⁷ The Memorandum in Support of the Motion to Amend filed in the DC District Court misstated to that court the proceedings here: “GM is currently attempting to circumvent this Court’s [*i.e.*, the DC District Court’s] authority

⁶ A copy of the Motion to Defer is annexed hereto as Exhibit “C.”

⁷ Annexed hereto as Exhibit “D” is the Motion to Amend, with exhibits, including a copy of the Elliott Plaintiffs’ proposed amended complaint (“**Proposed Amended Complaint**”).

by appealing to the Bankruptcy Court in the Southern District of New York to bar Mr. and Mrs. Elliott even from presenting the [Motion to Amend] to this Court.”

26. A review of their Proposed Amended Complaint clearly demonstrates that the Elliott Action is an Ignition Switch Action to its core. The Proposed Amended Complaint is replete with references to the alleged defective ignition switch in an Old GM pre-petition vehicle allegedly owned by the Elliott Plaintiffs (*i.e.*, a 2006 Chevrolet Cobalt), and each of the eight causes of action asserted against New GM seek economic loss damages, at least in part, based on the alleged defective ignition switch. *See generally* Proposed Amended Complaint.

27. Moreover, the Proposed Amended Complaint did not merely seek to clarify the *pro se* allegations contained in the Elliott Plaintiffs’ original complaint; it sought to add a new plaintiff, convert the Action into a class action, and to address issues with 13 different vehicle models that were, in some instances, manufactured and sold by Old GM, and in other instances manufactured by New GM.

E. The July Conference, and the Court’s Denial of the Relief Requested in the Phaneuf No Stay Pleading

28. The Court held the July Conference to address certain additional procedural issues that had arisen among Counsel for the Identified Parties since the entry of the Scheduling Order. As part of the July Conference, the Court ruled on which issues should be decided first in these contested proceedings. One of those issues was the Old GM Claim Threshold Issue, which necessarily concerns the issues raised by New GM and the Elliott Plaintiffs themselves – *i.e.*, whether the claims at issue in the Elliott Ignition Switch Action are claims against Old GM or New GM. A briefing schedule respecting the Old GM Claim Threshold Issue was established in the Supplemental Scheduling Order, with briefing to conclude by the end of September, 2014.

29. After the July Conference, the Court heard argument on the Phaneuf No Stay Pleading [Dkt. No. 12712]. Like the Elliott Ignition Switch Action, the Phaneuf Ignition Switch Action attempted to allege claims solely against New GM, and not Old GM. The Phaneuf Plaintiffs argued, like the Elliott Plaintiffs argue here, that their “claims relate to New GM’s conduct *post*-bankruptcy.” Phaneuf No Stay Pleading, p. 2. New GM responded, arguing that the Phaneuf Plaintiffs’ claims were like the other Plaintiffs’ claims in other Ignition Switch Actions, and that the Phaneuf Plaintiffs should be on the same schedule as the other Plaintiffs in the nearly 90 other Ignition Switch Actions.

30. The Court agreed with New GM, finding

that the sale order now applies, though it is possible, without prejudging any issues, that, after I hear from the other 87 litigants, I might ultimately rule that it does not apply to some kinds of claims and that, even if the sale order didn't apply, that New GM would be entitled to a preliminary injunction temporarily staying the Phaneuf plaintiffs' action from going forward, pending a determination by me on the other 87 litigants' claims under the standards articulated by the circuit in Jackson Dairy and its progeny.

Hr’g Tr. 91:12-21, July 2, 2014. The Court ruled that it makes the most sense to address common issues at one time, and not to make early findings based on the request of one, out of many, parties in interest:

To step out of that template and make early findings without giving them the opportunity to be heard and where the issues are of the complexity that people argued in good faith from many different approaches would be extraordinarily ill-advised. To the contrary, every principal of case management that judges are taught causes them to, on the one hand, try to deal with issues where all concerned have the ability to be heard and also to prevent one client or one group of litigants to get ahead of the rest in a way that has the potential for prejudicing the remainder.

Id., 94:1-11.

31. In addition, the Court found that even if the Sale Order and Injunction did not stay the Phaneuf Plaintiffs in the first instance, New GM had satisfied its burden of obtaining a preliminary injunction:

Finally, I determine that, even if my earlier order hadn't been entered, it would be appropriate to enter a preliminary injunction, limited in duration until I've ruled, preventing the piecemeal litigation of the Phaneuf plaintiffs' claims now ahead of all of the other lawsuits that are similarly situated. While I don't have a complete record, it's foreseeable, if not obvious, that at least a subset of the 87 other litigants are going to present the same issues, and that's the exact reason why the MDL action came into being where the cases before Judge Furman were determined by the MDL panel to be sent to a single judge for pretrial matters and explains how they originally came to be before Judge Furman. When issues raise overlapping -- excuse me. When actions raise overlapping issues, even if they're not wholly congruent, coordinated disposition is essential, and I don't rule out the possibility -- in fact, I assume it to be true -- that the facts you present, Mr. Block and Mr. Garber, may not appear in every one of those 88 cases, but the chances that they're not going to be present in at least some of them are remote. While I well-understand the desire of litigants both to get their cases moving as quickly as possible and -- though I don't know if it's your desire here -- to put yourself in a desirable a position ahead of others -- might occasion your desire to get this relief, they are insufficient to trump the normal case management concerns that I and most other judges would have.

Id., 94:21-95:22.

F. The Court Enjoins the Elliott Plaintiffs from Proceeding in Their Ignition Switch Action, but Allows them to File a Late No Stay Pleading

32. After the Phaneuf No Stay Pleading was ruled on, the Court heard argument on the Supplemental Response, as further supplemented by the Elliott Plaintiffs' and New GM's letters. The Court was prepared to allow the Elliott Plaintiffs to file a late No Stay Pleading to give them "the opportunity, if [they] can, to show that [their] action is any different than the other 87, including now Phaneuf and to consider my ruling that I just issued in Phaneuf to be stare decisis, that is a precedent, vis-a-vis your effort to get them special treatment but not res judicata or collateral estoppel." *Id.*, 99:19-24.

33. While the Court was skeptical about whether the Elliott Plaintiffs could make a cogent argument for why a stay would not apply to them, the Court nevertheless ruled, given that the Elliott Plaintiffs signed the Elliott Stay Stipulation *pro se*,⁸ that the Elliott Plaintiffs would have an opportunity to file a No Stay Pleading on behalf of themselves individually. However, after hearing that counsel for the Elliott Plaintiffs were attempting to convert the Elliott Ignition Switch Action into a class action, and to actively solicit additional plaintiffs, the Court limited its ruling:

So we're going to give the Elliotts, themselves, relief from the stipulation that they entered into, but nobody else. Therefore, if you want to proceed for their benefit as a non-class action, as what in substance is an individual action, you can do that, Mr. Hornal. But when a Judge, like me, excuses somebody from the legal consequences of what he's done, there is no basis in law or logic for then opening up the doors to anything more than that which is necessary to protect the pro se plaintiff.

Hr'g Tr. 114:7-16, July 2, 2014.

34. Thereafter, the Court entered the *Order Staying And Restraining Lawrence And Celestine Elliott, And Their Counsel, From Further Proceeding With Their Ignition Switch Action, Except As Expressly Set Forth Herein*, entered by the Court on July 8, 2014 (“**Elliott Stay Order**”) [Dkt. No. 12763].⁹ The Elliott Stay Order provides that, except as expressly set forth in that Order, the Elliott Plaintiffs, their counsel and others acting in concert with them, are stayed from proceeding in the DC District Court with respect to the Elliott Ignition Switch Action. In addition, the Elliott Stay Order required the Elliott Plaintiffs to undertake certain actions within a specific period of time, including (i) withdrawing their Motion to Amend within

⁸ The Court did state that if the Elliott Plaintiffs had counsel when they executed the Stay Stipulation, it would have held them to that stipulation. Hr'g Tr. 100:7-8, July 2, 2014 (“Frankly, if your clients' hadn't been pro se at the time, I would hold them to the stip. . .”).

⁹ On July 14, 2014, the Elliott Plaintiffs filed a notice of appeal with respect to, among other Orders, the Elliott Stay Order. Referencing the DC District Court Order (defined below), the Elliott Plaintiffs withdrew their notice of appeal on July 18, 2014.

two (2) business days of entry of the Elliott Stay Order (*i.e.*, July 10, 2014),¹⁰ and (ii) the filing of a No Stay Pleading with this Court within three (3) business days of entry of the Elliott Stay Order (*i.e.*, July 11, 2014). While the Elliott Plaintiffs timely filed their No Stay Pleading, they did not withdraw their Motion to Amend or provide any reason for not complying with this Court's directive. Their actions are a willful violation of this Court's Elliott Stay Order, and their misconduct is thus subject to the Court's contempt powers.

35. New GM's deadline to file a response in the DC District Court to the Motion to Amend was Monday, July 14, 2014. As the Elliott Plaintiffs did not withdraw their Motion to Amend by the date set forth in the Elliott Stay Order (July 10, 2014), New GM filed a *Notice of Authority and Related Proceedings* with the DC District Court on July 11, 2014 ("**Notice of Authority**"),¹¹ informing that court of the Elliott Stay Order, and New GM's motion to transfer the Elliott Ignition Switch Action to the MDL.

36. In response to the Notice of Authority, the Elliott Plaintiffs filed a 15-page pleading with the DC District Court on July 16, 2014.¹² While their Motion of Counsel contends that it seeks "no specific relief" (p. 1 n. 2 thereof), it contains many argumentative statements regarding this contested matter and this Court's Elliott Stay Order. For example, counsel for the Elliott Plaintiffs affirmatively state they decided not to withdraw their Motion to Amend, despite

¹⁰ Pursuant to the Elliott Stay Order, the Elliott Plaintiffs were permitted to file by July 18, 2014 an amended complaint in the DC District Court that alleged claims against New GM solely held by the Elliott Plaintiffs individually. The Elliott Plaintiffs were not permitted to convert their complaint into a class action complaint. However, presumably in light of the DC District Court Order, the Elliott Plaintiffs did not file an amended complaint as authorized by the Elliott Stay Order.

¹¹ A copy of the Notice of Authority is annexed hereto as Exhibit "E."

¹² The full title of the Elliott Plaintiffs pleading is *Motion Of Counsel To Notify The Court Of Developments In Related Proceedings Between The Parties, Of The Potential For Jurisdictional Conflict With Another Federal Court, Of Intrusion On The Integrity Of This Court's Proceedings, And Of The Conflicting Ethical Obligations Counsel Face* ("**Motion of Counsel**"). A copy of the Motion of Counsel is annexed hereto as Exhibit "F."

this Court's very clear instructions to do so in the Elliott Stay Order. *See* Motion of Counsel, p. 14.

37. Moreover, despite *this Court* being the proper forum to decide whether the claims asserted by the Elliott Plaintiffs are claims against Old GM or New GM, counsel for the Elliott Plaintiffs argued to the DC District Court their belief that this Court has no jurisdiction over the Elliott Ignition Switch Action. *See id.* at p. 13. Counsel for the Elliott Plaintiffs have thus taken it upon themselves to decide what, in their view, is appropriate and what is not, regardless of what is contained in a valid Order of the Court.

38. On July 16, 2014, after the Motion of Counsel was filed and, given that the Motion to Amend had not been withdrawn, the DC District Court entered an Order ("**DC District Court Order**")¹³ in connection with the Motion to Amend. The DC District Court recognized that the Elliott Stay Stipulation "was still a binding agreement based on the required procedures of the Bankruptcy Court," and found that "[t]he Elliotts have not complied with the Bankruptcy Court's directive to withdraw their motion to amend." DC District Court Order, at 3. However, as the Elliott Ignition Switch Action was not stayed, the DC District Court granted the Motion to Amend, finding the Proposed Amended Complaint "helpful to all concerned insofar as it would clarify the claims that the Elliotts are pressing before this Court." *Id.* at 4. Nonetheless, the DC District Court stayed all further proceedings in the Elliott Ignition Switch Action "pending the outcome of the proceedings before the Bankruptcy Court and the JPML." *Id.*¹⁴

¹³ A copy of the DC District Court Order is annexed hereto as Exhibit "G."

¹⁴ Having granted the Motion to Amend, the DC District Court denied New GM's motion to dismiss the initial complaint as moot. Moreover, in a separate Minute Order entered by the DC District Court also on July 16, 2014, that Court denied as moot any relief requested by the Elliott Plaintiffs in the Motion to Defer and in the Motion of Counsel. *See* Elliott Ignition Switch Action Civil Docket Sheet for July 16, 2014, annexed hereto as Exhibit "H."

39. This Response is filed by New GM pursuant to paragraph 5 of the Elliott Stay Order, and sets forth (a) why the relief requested in the Elliott No Stay Pleading should be denied, and (b) why the Elliott Plaintiffs should be preliminarily enjoined from proceeding with their Ignition Switch Action pursuant to the terms of the Elliott Stay Stipulation.

RESPONSE

40. As stated in the Motion to Enforce, the United States Supreme Court in *Celotex Corp. v. Edwards* set forth the “well-established” rule that “persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” 514 U.S. 300, 306 (1995).

The Supreme Court further explained:

If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded judgment creditors have done Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court’s Section 105 Injunction in the federal courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law.

Id. at 313.

41. The settled principles of *Celotex* required the Elliott Plaintiffs to seek relief from the Sale Order and Injunction in this Court, prior to commencing their Ignition Switch Action. They did not do so, and – through their No Stay Pleading – they continue to disregard this Court’s jurisdiction over them.

42. New GM is not seeking any new injunction against the Elliott Plaintiffs; New GM is simply seeking to enforce the pre-existing injunction set forth in this Court’s Sale Order and Injunction. Through their No Stay Pleading, the Elliott Plaintiffs are essentially asking the Court to vacate its preexisting injunction as to them. The burden is thus on the Elliott Plaintiffs to demonstrate that the injunction in the Sale Order and Injunction should be vacated. *See Stewart*

v. General Motors Corp., 756 F.2d 1285, 1291 (7th Cir. 1985) (“The law appears settled that the defendant bears that burden on a motion to vacate an injunction.”). They have not met their burden.

43. Moreover, even if the Court views New GM as seeking a preliminary injunction (which it is not), as demonstrated herein, New GM clearly can satisfy such burden of proof.

44. The test for granting a preliminary injunction is whether the moving party can establish “(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.” *Sunni, LLC v. Edible Arrangements, Inc.*, No. 14 Civ. 461 (KPF), 2014 WL 1226210 (S.D.N.Y. March 25, 2014) (quoting *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 215 (2d Cir. 2012) (internal quotation marks omitted)).

45. Here, as was the case with the Phaneuf Plaintiffs, New GM will be irreparably harmed if the Elliott Plaintiffs are not stayed from proceeding in another forum. Allowing the Elliott Plaintiffs to continue their Action in another forum will require New GM to defend the same claims in multiple forums. Inconsistent decisions on issues squarely within this Court’s province may result. In addition, allowing just the Elliott Plaintiffs – one small group of Plaintiffs out of scores of other Ignition Switch Actions – to continue their Ignition Switch Action in another forum may cause other Plaintiffs to seek relief from the Stay Stipulations they already entered into, and may potentially create confusion in the Transferee Court (as defined in

the Scheduling Order)¹⁵ as to what issues may proceed there before the bankruptcy-related issues are determined by this Court.

46. Although the Elliott Plaintiffs have argued to the contrary, they essentially seek to hold New GM liable as a successor to Old GM, and seek to hold New GM accountable for Old GM's conduct relating to Old GM vehicles. These types of claims are clearly barred by the Sale Order and Injunction. Accordingly, as demonstrated more fully in the Motion to Enforce, New GM has demonstrated a likelihood of success on the merits or, at a minimum, that there are very serious questions going to the merits to make them a fair ground for litigation.

47. In addition, in their No Stay Pleading, aside from referencing their ages, the Elliott Plaintiffs have not stated how they would be harmed if their Ignition Switch Action was stayed like effectively all other Plaintiffs seeking economic loss damages in the Ignition Switch Actions, who voluntarily agreed to do so.¹⁶

48. In view of the foregoing, to the extent applicable, New GM has satisfied the standard for the issuance of a preliminary injunction against the Elliott Plaintiffs.

**THE RELIEF REQUESTED IN THE ELLIOTT
NO STAY PLEADING SHOULD BE DENIED**

49. Preliminarily, as was the case with respect to the Phaneuf No Stay Pleading, New GM will limit its substantive arguments in this Response because of the absence of counsel for the other Plaintiffs in the Ignition Switch Actions. *See* Hr'g Tr. 82:14-17, July 2, 2014 ("MR. STEINBERG: . . . and I'm trying to be very careful not to make substantive arguments . . .

¹⁵ Given the allegations in the Proposed Amended Complaint, it is likely that the Elliott Ignition Switch Action will ultimately be transferred to the MDL. The Elliott Plaintiffs concede this likely outcome in their No Stay Pleading. *See* Elliott No Stay Pleading, p. 8 n. 10 ("The Elliots understand that at least some of their claims may be consolidated with, and transferred to, the pending MDL.").

¹⁶ In fact, the recall repairs for the ignition switch and related parts in the Elliott Plaintiffs' 2006 Cobalt were recently completed free of charge by an authorized GM dealer in the Washington DC area.

THE COURT: That's especially important in light of all the people who have already left the courtroom today."'). As discussed herein, the issues raised by the Elliott Plaintiffs will be briefed in accordance with the procedures established for the Four Threshold Issues pursuant to the Supplemental Scheduling Order.

50. To the extent the Court believes that substantive arguments are needed to address the Elliott Plaintiffs' claims in the context of their No Stay Pleading prior to the Court addressing the Four Threshold Issues (which New GM asserts should not be the case), New GM requests that it be given an opportunity to brief such issues.

A. The Elliott Plaintiffs' Claims Clearly Implicate the Sale Order and Injunction

51. The issues raised by the Elliott Plaintiffs are simpler to address than the issues raised by the Phaneuf Plaintiffs (who assert claims with respect to both New GM and Old GM vehicle owners). The Elliott Plaintiffs own an Old GM vehicle which the Court found to be a highly relevant fact in determining whether a No Stay Pleading should be granted. Hr'g Tr. 92:3-5, July 2, 2014.¹⁷

52. The Elliott Plaintiffs, like the Phaneuf Plaintiffs, similarly argue that their claims are based solely on New GM's conduct, and not Old GM's conduct. New GM strongly disputes the Elliott Plaintiffs' assertion. In any event, it is undisputed that the Elliott Plaintiffs purchased their vehicle -- a 2006 Chevrolet Cobalt -- from Old GM (not New GM). The Elliott Plaintiffs are identically situated to many of the other class representatives in the other Ignition Switch Actions who purchased their vehicles from Old GM. All of those Plaintiffs have voluntarily

¹⁷ If the joined plaintiff in the Elliott Ignition Switch Action were to be considered, which should not be the case given that her presence in the Action is solely a function of the Elliott Plaintiffs' failure to comply with this Court's Elliott Stay Order, she owns a New GM vehicle (*i.e.*, a 2010 Cobalt), which would merely bring the Elliott Plaintiffs to equal footing with the Phaneuf Plaintiffs.

agreed to stay their Ignition Switch Actions pending resolution of the bankruptcy-related issues raised in the Motion to Enforce. The Elliott Plaintiffs should be required to do the same.

53. Moreover, while the Elliott Plaintiffs contend that they are only complaining about New GM's conduct, and not Old GM's conduct, a review of their complaint demonstrates that is not true. Despite an affirmative statement to the contrary, the Elliott Plaintiffs' claims are based on a "successor liability" theory. The Elliott Plaintiffs specifically assert, among other things, that "New GM acquired all the books, records and accounts of [Old GM], including records that document the unlawful concealment of defects in vehicles sold by Old GM prior to New GM's existence." Proposed Amended Complaint, ¶ 6.

54. The Elliott Plaintiffs may dispute New GM's assertion, but even they recognize that the Court needs to interpret the Sale Order and Injunction to reach a conclusion on the issue.¹⁸ The Sale Order and Injunction unquestionably reserved exclusive jurisdiction to this Court to interpret and enforce the Sale Order and Injunction, as well as the terms of the MSPA.¹⁹ This is why the Motion to Enforce was filed in this Court, and this is why this Court is the only proper Court to hear and decide these issues.

¹⁸ See Elliott No Stay Pleading, pp. 27-28 ("Before such a conclusion can reasonably (or constitutionally) be reached, an analysis is necessary first to determine if their third-party nondebtor claims assert derivative or successor liability on the part of New GM for retained liability of Old GM, in which case the claims may well be within the terms of the Sale Order, or if they are based instead on allegations that New GM violated independent duties that New GM owed to the Elliotts, causing them legally cognizable harm, in which case the claims would not be, and constitutionally could not have been, encompassed by the Sale Order and Injunction.").

¹⁹ See Sale Order and Injunction, ¶ 71. In their No Stay Pleading, the Elliott Plaintiffs confuse the Court's jurisdiction to interpret and enforce the Sale Order and Injunction, with a bankruptcy court's general jurisdiction to enforce the automatic stay or to generally protect debtors and/or property of the estate. See, e.g., Elliott No Stay Pleading, at pp. 9-11. New GM has never argued that the automatic stay applies here or that this Court's jurisdiction arises from a specific section of the Bankruptcy Code. New GM asserts, and as this Court has previously found in similar matters, this Court has exclusive jurisdiction to enforce its previous Orders, like the Sale Order and Injunction. See Motion to Enforce, ¶¶ 25-27. This Court clearly has such jurisdiction to resolve the issues raised in the Motion to Enforce, generally, and with respect to the Elliott Plaintiffs specifically.

55. All Plaintiffs are required to obey the injunction contained in the Sale Order and Injunction until this Court has had an opportunity to resolve the bankruptcy-related issues set forth in the Motion to Enforce, and in particular, decide which claims asserted against New GM are barred, and which, if any, are not. The Elliott Plaintiffs are no different from any of the other Plaintiffs. Virtually every other one of them, by signing the Stay Stipulation, has acknowledged their obligation to comply with the Court's Sale Order and Injunction. The Elliott Plaintiffs should be compelled to do what the others have readily acknowledged they will and must do.

B. The Elliott Plaintiffs' Arguments Are Subsumed in the Old GM Claim Threshold Issues And Should Be Decided Pursuant to the Court-Approved Procedures Regarding Same

56. As stated above, the claims asserted by the Elliott Plaintiffs are no different from the claims asserted by many Plaintiffs in other Ignition Switch Actions. Numerous other Plaintiffs have asserted, among other things, claims against New GM based on RICO,²⁰ fraud and consumer protection statutes.²¹ The real issue raised by the Elliott No Stay Pleading is whether their contention – *i.e.*, that they have asserted claims only against New GM and not Old GM -- should be decided now, or as part of the identical Old GM Claim Threshold Issue that is set forth in the Supplemental Scheduling Order. This is a question that this Court already has answered repeatedly, and has implemented carefully-crafted procedures for doing so.

57. If the Elliott Plaintiffs are not required to abide by the preexisting injunction and to cease prosecuting their Ignition Switch Action, the carefully-crafted procedures put in place by

²⁰ Other Ignition Switch Actions asserting a RICO claim include those filed by the Arnold Plaintiffs, the Burton Plaintiffs, the Edwards Plaintiffs, the Emerson Plaintiffs, the Espineira Plaintiffs, the Harris Plaintiffs, the Knetze Plaintiffs, the Lannon Plaintiffs, the Markle Plaintiffs, the Mazzocchi Plaintiffs, the Ramirez Plaintiffs, the Ross Plaintiffs and the Santiago Plaintiffs.

²¹ Most of the Ignition Switch Actions contain claims based on (i) fraud or fraudulent concealment (which the Elliott Plaintiffs allege in their Proposed Amended Complaint (*see* ¶ 66 thereof)), and (ii) alleged violations of consumer protection statutes.

this Court in the Scheduling Order and Supplemental Scheduling Order may unravel. The Stay Stipulations entered into by the other Plaintiffs provide that:

if a plaintiff in a different Ignition Switch Action (as defined in the Motion to Enforce) does not sign a stipulation similar to this Stipulation, and prior to September 1, 2014 obtains a ruling from the Bankruptcy Court which permits that plaintiff to go forward in its Ignition Switch Action, the Plaintiff who signed this Stipulation reserves the right to promptly seek the same relief from the Bankruptcy Court as it applies to this Action but only if the same factual and/or legal predicate on which the other plaintiff obtained relief applies to the Plaintiff in this Action as it did to the plaintiff in the other Ignition Switch Action who obtained such relief.

58. Allowing the Elliott Plaintiffs to proceed with their Ignition Switch Action in a different forum could cause other Plaintiffs to seek relief in this Court from the stay that they previously voluntarily entered into, or to proceed directly in an individual court or the MDL court based on the caveat to the Stay Stipulation set forth above. Any of this would cause the very chaos the Court sought to avoid by entering the Scheduling Order. The procedures agreed to by all other Plaintiffs should govern the Action instituted by the Elliott Plaintiffs.

WHEREFORE, New GM respectfully requests that this Court (i) deny the relief requested in the Elliott No Stay Pleading, (ii) preliminarily enjoin the Elliott Plaintiffs from further prosecuting their Ignition Switch Action pursuant to the terms of the Elliott Stay Stipulation, and (iii) grant New GM such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 21, 2014

Respectfully submitted,

/s/ Arthur Steinberg
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Attorneys for General Motors LLC

Exhibit A

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May 20, 2014

Via FedEx

Lawrence M. Elliott
620 Nicholson Street NW
Washington DC, 20011-2020

Celestine V. Elliott
620 Nicholson Street NW
Washington DC, 20011-2020

Re: Elliott et al. v. General Motors LLC D. D.C. No. 1:14-cv-00691-KBJ

Dear Mr. Elliott and Ms. Elliott:

We are co-counsel for General Motors LLC ("New GM"). You previously commenced an Action against New GM asserting certain claims based on an alleged defect in ignition switches in certain vehicles. In connection therewith, on April 21, 2014, New GM filed a Motion to Enforce the Sale Order and Injunction with the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). On May 16, 2014, the Bankruptcy Court issued a Scheduling Order ("Scheduling Order") establishing certain procedures for addressing issues raised in the Motion to Enforce. A copy of the Scheduling Order is attached hereto. The form of the Scheduling Order presented to the Bankruptcy Court was negotiated with and approved by counsel representing certain of the Plaintiffs who have filed Actions against New GM ("Designated Counsel"). Designated Counsel appeared at the May 2, 2014 Bankruptcy Court hearing and spoke on behalf of the clear majority of Plaintiffs. They have agreed to try and coordinate the efforts of Plaintiffs' counsel in this matter. Contact information for Designated Counsel is as follows:

1. Edward Weisfelner – email: eweisfelner@brownrudnick.com; phone: 212-209-4900
2. Howard Steel – e-mail: hsteel@brownrudnick.com; phone: 212-209-4917
3. Sander Esserman – e-mail: esserman@sbep-law.com; phone: 214-969-4910
4. Peter Lockwood – e-mail: plockwood@capdale.com; phone: 202-862-5065

Pursuant to Paragraph 5(a) of the Scheduling Order (p. 5), all Plaintiffs that have filed Actions against New GM have until May 23, 2014 to enter into voluntary stipulations ("Stipulation") with New GM staying all proceedings in their Action against New GM (and certain of its affiliates). A copy of the Stipulation for your Action is attached hereto. Plaintiffs' Designated Counsel have reviewed and approved the form of the Stipulation. Please review the

KIRKLAND & ELLIS LLP

Lawrence M. Elliott
Celestine V. Elliott
May 20, 2014
Page 2

Stipulation and, if you agree to its terms, please sign where indicated and e-mail or fax a copy back to each of the following counsel representing New GM by May 23, 2014:

1. Arthur Steinberg – email: asteinberg@kslaw.com; facsimile: 212-556-2222; phone: 212-556-2158
2. Scott Davidson – e-mail: sdavidson@kslaw.com; facsimile: 212-556-2222; phone: 212-556-2164
3. Richard Godfrey – e-mail: rgodfrey@kirkland.com; facsimile: 312-862-2200; phone: 312-862-2391
4. Andrew Bloomer – e-mail; abloomer@kirkland.com; facsimile: 312-862-2200; phone: 312-862-2482

If you choose not to enter into a Stipulation, pursuant to Paragraph 5(b) of the Scheduling Order, you are required to file a pleading in the Bankruptcy Court by no later than May 27, 2014 setting forth why you should not be directed to stay your Action (“No Stay Pleading”). New GM will file a response to the No Stay Pleading by June 13, 2014, and the Bankruptcy Court will hold a hearing on a date set by the Bankruptcy Court.

Please be advised that if you choose not to (i) execute a Stipulation, or (ii) file a No Stay Pleading, New GM will seek appropriate relief from the Bankruptcy Court, *inter alia*, compelling you to comply with the terms of the Sale Order and Injunction, the Scheduling Order, and/or staying your Action.

To the extent you have previously entered into an agreed stay or extension of time in the court where you commenced your Action, those stipulations and extensions of time remain in effect. However, the Bankruptcy Court’s Order supersedes any prior agreement between the parties. You are therefore required to either execute a Stipulation or file a No Stay Pleading irrespective of any prior agreed stay or extension of time.

If you have any questions, you can contact the above-referenced counsel for New GM, or any of Plaintiffs’ Designated Counsel.

Sincerely,



Leonid Feller

Enclosure

LF/mrb

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE M. ELLIOTT, CELESTINE V.) Case No. 1:14-cv-00691-KBJ
ELLIOTT, et al.,)
) Hon. Ketanji Brown Jackson
Plaintiffs,)
)
v.)
)
GENERAL MOTORS LLC,)
)
Defendant.)
_____)

STIPULATION STAYING ACTION

WHEREAS, the above-referenced plaintiff(s) ("**Plaintiff(s)**") commenced this action ("**Action**") against General Motors LLC ("**New GM**") seeking, among other things, economic damages against New GM related to an alleged defect in certain vehicles or parts, and the recall instituted by New GM with respect thereto;

WHEREAS, on April 21, 2014, New GM filed the *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction* ("**Motion to Enforce**") in the United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**") asserting, *inter alia*, that (i) the Action violates the Order of the Bankruptcy Court, dated July 5, 2009 ("**Sale Order and Injunction**") approving the sale of substantially all of the assets from General Motors Corp. (n/k/a Motors Liquidation Company) ("**Old GM**") to New GM, and the injunction contained therein, and (ii) the Bankruptcy Court has exclusive jurisdiction to interpret and enforce the Sale Order and Injunction;

WHEREAS, the Plaintiffs oppose the Motion to Enforce;

WHEREAS, by Order of the Bankruptcy Court dated May 16, 2014 ("**Scheduling Order**"), the Bankruptcy Court established certain procedures to address the issues raised in the Motion to Enforce and the objections thereto. One of the procedures set forth in the Scheduling Order provides that the Plaintiff(s) shall be given until May 23, 2014 to enter into voluntary stipulations with New GM¹ for a stay of all proceedings in this Action against New GM;

WHEREAS, a hearing has been scheduled for May 29, 2014 before the Judicial Panel on Multidistrict Litigation ("**JPML**") in *In re General Motors LLC Ignition Switch Litigation*, MDL 2543, to determine whether to consolidate and transfer this Action and other similar actions

¹ For purposes of this Stipulation, New GM shall also include General Motors Holdings LLC and General Motors Company.

(collectively, the "Ignition Switch Actions") for coordinated or consolidated pretrial proceedings and, if so, the District Court and District Judge ("Transferee Court") before whom the Ignition Switch Actions will be centralized for that purpose; and

WHEREAS, subject to the terms hereof, and any further order of the Bankruptcy Court, the Plaintiff(s) have agreed to voluntarily stay this Action and any proceeding before the Transferee Court (except as set forth herein) pending a resolution by the Bankruptcy Court of the issues raised in the Motion to Enforce, and the objections thereto, or as otherwise set forth herein.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff(s) and New GM (collectively, the "Parties"), as follows:

1. Subject to paragraph 6 hereof, the Parties have agreed to enter into this Stipulation to stay the Action against New GM, and that Plaintiff(s), subject to further order of the Bankruptcy Court, shall not seek to further prosecute this Action during the "Interval" against New GM. For purposes hereof, (a) the "Interval" shall commence on the date of this Stipulation and shall end 30 days after a Final Order(s) is entered resolving all issues raised in the Motion to Enforce, and (b) "Final Order" shall mean the entry of an order by the Bankruptcy Court, and the time period to file an appeal of such order has expired.

2. The Parties agree that this Stipulation shall not interfere with the hearing scheduled for May 29, 2014 before the JPML, and any order by the JPML regarding whether to consolidate and transfer the Ignition Switch Actions for coordinated or consolidated pretrial proceedings and, if so, the Transferee Court before whom the Ignition Switch Actions will be centralized for that purpose.

3. The Parties agree that if the JPML consolidates and transfers the Ignition Switch Actions to a Transferee Court, Plaintiff(s) will continue to abide by this Stipulation in the Transferee Court during the Interval, *provided, however*, that Plaintiffs may, if the Transferee Court so chooses, take such administrative actions relating to the appointment of plaintiff and defendant liaison counsel and forming a plaintiffs' steering committee or other committee of plaintiffs' counsel.²

4. This Stipulation is without prejudice to the rights of New GM to request that the Bankruptcy Court stay the Plaintiff(s) from any further proceedings before the Transferee Court, or for the Plaintiff(s) to oppose such relief.

5. The Parties agree that this Stipulation terminates when, and only to the extent that, the Bankruptcy Court grants relief from the stay of this Action as agreed to by this Stipulation; provided however if a plaintiff in a different Ignition Switch Action (as defined in the Motion to Enforce) does not sign a stipulation similar to this Stipulation, and prior to September 1, 2014 obtains a ruling from the Bankruptcy Court which permits that plaintiff to go forward in its Ignition Switch Action, the Plaintiff who signed this Stipulation reserves the right to promptly seek the same relief from the Bankruptcy Court as it applies to this Action but only if the same factual and/or legal predicate on which the other plaintiff obtained relief applies to the Plaintiff in this Action as it did to the plaintiff in the other Ignition Switch Action who obtained such relief.

6. Any Party may, after September 1, 2014, request that the Bankruptcy Court modify or terminate the stay agreed to herein for cause shown, including without limitation

² Pursuant to the Scheduling Order, the issue of whether a consolidated complaint can be filed in the Transferee Court shall be addressed at the conference scheduled to take place before the Bankruptcy Court on July 2, 2014 at 9:45 a.m.

based on any rulings by the Bankruptcy Court, or any perceived delay in the resolution of the Threshold Issues (as such term is defined in the Scheduling Order).

7. The Parties each agree to execute such documents as may be reasonably necessary to carry out the terms of this Stipulation.

8. The Parties each acknowledge that they have been represented by counsel, have jointly negotiated and prepared this Stipulation and are fully satisfied with its terms. In the event an ambiguity or question of intent or interpretation arises with respect to this Stipulation, this Stipulation shall be construed as if drafted by all Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Stipulation.

9. This Stipulation shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to the conflict of laws principles thereof.

10. This Stipulation constitutes the entire agreement and understanding between the Parties regarding the subject matter herein, and supersedes any Party's promises to or agreements with any other Party with respect to the subject matter herein. No waiver or modification of any term or condition contained herein shall be valid or binding unless in writing and executed by the Parties hereto.

11. Nothing set forth herein is intended to modify the terms of the Scheduling Order. If there are any inconsistencies or conflicts between the terms of this Stipulation and the terms of the Scheduling Order, the terms of the Scheduling Order shall control.

12. This Stipulation may be filed by either Party in the Action and in the Bankruptcy Court.

13. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or e-mail transmission, and each of which shall be deemed an original.

DATED: May ___, 2014

Respectfully submitted,

/s/ Dominic E. Draye
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Attorneys for Defendant General Motors LLC

DATED: May ___, 2014

/s/ Lawrence M. Elliott
Lawrence M. Elliott
620 Nicholson Street, N.W.
Washington, DC 20011-2020

Pro Se Plaintiff

DATED: May ___, 2014

/s/ Celestine V. Elliott
Celestine V. Elliott
620 Nicholson Street, N.W.
Washington, DC 20011-2020

Pro Se Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May DD, 2014, a copy of the forgoing **STIPULATION STAYING ACTION** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

DATED: May __, 2014

/s/ Dominic E. Draye

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

| | |
|--|---------------------------------|
| -----X | |
| In re | : Chapter 11 |
| | : : |
| MOTORS LIQUIDATION COMPANY, <i>et al.</i> , | : Case No.: 09-50026 (REG) |
| <i>f/k/a General Motors Corp., et al.</i> | : : |
| | : : |
| Debtors. | : (Jointly Administered) |
| -----X | |
| STEVEN GROMAN, ROBIN DELUCO, | : : |
| ELIZABETH Y. GRUMET, ABC FLOORING, | : : |
| INC., MARCUS SULLIVAN, KATELYN | : : |
| SAXSON, AMY C. CLINTON, AND ALLISON | : Adv. Pro. No.: 14-01929 (REG) |
| C. CLINTON, on behalf of themselves, and all | : : |
| others similarly situated, | : : |
| | : : |
| Plaintiffs, | : : |
| | : : |
| -v- | : : |
| | : : |
| GENERAL MOTORS LLC, | : : |
| | : : |
| Defendant. | : : |
| -----X | |

**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. 14-01929¹**

Upon the Court’s Order, dated April 22, 2014 (“April 22 Order”), scheduling a conference for May 2, 2014 (“Conference”) to address procedural issues respecting the Motion, dated April 21, 2014 (“Motion”), of General Motors LLC (“New GM”),² pursuant to Sections 105 and 363 of the Bankruptcy Code, seeking to enforce the Sale Order and Injunction, the Objection, dated April 22, 2014 to the Motion filed by certain Plaintiffs [Dkt. No. 12629]

¹ Blacklined to show differences from Order as proposed by Counsel for the Identified Parties.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

(“Objection”), and the adversary proceeding, Adv. Proc. No. 14-01929 (REG) (“Adversary Proceeding”) filed by Steven Groman *et al.* (“Groman Plaintiffs”); and due and proper notice of the Conference having been provided to counsel for the Plaintiffs, counsel for the Motors Liquidation Company GUC Trust (“GUC Trust”), counsel for certain holders of GUC Trust units that appeared at the Conference (“Unitholders”), and the Office of the United States Trustee, and it appearing that no other or further notice need be given; and it appearing that the April 22 Order encouraged Plaintiffs’ counsel to band together, to the extent possible, to avoid repetition and duplicative arguments, and the Plaintiffs have made a good faith attempt to do so;³ and the Court having considered the letters filed with the Court regarding the proposed agenda for the Conference; and the Conference having been held on May 2, 2014; and upon the record of the Conference, and the prior proceedings had herein, the Court having issued directives from the bench, which are memorialized in this Order. Accordingly, it is hereby

ORDERED that no discovery shall take place with respect to the Motion, the Objection or the Adversary Proceeding until further order of this Court; and it is further

ORDERED that the contested matter for the Motion, the Objection and the Adversary Proceeding shall be jointly administered by this Court and, for ease of this Court and all parties, all pleadings and other documents shall only be required to be filed on the main docket for the Chapter 11 case (Case No. 09-50026); and it is further

ORDERED that the Groman Plaintiffs shall have until May 21, 2014 to file any amendment as of right to their complaint in the Adversary Proceeding, *provided, however*, that any such amendment shall not affect the procedures set forth in this Order, absent further order of this Court; and it is further

³ Certain Plaintiffs designated the law firms Brown Rudnick, LLP; Caplin & Drysdale, Chartered; and Stutzman, Bromberg, Esserman & Plifka, PC (collectively “Designated Counsel”) to speak on their behalf at the Conference.

ORDERED that the time for New GM to answer or move with respect to the Adversary Proceeding is adjourned *sine die*; and it is further

ORDERED that the question of whether Court-ordered mediation may be useful to resolve issues in these proceedings is deferred without prejudice to any party's rights to request Court-ordered mediation at a later time; and it is further

ORDERED that the GUC Trust agrees that it shall not assert a timeliness objection to any claims that the Plaintiffs may attempt to assert against the Old GM bankruptcy estate and/or the GUC Trust, based directly or indirectly on the ignition switch issue, as a result of the Plaintiffs' delay in asserting such claims during the "Interval." For purposes hereof, (a) the "Interval" shall commence on the date of this Order and shall end 30 days after a Final Order is entered with respect to an adjudication of the Threshold Issues (as defined in this Order), and (b) "Final Order" shall mean the entry of an order by a court of competent jurisdiction, and there are no pending appeals, and the time period to file an appeal of such order has expired; and it is further

ORDERED that Wilmington Trust Company ("WTC"), as the GUC Trust Administrator, and the Unitholders, subject to WTC and such Unitholders coordinating their efforts in these proceedings to the extent reasonably practicable, shall be considered parties in interest in the contested matter concerning the Motion, the Objection, and the Adversary Proceeding, and shall have standing to appear and be heard on all issues regarding the Motion, the Objection, and the Adversary Proceeding. WTC and the Unitholders, subject to the coordination of efforts as discussed above, shall be permitted to participate in any discovery that may later be authorized by the Court; and it is further

ORDERED that the following initial case schedule shall apply to the Motion, the Objection and the Adversary Proceeding:

1. The threshold issues to be addressed by the parties (“**Threshold Issues**”) are presently determined to be as follows:
 - a. Whether procedural due process in connection with the Sale Motion and the Sale Order and Injunction was violated as it relates to the Plaintiffs;
 - b. If procedural due process was violated as described in 1(a) above, whether a remedy can or should be fashioned as a result of such violation and, if so, against whom;
 - c. Whether a fraud on the Court was committed in connection with the Sale Motion and Sale Order and Injunction based on the alleged issues regarding the ignition switch defect (“**Fraud on the Court Threshold Issue**”);
 - d. Whether New GM may voluntarily provide compensation to pre-petition accident victims that allege that their accident was caused by a defective ignition switch, while seeking to enforce the Sale Order and Injunction against claims asserted in the Ignition Switch Actions; and
 - e. Whether any or all of the claims asserted in the Ignition Switch Actions are claims against the Old GM bankruptcy estate (and/or the GUC Trust).⁴

2. The following schedule shall apply to the Threshold Issues:
 - a. by May 28, 2014, Designated Counsel, counsel for the Groman Plaintiffs, counsel for the GUC Trust and counsel for the Unitholders collectively, are to provide New GM with proposed stipulations of facts regarding the Threshold Issues;
 - b. by June 11, 2014, New GM is to respond to the parties set forth in Section 2(a) by stating which proposed fact stipulations can be agreed to and which cannot, and which additional proposed fact stipulations should be considered by such parties;
 - c. during the period from June 11, 2014 through and including June 30, 2014, New GM and the parties in Section 2(a) (collectively, the “**Counsel for the Identified Parties**”) are to “meet and confer” on the proposed fact stipulations and attempt to narrow any remaining fact issues that may exist;

⁴ For the avoidance of doubt, the issue of whether a claim asserted in the Ignition Switch Actions is timely and/or meritorious against the Old GM bankruptcy estate (and/or the GUC Trust) is not a Threshold Issue.

- d. by July 1, 2014, the parties are to deliver to this Court the agreed upon stipulations of facts, and jointly identify for this Court any facts that could not be stipulated to; and
 - e. a further status conference shall be held on July 2, 2014 at 9:45 a.m. (Eastern) ("July Conference") so that this Court can address any remaining disputes that may exist among the parties in respect of the Threshold Issues, including how such issues should affect further proceedings, either by way of authorizing limited discovery on such issues, or by adding other issues to the list of Threshold Issues, or by removing such issues from the list of Threshold Issues at that time. The briefing schedule for the Threshold Issues will be set at the July Conference.
3. With respect to the Fraud on the Court Threshold Issue, Counsel for the Identified Parties are to meet and confer to attempt to determine the appropriate scope of discovery for such issue. If, after good faith discussions among the Counsel for the Identified Parties they are unable to agree on the appropriate scope of discovery for the Fraud on the Court Threshold Issue, any of the Counsel for the Identified Parties shall be permitted to request that the Court remove the Fraud on the Court Threshold Issue from the list of Threshold Issues, and to defer the consideration of such issue until a later time, *provided, however*, that the Counsel for the Identified Parties are to jointly identify for the Court the area(s) of disagreement so that it can be reviewed by the Court and, if appropriate, addressed by the Court at the July Conference.
 4. This Order shall not interfere with the hearing scheduled for May 29, 2014 before the Judicial Panel on Multidistrict Litigation ("JPML") in *In re General Motors LLC Ignition Switch Litigation*, MDL 2543, and any order by the JPML regarding whether to consolidate and transfer the Ignition Switch Actions for coordinated or consolidated pretrial proceedings and, if so, the District Court and District Judge ("Transferee Court") before whom the Ignition Switch Actions will be centralized for that purpose.
 5. (a) Plaintiffs shall be given until May 23, 2014 to enter into voluntary stipulations with New GM [proposed addition intentionally omitted] staying all proceedings in their Ignition Switch Action against New GM (including General Motors Holdings LLC and/or General Motors Company) other than the JPML proceedings set forth in paragraph 4 above and, if the Transferee Court so chooses, proceedings in the Transferee Court for the appointment of plaintiff and defendant liaison counsel and the formation of a plaintiffs' steering committee or other committee of plaintiffs' counsel.⁵ The Order is without prejudice to the rights of any party to request that this Court stay the Plaintiff(s) from further proceedings before the Transferee Court or for any party to oppose such relief.

⁵ The issue of whether Plaintiffs may file a consolidated complaint in the Transferee Court shall be addressed at the July Conference.

(b) If a Plaintiff chooses not to enter into a voluntary stay stipulation, it shall be required to file a pleading in this Court by no later than May 27, 2014 setting forth why it should not be directed to stay its Ignition Switch Action (“**No Stay Pleading**”). New GM will file a response to the No Stay Pleading by June 13, 2014, and the Court shall hold a hearing on a date set by the Court. Nothing set forth in this Order shall change the burden of proof as to whether there has been a violation of the Sale Order and Injunction by Plaintiffs who do not enter into a voluntary stay stipulation. This Order is without prejudice to any party, after September 1, 2014, requesting that this Court modify the stay for cause shown, including based on any rulings in this case, or any perceived delay in the resolution of the Threshold Issues.

6. Counsel for the Identified Parties are to identify, prior to the July Conference, all issues (other than the issues identified in paragraph 1 hereof) that the Court will be asked to determine in connection with the Motion, the Objection and the Adversary Proceeding, and to state whether or not such issues are to be added to the list of Threshold Issues. Prior to the July Conference, Counsel for the Identified Parties are to “meet and confer” as to when any such issues are best decided.
7. Consideration of non-Threshold Issues shall be deferred to a later time, and all parties shall reserve their rights with respect to such issues.

ORDERED that to the extent reasonably practicable, Designated Counsel shall consult and coordinate with other bankruptcy counsel who have filed a notice of appearance on behalf of any Plaintiff(s) in connection with the matters set forth in paragraphs 2, 3 and 6 above.

ORDERED that nothing in this Order is intended to or shall preclude any other Plaintiff’s counsel from taking a position in connection with any of the matters set forth in paragraphs 2, 3 and 6 above, PROVIDED that any other counsel who wishes to be heard orally with respect to such position at the Conference on July 2 shall submit and electronically file, no later than noon on July 1, a letter to the Court (with copies to all Identified Parties) summarizing the points he or she will wish to make: and PROVIDED FURTHER that any counsel who has failed to do so will not be heard orally at the July 2 Conference.

ORDERED that this Court shall retain exclusive jurisdiction to interpret and enforce this

Order.

Dated: May 16, 2014
New York, New York

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE



June 19, 2014

Dear Customer:

The following is the proof-of-delivery for tracking number **770039698295**.

Delivery Information:

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| Signed for by: | .ELLIOTT | Delivery location: | 620 NICHOLSON ST NW WASHINGTON, DC 20011 |
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Recipient:
Lawrence & Celestine Elliott
620 Nicholson Street NW
WASHINGTON, DC 20011 US

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Leonid Feller
Kirkland & Ellis LLP
300 N. LaSalle Street
Chicago, IL 60654 US

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Exhibit B

Fax Cover Sheet

Lawrence Elliott

Washington, DC 20011-2020

| | |
|---|---|
| Send to: <i>Arthur Steinburg Scott Davidson</i> | From: <i>Lawrence Elliott (Celestine) Elliott</i> |
| Attention: | Date: <i>05/23/2014</i> |
| Office Location: | Office Location: |
| Fax Number: <i>212-556-2222</i> | Phone Number: <i>202-744-5443</i> |

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Total pages, including cover: *9*

Comments:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAWRENCE M. ELLIOTT, CELESTINE V.
ELLIOTT, et al.,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

) Case No. 1:14-cv-00691-KBJ

)
) Hon. Ketanji Brown Jackson

STIPULATION STAYING ACTION

13. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or e-mail transmission, and each of which shall be deemed an original.

DATED: May 22 2014

Respectfully submitted,

/s/ Dominic E. Draye

Dominic E. Draye (DC BN 1008820)
KIRKLAND & ELLIS LLP
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Washington, DC 20005-5793
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Facsimile: 202-879-5200
Email: dominic.draye@kirkland.com

Richard C. Godfrey, P.C. (to be admitted *pro hac vice*)

Robert B. Ellis, P.C. (to be admitted *pro hac vice*)

Andrew B. Bloomer, P.C. (to be admitted *pro hac vice*)

Leonid Feller (to be admitted *pro hac vice*)

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Email: rgodfrey@kirkland.com
Email: rellis@kirkland.com
Email: abloomer@kirkland.com
Email: leonid.feller@kirkland.com

Attorneys for Defendant General Motors LLC

DATED: May 22 2014

/s/ Lawrence M. Elliott

Lawrence M. Elliott
620 Nicholson Street, N.W.
Washington, DC 20011-2020

Pro Se Plaintiff

DATED: May 22 2014

/s/ Celestine V. Elliott

Celestine V. Elliott
620 Nicholson Street, N.W.
Washington, DC 20011-2020

Pro Se Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May DD, 2014, a copy of the forgoing **STIPULATION STAYING ACTION** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

DATED: May 22, 2014

/s/ Dominic E. Drave

WHEREAS, the above-referenced plaintiff(s) ("Plaintiff(s)") commenced this action ("Action") against General Motors LLC ("New GM") seeking, among other things, economic damages against New GM related to an alleged defect in certain vehicles or parts, and the recall instituted by New GM with respect thereto;

WHEREAS, on April 21, 2014, New GM filed the *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction* ("Motion to Enforce") in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") asserting, *inter alia*, that (i) the Action violates the Order of the Bankruptcy Court, dated July 5, 2009 ("Sale Order and Injunction") approving the sale of substantially all of the assets from General Motors Corp. (n/k/a Motors Liquidation Company) ("Old GM") to New GM, and the injunction contained therein, and (ii) the Bankruptcy Court has exclusive jurisdiction to interpret and enforce the Sale Order and Injunction;

WHEREAS, the Plaintiffs oppose the Motion to Enforce;

WHEREAS, by Order of the Bankruptcy Court dated May 16, 2014 ("Scheduling Order"), the Bankruptcy Court established certain procedures to address the issues raised in the Motion to Enforce and the objections thereto. One of the procedures set forth in the Scheduling Order provides that the Plaintiff(s) shall be given until May 23, 2014 to enter into voluntary stipulations with New GM¹ for a stay of all proceedings in this Action against New GM;

WHEREAS, a hearing has been scheduled for May 29, 2014 before the Judicial Panel on Multidistrict Litigation ("JPML") in *In re General Motors LLC Ignition Switch Litigation*, MDL 2543, to determine whether to consolidate and transfer this Action and other similar actions

¹ For purposes of this Stipulation, New GM shall also include General Motors Holdings LLC and General Motors Company.

(collectively, the "Ignition Switch Actions") for coordinated or consolidated pretrial proceedings and, if so, the District Court and District Judge ("Transferee Court") before whom the Ignition Switch Actions will be centralized for that purpose; and

WHEREAS, subject to the terms hereof, and any further order of the Bankruptcy Court, the Plaintiff(s) have agreed to voluntarily stay this Action and any proceeding before the Transferee Court (except as set forth herein) pending a resolution by the Bankruptcy Court of the issues raised in the Motion to Enforce, and the objections thereto, or as otherwise set forth herein.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff(s) and New GM (collectively, the "Parties"), as follows:

1. Subject to paragraph 6 hereof, the Parties have agreed to enter into this Stipulation to stay the Action against New GM, and that Plaintiff(s), subject to further order of the Bankruptcy Court, shall not seek to further prosecute this Action during the "Interval" against New GM. For purposes hereof, (a) the "Interval" shall commence on the date of this Stipulation and shall end 30 days after a Final Order(s) is entered resolving all issues raised in the Motion to Enforce, and (b) "Final Order" shall mean the entry of an order by the Bankruptcy Court, and the time period to file an appeal of such order has expired.

2. The Parties agree that this Stipulation shall not interfere with the hearing scheduled for May 29, 2014 before the JPML, and any order by the JPML regarding whether to consolidate and transfer the Ignition Switch Actions for coordinated or consolidated pretrial proceedings and, if so, the Transferee Court before whom the Ignition Switch Actions will be centralized for that purpose.

3. The Parties agree that if the JPML consolidates and transfers the Ignition Switch Actions to a Transferee Court, Plaintiff(s) will continue to abide by this Stipulation in the Transferee Court during the Interval, *provided, however*, that Plaintiff(s) may, if the Transferee Court so chooses, take such administrative actions relating to the appointment of plaintiff and defendant liaison counsel and forming a plaintiff(s)' steering committee or other committee of plaintiff(s)' counsel.²

4. This Stipulation is without prejudice to the rights of New GM to request that the Bankruptcy Court stay the Plaintiff(s) from any further proceedings before the Transferee Court, or for the Plaintiff(s) to oppose such relief.

5. The Parties agree that this Stipulation terminates when, and only to the extent that, the Bankruptcy Court grants relief from the stay of this Action as agreed to by this Stipulation; provided however if a plaintiff in a different Ignition Switch Action (as defined in the Motion to Enforce) does not sign a stipulation similar to this Stipulation, and prior to September 1, 2014 obtains a ruling from the Bankruptcy Court which permits that plaintiff to go forward in its Ignition Switch Action, the Plaintiff who signed this Stipulation reserves the right to promptly seek the same relief from the Bankruptcy Court as it applies to this Action but only if the same factual and/or legal predicate on which the other plaintiff obtained relief applies to the Plaintiff in this Action as it did to the plaintiff in the other Ignition Switch Action who obtained such relief.

6. Any Party may, after September 1, 2014, request that the Bankruptcy Court modify or terminate the stay agreed to herein for cause shown, including without limitation

² Pursuant to the Scheduling Order, the issue of whether a consolidated complaint can be filed in the Transferee Court shall be addressed at the conference scheduled to take place before the Bankruptcy Court on July 2, 2014 at 9:45 a.m.

based on any rulings by the Bankruptcy Court, or any perceived delay in the resolution of the Threshold Issues (as such term is defined in the Scheduling Order).

7. The Parties each agree to execute such documents as may be reasonably necessary to carry out the terms of this Stipulation.

8. The Parties each acknowledge that they have been represented by counsel, have jointly negotiated and prepared this Stipulation and are fully satisfied with its terms. In the event an ambiguity or question of intent or interpretation arises with respect to this Stipulation, this Stipulation shall be construed as if drafted by all Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Stipulation.

9. This Stipulation shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to the conflict of laws principles thereof.

10. This Stipulation constitutes the entire agreement and understanding between the Parties regarding the subject matter herein, and supersedes any Party's promises to or agreements with any other Party with respect to the subject matter herein. No waiver or modification of any term or condition contained herein shall be valid or binding unless in writing and executed by the Parties hereto.

11. Nothing set forth herein is intended to modify the terms of the Scheduling Order. If there are any inconsistencies or conflicts between the terms of this Stipulation and the terms of the Scheduling Order, the terms of the Scheduling Order shall control.

12. This Stipulation may be filed by either Party in the Action and in the Bankruptcy Court.

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|----------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS' MOTION REQUESTING THAT THE COURT DEFER
CONSIDERATION OF GENERAL MOTORS LLC'S PENDING MOTION TO DISMISS**

Plaintiffs Lawrence M. and Celestine V. Elliott, by and through their undersigned counsel, hereby move to request that the Court defer consideration of General Motors LLC's ("GM's") Motion to Dismiss the Plaintiffs' *pro se* Complaint until after the Plaintiffs have an opportunity to move for leave to amend the Complaint. Plaintiffs retained counsel on June 18, 2014 and intend to seek the Court's leave to amend the Complaint in order to clarify their factual allegations and the legal bases for relief, and to make other changes in their pleadings. Clarification of the pleadings will assist the Court in assessing the sufficiency of Plaintiffs' allegations, as well as in resolving GM's contention, presumably to be filed shortly, that this Court should stay the action. Plaintiffs intend to file a motion for leave to amend by the close of business on June 28, 2014.

GM has informed co-counsel that it will not consent to Plaintiffs' forthcoming request to amend their pleadings. GM did not explicitly consent to the relief requested in the instant motion by the time of this filing.

Respectfully submitted,

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 20, 2014

Daniel Hornal, Esq.
705 4th Street, NW
Suite 403
Washington, DC, 20001
(202) 709 9662
daniel@taloslaw.com
Attorney for Plaintiffs

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE THE
PROPOSED FIRST AMENDED COMPLAINT AND TO JOIN PARTIES**

On June 20, 2014, plaintiffs, Lawrence and Celestine Elliott, filed a motion in this Court requesting that consideration of General Motors LLC’s (“GM’s”) Motion to Dismiss be deferred until June 27, 2014, while plaintiffs drafted and filed a motion for leave to file an amended complaint.

Plaintiffs now file this motion, pursuant to Fed. R. Civ. P. 15(a)(2), for leave to file the attached First Amended Complaint against GM.

Plaintiffs additionally request leave to join Berenice Summerville as a Plaintiff and Delphi Automotive PLC and Delphi Automotive Systems LLC as defendants, pursuant to Fed. R. Civ. P. 21 and Fed. R. Civ. P. 20(a)(1)(b). Ms. Summerville’s claims against GM raise the same or common questions of law and fact as those of Mr. and Mrs. Elliott. The proposed Defendants are independently and jointly and severally liable with GM for many of the injuries that Plaintiffs allege.

Pursuant to Local Rule 7(m), counsel for Plaintiffs contacted counsel for GM regarding the filing of this motion. Counsel for GM stated that GM would not consent to Plaintiffs' request to amend their pleadings.

Respectfully submitted,

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

Daniel Hornal, Esq.
705 4th Street, NW
Suite 403
Washington, DC, 20001
(202) 709 9662
daniel@taloslaw.com
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE
THE PROPOSED FIRST AMENDED COMPLAINT AND TO JOIN PARTIES**

I. Plaintiffs' Motion for Leave to File First Amended Complaint

On April 1, 2014, Lawrence and Celestine Elliott, as *pro se* plaintiffs, filed a Complaint in letter form in the Superior Court of the District of Columbia, which was docketed as Civil Action No. 14-001980. General Motors LLC ("GM") was served with a Summons and the Complaint on April 4, 2014, and on April 23, 2014, GM removed the case to this Court.

On April 23, 2014, GM moved to dismiss Mr. and Mrs. Elliott's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. No. 3). Plaintiffs' original Complaint was filed without the benefit of counsel and contains a variety of complaints stemming from their ownership of their 2006 Chevrolet Cobalt. *See* Complaint in Superior Court Documents, May 5, 2014 (Doc. No. 7).

As the Proposed First Amended Complaint alleges, Mr. and Mrs. Elliott are 78 and 73 years of age respectively. After they retired from over twenty-five years as taxi and commercial drivers, they paid the full manufacturers' suggested retail price for a new 2006 Chevrolet Cobalt. They had used this vehicle to transport their family, including grand and great-grand children who reside with them or nearby. This car has safety related defects that posed unreasonable and imminent danger of death or serious bodily injury. New GM and Delphi concealed these defects from them since the time of New GM's inception in October 2009.

On May 12, 2014, GM notified the United States Judicial Panel on Multidistrict Litigation that this action is related to the proceedings in *In re: General Motors LLC Ignition Switch Litigation*. *See* Notice of Related Action (*In re: General Motors LLC Ignition Switch Litigation* MDL No. 2543 Doc. No. 223). On June 11, 2014, that forum determined that Elliot et al. v. GM is not appropriate for inclusion in the Multidistrict Litigation proceedings. *See*

Notice to Counsel (*In re: General Motors Ignition Switch Litigation* MDL No. 2543 Doc. No. 269).

April 21, 2014, in *In re: Motors Liquidation*, GM filed a Motion to Enforce the Bankruptcy Court's July 5, 2009 Sale Order and Injunction. *See* Motion to Enforce (*Motors Liquidation Company*, (Bankr. S.D.N.Y), Doc. No. 12620). GM again unilaterally designated Mr. and Mrs. Elliotts' action, on a spreadsheet schedule, along with dozens of others, and based solely on the *pro se* letter, as an "ignition switch action" in its attempt to bar claims against it based on the bankruptcy proceedings of its predecessor. *See id.* GM is currently attempting to circumvent this Court's authority over its docket by appealing to the Bankruptcy Court in the Southern District of New York to bar Mr. and Mrs. Elliott even from presenting the instant motion to this Court. *See id.* Plaintiffs, through their counsel, are in contact with the Bankruptcy Court to determine how to proceed to correct GM's erroneous inclusion of the Elliott's claims in those proceedings.

Plaintiffs now move for leave to amend their original complaint, pursuant to Fed. R. Civ. P. 15(a)(2), to join parties, and to clarify their factual allegations and the legal claims they assert. Such clarification is indispensable to the ability of this Court and sister Courts considering related matters to give fair consideration to Plaintiffs claims. If a party seeks leave of the court to amend the complaint, the court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). This Court has previously found that amendments should only be denied where there is a clear justification for doing so, such as "futility, bad faith, undue delay, or dilatory motive." *See, e.g., Lopez v. JetSetDC, LLC*, ---F. Supp. 2d--- (D.D.C. 2014) (citing *Monroe v. Williams*, 704 F. Supp. 621, 623 (D.D.C. 1988)). Due to the *pro se* nature of Plaintiffs' original Complaint, the intent of this Amended Complaint is the opposite of dilatory. The Amended Complaint clarifies the position of Plaintiffs such that their claims

can be more easily evaluated in light of GM's Motion to Dismiss under Fed. R. Civ. P.

12(b)(6) and other issues that are reasonably expected to arise in the litigation.

Plaintiffs seek to join Berenice Summerville as a Plaintiff. Ms. Summerville bought a dark blue 2010 Chevrolet Cobalt in December of 2009 as a Christmas gift for her mother. Ms. Summerville primarily used the car to drive her mother, who is now eighty years old, to doctor appointments and run errands. Ms. Summerville resides in Maryland, just five miles outside the District of Columbia; she frequently drives her Cobalt within the District. Just like Mr. and Mrs. Elliott, Ms. Summerville has endured a litany of problems with her Cobalt; there has periodically been an odor of gasoline around the car, and she has noted the vehicle's particularly poor gas mileage – both indicators of a gas leak that would be consistent with the 2006 Cobalt's defective gas pump. Additionally, her 2010 Cobalt uses the same defective ignition switch as the 2006 Cobalt that belongs to Mr. and Mrs. Elliott.

Plaintiffs seek to join related Delphi entities as Defendants. As the Proposed First Amended Complaint alleges, Delphi manufactured the defective ignition switches in Plaintiffs and Ms. Summerville's vehicles, and collaborated with GM in an extensive and elaborate scheme to conceal the defect from Plaintiffs, class members, regulatory authorities, investors, and others

Fed. Rule Civ. P. 21 states, "the court may at any time, on just terms, add or drop a party." In this case, those just terms come from Fed. Rule Civ. P. 20. Rule 20 requires first that the claims of the two parties arise out of the same transaction, occurrence or series thereof – that the claims are logically related. Fed. Rule Civ. P 20(a)(1)-(2); *see, e.g., Disparte v. Corporate Executive Bd.* 223 F.R.D. 7, 11 (D.D.C. 2004) (citing *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610)). The claims that Mrs. Summerville brings, like Mr. and Mrs. Elliott's

claims, arise out of the same conspiracy between GM, Delphi, and their dealers to conceal the extent of the danger posed by the latent defects in the vehicles plaintiffs purchased and drove.

Second, Rule 20(a)(1)-(2) requires that there be *some* question of law or fact as to all of the plaintiffs' claims. Fed. Rule Civ. P 20(a)(1)-(2); *see, e.g., Disparte*, 223 F.R.D. at 11 (citing *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1334 (8th Cir. 1974)). The claims that Ms. Summerville brings share many questions of law and fact in common with the claims that Mr. and Mrs. Elliott bring, including but not limited to the following:

- A. Whether the ignition switches in Plaintiffs' and Class Members vehicles are defective;
- B. Whether the fuel pumps in Plaintiffs' and Class Members' Chevrolet Cobalts are defective;
- C. Whether Defendants violated 18 U.S.C. § 1962(c) by conducting the affairs of the RICO Enterprise through a pattern of racketeering activity; and
- D. Whether Defendants had a duty to disclose the latent safety defects in plaintiffs' cars upon Defendants' discovery of those defects.

Finally, joinder may not prejudice any party or cause needless delay. *See Call of the Wild Movie, LLC v. Does*, 770 F. Supp. 2d 332 (D.D.C. 2011). In this case, joinder does not prejudice any party and is explicitly intended to reduce delay by increasing the efficiency with which these common questions of law and fact can be resolved. Pursuant to judicial efficiency and expeditious resolution of disputes, joinder of parties and claims has been "strongly encouraged." *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966); *see also M.K. v. Tenet*, 216 F.R.D. 133 (D.D.C. 2002) (stating the interest of this Court in preventing "multiple lawsuits, extra expense to the parties, and loss of time to the court [and]...litigants.).

Respectfully submitted,

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

Daniel Hornal, Esq.
705 4th Street, NW
Suite 403
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(202) 709 9662
daniel@taloslaw.com
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

[PROPOSED] Order

Upon consideration of the Motion for Leave to File First Amendment Complaint filed by Plaintiffs, Mr. and Mrs. Elliott, IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED. The clerk is directed to file the First Amended Complaint.

Upon consideration of Plaintiffs’ Motion for Permissive Joinder of Berenice Summerville as a Plaintiff, IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED and Berenice Summerville is joined as a Plaintiff in this matter.

Upon consideration of Plaintiffs’ Motion for Permissive Joinder of Delphi Automotive PLC and Delphi Automotive Systems LLC (“the Delphi parties”), IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED and the Delphi parties are joined as Defendants in this matter.

ORDERED, District of Columbia, this _____ day of _____, 2014

UNITED STATES DISTRICT JUDGE

DISTRIBUTION:

Robert Sharpleigh Ryland
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Fax: (202) 879-5200
robert.ryland@kirkland.com
Attorney for General Motors LLC

Matthew Francis Hall
DUNWAY & CROSS
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Tel: (202) 862-9700
Fax: (202) 862-9710
Attorney for General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Plaintiffs' Motion to Amend Complaint and Join Plaintiffs and Defendants, Memorandum in Support thereof, and Proposed Order on the following parties by electronically filing them with the Court's electronic case filing system this 28th day of June 2014:

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Fax: (202) 862-9710
Attorney for General Motors LLC

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

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(202) 709 9662
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Attorney for Plaintiffs

**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,)
)
Plaintiffs,)
)
v.)
)
GENERAL MOTORS LLC,)
DELPHI AUTOMOTIVE PLC,)
and DPH-DAS LLC f/k/a DELPHI)
AUTOMOTIVE SYSTEMS, LLC,)
)
Defendants.)

Case No. 1:14-cv-00691 (KBJ)
**CLASS ACTION FOR DECLARATORY,
INJUNCTIVE, AND MONETARY RELIEF**
**REPRESENTATIVE ACTION FOR
DECLARATORY, INJUNCTIVE, AND
MONETARY RELIEF
PURSUANT TO THE
D.C CONSUMER PROTECTION
PROCEDURES ACT, D.C. Code § 28-3901
et seq.**
JURY TRIAL DEMANDED

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 as 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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D.C Bar #1005381
705 4th St. NW #403
Washington, DC 20001
(202) 709-9662
daniel@taloslaw.com
Attorney for Plaintiffs

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|-----------------------------------|---|-----------------------------------|
| LAWRENCE M. ELLIOTT, CELESTINE V. |) | Case No. 1:14-cv-00691-KBJ |
| ELLIOTT, et al., |) | |
| |) | Hon. Ketanji Brown Jackson |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

NOTICE OF AUTHORITY AND RELATED PROCEEDINGS

General Motors LLC (“New GM”) submits this Notice of Authority and Related Proceedings to advise this Court of (i) an “Order Staying and Restraining Lawrence and Celestine Elliott, and Their Counsel, From Further Proceeding With Their Ignition Switch Action, Except as Expressly Set Forth Herein,” entered by the United States Bankruptcy Court for the Southern District of New York on July 8, 2014 (the “Bankruptcy Court Order,” attached hereto as Ex. A); and of (ii) “New GM’s Motion to Transfer Tag-Along Action for Consolidated Pretrial Proceedings,” filed before the Judicial Panel on Multidistrict Litigation (“JPML”) on July 1, 2014 (the “JPML Transfer Motion,” attached hereto as Ex. B).

The Bankruptcy Court Order. On July 8, 2014, the Bankruptcy Court Order was entered in aid of the Bankruptcy Court’s exclusive and continuing jurisdiction to interpret and resolve any claims arising from or related to its 2009 Sale Order and Injunction, and the Amended and Restated Master Sale and Purchase Agreement (“ARMSPA”) that it approved. Pursuant to the 2009 Sale Order and Injunction, New GM purchased substantially all of the assets of Motors Liquidation Co., f/k/a/ General Motors Corporation (“Old GM”), while all

liabilities relating to vehicles and parts manufactured and sold by Old GM (subject to limited exceptions not applicable here) were legacy liabilities retained by Old GM. On April 21, 2014, New GM filed a Motion to Enforce the 2009 Sale Order and Injunction in the Bankruptcy Court, asking that the Bankruptcy Court enforce the injunction contained therein which prohibited the plaintiffs in many dozens of cases pending nationwide from pursuing claims against New GM for economic loss damages arising from vehicles and parts manufactured by Old GM—including the Elliotts’ suit here. (*In re Motors Liquidation Co.*, No. 09-50026, ECF No. 12620). On May 16, 2014, the Bankruptcy Court entered a Scheduling Order, establishing procedures to resolve the Motion to Enforce with respect to the Elliotts and approximately 80 other sets of plaintiffs (the “Ignition Switch Actions”), including requiring all plaintiffs to stay their individual Actions, or else seek relief in the Bankruptcy Court, until the Bankruptcy Court had an opportunity to resolve certain Threshold Issues raised by the Motion to Enforce. (*Id.*, ECF No. 12697). The Elliotts, *pro se*, initially entered into a Stay Stipulation with New GM, but this Court rejected it as to form, subject to resubmission as a joint motion (Doc. No. 11). The Elliotts later retained counsel who sought to proceed with a Motion for Leave to File Proposed First Amended [Class Action] Complaint in this Court (Doc. No. 15), without first following the procedures implemented in the Bankruptcy Court for all Ignition Switch Actions.

The Elliotts were heard in the Bankruptcy Court on July 2, 2014. Following that hearing, on July 8, 2014, the Bankruptcy Court entered an Order providing “that the Elliotts, their counsel and any other person acting in concert with them are stayed and restrained from undertaking any further action against New GM in their Ignition Switch Action pending in the United States District Court for the District of Columbia . . . except as expressly provided by this Order[.]” (Ex. A. at 2.) The Bankruptcy Court further ordered “that the Elliotts are directed within two (2)

business days of entry of this Order to withdraw their motion for leave to amend their [class action] complaint (“Motion to Amend”) filed with the DC District Court,” but were permitted, if they so choose, to file “an amended complaint in the DC District Court that solely alleges claims [against New GM] that the Elliotts possess individually” (*Id.* at 2-3). The time for the Elliotts to withdraw their Motion to Amend expired on July 10, 2014, and the Elliotts have not complied with the Bankruptcy Court Order.

The JPML Transfer Motion. On March 25, 2014, the JPML established MDL No. 2543, *In re: General Motors LLC Ignition Switch Litigation*. On June 9, 2014, the JPML designated the United States District Court for the Southern District of New York as the MDL court and assigned the Honorable Jesse M. Furman to conduct coordinated or consolidated pretrial proceedings in the Ignition Switch Actions. (*Id.*, ECF No. 266). The JPML transferred an initial group of fifteen cases pending in six federal districts to the Southern District of New York, after concluding that it was “undisputed” that cases alleging a vehicle ignition switch defect satisfied the requirements for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407. (*Id.* at 2). More than 80 additional Ignition Switch Actions have since been transferred to the MDL Court, including claims to recover both for alleged economic losses and for alleged personal injuries. (*See* MDL No. 2543.)

The Clerk of the JPML initially determined that this Action should not be included in the MDL, after reviewing the abstruse *pro se* complaint originally filed by the Elliotts. (MDL 2543, ECF No. 269). On July 1, 2014, after plaintiffs filed their Motion for Leave to File the Proposed First Amended Complaint, clearly setting forth multiple counts based on the purported ignition switch defect that is the subject of MDL No. 2543, New GM filed the JPML Transfer Motion. (Ex. B). The JPML has set a briefing schedule on the Transfer Motion, with plaintiffs’ response

due on July 23, 2014, New GM's reply due on July 30, 2014, and a decision expected shortly thereafter. (*Id.*, ECF No. 312). If the JPML Transfer Motion is granted, there will be no need for further pretrial proceedings in this Court.

DATED: July 11, 2014

Respectfully submitted,

/s/ Robert S. Ryland
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Richard C. Godfrey, P.C. (to be admitted *pro hac vice*)
Robert B. Ellis, P.C. (to be admitted *pro hac vice*)
Andrew B. Bloomer, P.C. (*pro hac vice* motion pending)
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Attorneys for Defendant General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2014, a copy of the forgoing **NOTICE OF AUTHORITY AND RELATED ACTION** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

DATED: July 11, 2014

/s/ Robert S. Ryland

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER STAYING AND RESTRAINING LAWRENCE AND CELESTINE ELLIOTT, AND THEIR COUNSEL, FROM FURTHER PROCEEDING WITH THEIR IGNITION SWITCH ACTION, EXCEPT AS EXPRESSLY SET FORTH HEREIN

Upon the Court’s Order, dated May 16, 2014 (“**Scheduling Order**”), establishing procedures to address certain issues respecting, among other things, (i) the Motion, dated April 21, 2014 [Dkt. No. 12620] (“**Motion**”), of General Motors LLC (“**New GM**”),¹ pursuant to Sections 105 and 363 of the Bankruptcy Code, seeking to enforce the Sale Order and Injunction; and upon the Scheduling Order providing that Plaintiffs in Ignition Switch Actions were required by a date certain to either (i) agree to enter into a stipulation (“**Stay Stipulation**”) with New GM staying their individual Ignition Switch Actions, or (ii) file with the Court a “No Stay Pleading” setting forth why they believed their individual Ignition Switch Actions should not be stayed (collectively, the “**Stay Procedures**”); and Lawrence and Celestine Elliott (collectively, the “**Elliotts**”), *pro se*, having timely executed a Stay Stipulation (“**Elliott Stay Stipulation**”) but, upon retaining counsel, having requested to withdraw the Elliott Stay Stipulation and to file a late No Stay Pleading; and upon the *Supplemental Response by General Motors LLC in Connection with Stay Procedures Set Forth in the Court’s May 16, 2014 Scheduling Order*, filed

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

by General Motors LLC [ECF 12735] (“**Supplemental Response**”); and upon the letter (“**Hornal Letter**”) dated June 30, 2014 by Daniel Hornal, Esq., counsel for the Elliotts, which was attached to an Endorsed Order issued by the Court on June 30, 2014 [Dkt. No. 12737]; and upon the letter, dated July 1, 2014 by New GM to the Court in response to the Hornal Letter [ECF 12748] (“**New GM Letter**”); and upon a hearing (“**Hearing**”) being held before the Court on July 2, 2014 to address the issues raised in the aforementioned pleadings and upon the record of the Hearing, and the prior proceedings had herein, the Court having issued a ruling from the bench, which is memorialized in this Order; it is hereby

1) ORDERED that, subject to the Elliotts timely filing a No Stay Pleading consistent with the terms of this Order, the Elliotts are granted relief from the Elliott Stay Stipulation solely as provided in this Order, and it is further

2) ORDERED that the Elliotts, their counsel and any other person acting in concert with them are stayed and restrained from undertaking any further action against New GM in their Ignition Switch Action pending in the United States District Court for the District of Columbia (“**DC District Court**”), or in any other ~~court~~ action in which the Elliotts are a party based on allegations that are substantially similar to those alleged in the Elliotts’ Ignition Switch Action, except as expressly provided by this Order; and it is further

3) ORDERED that the Elliotts are directed within two (2) business days of entry of this Order to withdraw their motion for leave to amend their complaint (“**Motion to Amend**”) filed with the DC District Court on June 28, 2014, and are stayed and restrained from taking any action in respect thereof, including without limitation litigating their proposed amended complaint seeking to proceed as a

class action, *provided, however*, within ten (10) business days after the entry of this Order, the Elliotts may file an amended complaint in the DC District Court that solely alleges claims ~~against New GM~~ that the Elliotts possess individually, and not as a representative of any class of plaintiffs. In particular, neither the Elliotts nor their counsel are permitted to amend the Elliotts' complaint to add any additional plaintiff(s) ~~or defendant(s)~~, or to convert the Elliotts' individual Ignition Switch Action into a class action; and it is further

4) ORDERED that, within ten (10) business days after the entry of this Order, the Elliotts shall file with the Clerk of this Court evidence of the withdrawal of the Motion to Amend and the filing of any amended complaint on behalf of the Elliotts individually; and it is further

5) ORDERED that the Elliotts shall be permitted to file a No Stay Pleading with this Court within three (3) business days of entry of this Order, New GM shall have ten (10) days to file any response to such No Stay Pleading, and the Court shall hold a hearing on the No Stay Pleading on August 5, 2014 at 9:45 a.m. (Eastern Time); and it is further

6) ORDERED that, if the Elliotts fail to file a No Stay Pleading with the Court within three (3) business days of entry of this Order, the terms of the Stay Stipulation shall automatically be binding on the Elliotts; and it is further

7 ORDERED that this Court shall retain exclusive jurisdiction to interpret
and enforce this Order.

Dated: July 8, 2014
New York, New York

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE GENERAL MOTORS LLC)
IGNITION SWITCH LITIGATION) MDL DOCKET NO. 2543
)
)
)
)

**DEFENDANT GENERAL MOTORS LLC’S MOTION TO TRANSFER TAG-ALONG
ACTION FOR CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to 28 U.S.C. § 1407 and Rules 6.1 and 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (the “Panel”), defendant General Motors LLC (“New GM”) respectively moves this Panel to transfer the related action styled *Elliott, et al. v. General Motors LLC* (D.D.C. No. 1:14-cv-00691) to the Southern District of New York for coordinated or consolidated pretrial proceedings in MDL 2543. Plaintiffs’ proposed amended complaint in *Elliott*, like the 90 cases the Panel already has transferred to date, purports to “assert[] economic damages on behalf of certain classes and/or individuals stemming from an alleged defect in certain General Motors vehicles that causes the vehicle’s ignition switch to move unintentionally from the ‘run’ position to the ‘accessory’ or ‘off’ position.” (Transfer Order, ECF No. 266 at 1.) Transfer is warranted here, where “[c]entralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.” (*Id.* at 2.)

WHEREFORE, for the reasons more fully set forth in the accompanying memorandum, New GM respectfully requests that the *Elliott* tag-along action be transferred to the Southern District of New York for coordinated or consolidated pretrial proceedings.

DATED: July 1, 2014

Respectfully Submitted,

KIRKLAND & ELLIS LLP

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Attorney for Defendant General Motors LLC

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**IN RE GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION**

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)
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MDL DOCKET NO. 2543

**MEMORANDUM IN SUPPORT OF DEFENDANT GENERAL MOTORS LLC’S
MOTION TO TRANSFER TAG-ALONG ACTION**

On June 9, 2014, the Panel transferred 15 cases to the Southern District of New York for coordinated or consolidated pretrial proceedings, finding that “each of the actions... asserts economic damages on behalf of certain classes and/or individuals stemming from an alleged defect in certain General Motors vehicles that causes the vehicle’s ignition switch to move unintentionally from the ‘run’ position to the ‘accessory’ or ‘off’ position.” (Transfer Order, ECF No. 266 at 1.) In determining that transfer was warranted, the Panel concluded that “[c]entralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.” (*Id.* at 2.)

Among the more than 90 cases that have been tagged as related actions in MDL 2543, the Clerk of the Panel initially determined that *Elliott, et al. v. General Motors LLC* (D.D.C. No. 1:14-cv-00691) should not be included in the MDL, after reviewing an abstruse pro se complaint originally filed by plaintiffs. The plaintiffs now have retained counsel and filed a proposed amended complaint, which eliminates any doubt that this case appropriately should be included in the MDL for coordinated and consolidated pretrial proceedings. (Ex. 1, Pls.’ Mot. for Leave & Prop. Am. Compl.) The *Elliott* plaintiffs’ proposed amended complaint asserts claims on behalf of a putative nationwide class for the alleged decrease in values of their vehicles due to

the same ignition switch defect at issue in the MDL (as well as an alleged fuel pump defect). (Pls.' Prop. Am. Compl. ¶¶41-42.) Given these shared core allegations, transfer of *Elliott* for consolidation with MDL 2543 will avoid unnecessary, costly, and duplicative discovery regarding the same events and conduct. The MDL judge is ideally positioned to manage that overlapping discovery, avoiding the risk of inconsistent pretrial rulings, and conserving the resources of the parties and the judiciary.

A. *Elliott* Involves The Same Core Conduct And Events Alleged In Cases In MDL 2543.

On April 1, Plaintiffs Lawrence M. Elliott and Celestine V. Elliott filed a four-page complaint against New GM in the Superior Court of the District of Columbia, seeking economic damages arising out of their ownership of a 2006 Chevy Cobalt SS. (*See Elliott* Compl., Notice of Related Actions, ECF No. 223, Ex. 3.) Plaintiffs' complaint, which was filed pro se, makes the following allegations related to the faulty ignition switch which gave rise to this MDL:

Even though they [New GM] say the key lock has been recalled (not until we get the parts) is it a recall. The key turned the ignition off under many conditions in the Cobalt SS, (the ignition switch was also found to split at times and turn the run cycle to the accessory cycle). The accessory cycle does not have the Air Bags or many features that the Run position supports. They used the same part number so how are we to know which is the replacement and which is the old defective one. This turns the air bags and steering (OFF) both of which are controlled electrically, which is how it kills. According to what is in the public arena they knew this as early as 2002. It is now 2014. To make matters worse, they did not change the part number so you would not know if you were getting or buying the same defect.

(*Id.* at 6-7.) On April 23, New GM removed the case to the United States District Court for the District of Columbia and moved to dismiss for failure to state a claim upon which relief can be granted. (*Id.* at 2.) As of this filing, the motion to dismiss remains pending.

On May 12, New GM tagged the *Elliott* action as a potential related action in accordance with JPML Rule 6.2(d). (*Id.* at 1.) On June 11, after reviewing the pro se complaint, and notwithstanding the ignition switch allegations containing therein, the Clerk of the Panel initially determined that *Elliott* was “not appropriate for inclusion in this MDL.” (ECF No. 269.)

On June 28, after retaining counsel, plaintiffs filed a motion for leave to file a proposed amended complaint. (*See* Ex. 1, Pls.’ Mot. for Leave & Prop. Am. Compl.) Plaintiffs’ proposed amended complaint, which refers to the ignition switch at issue in MDL 2543 in no less than 39 separate paragraphs—and as a basis for each of the eight counts alleged—confirms that this case is appropriate for inclusion in this MDL. (*See, e.g.*, Pls’ Mot. & Am. Compl. ¶¶ 2, 5, 7, 11, 16, 20, 25-26, 28-31, 34, 36, 41-42, 45, 47, 57, 58, 59, 60, 61, 62, 63, 65, 67, 72, 74-75, 77, 81, 91, 92, 101-102, 105, 111.)

By way of example only, Plaintiffs’ proposed amended complaint contains the following claims regarding the faulty ignition switch defect:

- “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” (¶ 57, Count I: RICO; *see also id.* ¶¶ 6, 8-9, 12, 20, 25.)
- “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.” (¶ 65, Count II: Fraud.)
- “Because the defective ignition switches . . . created a foreseeable risk of severe personal and property injury to drivers, passengers, other motorists, and the public at large, Defendants had a duty to warn consumers about, and fix, the defect as soon as they learned of the problem – upon the inception of New GM in October 2009.” (¶ 81, Count IV: Negligent Infliction of Economic Loss.)

B. Transfer Will Serve The Convenience Of The Parties And Witnesses And Will Promote The Just And Efficient Conduct Of The Actions.

Elliott should be transferred to MDL 2543 because its core allegations are the same as the claims in the other ignition switch cases and transfer will promote the goals that MDL 2543 is meant to accomplish: eliminating duplicative discovery, avoiding the risk of inconsistent pretrial rulings, and conserving the resources of the parties, their counsel and the judiciary. *See In re Gen. Motors Ignition Switch Litig.*, MDL 2543, ECF 266, 2014 WL 2616819, at *1 (J.P.M.L. June 9, 2014) (identifying factors supporting consolidation). The fact that *Elliott* also contains certain non-ignition switch allegations is neither relevant to the issue of, nor prevents, transfer. *See In re AT&T Corp. Secs. Litig.*, 2001 U.S. Dist. LEXIS 5233, at *3-4 (J.P.M.L. Apr. 19, 2001) (in consolidating cases over plaintiffs' objection that their cases were "brought on behalf of purchasers of a different stock, during a smaller time period, and primarily under different federal statutes," the Panel noted that "transfer under Section 1407 does not require a complete identity or even majority of common factual issues . . . [n]or is the presence of additional or differing legal theories significant when the underlying actions still arise from a common factual core"); *In re Katz Interactive Call Processing Patent Litig.*, 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007) (rejecting argument that transfer should be denied because common issues did not predominate; "Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer"). Discovery is likely to be time-consuming and complex, and consolidation of *Elliott* with MDL 2543 will eliminate what would otherwise be unnecessary, expensive, and duplicative depositions of witnesses as well as the review and production of documents regarding the same events and conduct. *See In re Gen. Tire & Rubber Co. Secs. Litig.*, 429 F. Supp. 1032, 1034 ("placing these actions under the

control of a single judge will ensure that duplicative discovery on the complex factual questions will be prevented”).

Furthermore, because the MDL transferee court can manage the discovery to accommodate any differences, the fact that the Elliotts also premise some of their claims on a purportedly defective fuel pump, in addition to the common ignition switch claims, is no bar to transfer. *See, e.g., In re Bridgestone/Firestone, Inc., Tires Product Liab. Litig.*, 151 F. Supp. 2d 1381 (J.P.M.L. 2001) (transferring tag-along actions regarding alleged defects in two additional lines of tires and renaming MDL to reflect broader subject matter); *In re Zimmer Nexgen Knee Implant Prods. Liab. Litig.*, 802 F. Supp. 2d 1374 (J.P.M.L. 2011) (centralizing actions implicating “eight products, six different design teams, six different sets of design history documents, and eight different 510(k) regulatory applications”); *see also In re Denture Cream Products Liab. Litig.*, MDL 2051, 624 F. Supp. 2d 1379, 1381 (2009) (the “transferee court can employ any number of pretrial techniques—such as establishing separate discovery and/or motion tracks—to efficiently manage this litigation”); *In re Nat’l Century Fin. Enters., Inc.*, 293 F. Supp. 2d 1375, 1377 (J.P.M.L. 2003) (rejecting argument that there were insufficient common questions and noting ability of transferee judge to remand certain claims or actions in advance of others).

CONCLUSION

Discovery in the MDL 2543 cases is likely to be complex, time-consuming, and expensive. Given the significant factual overlap with those cases, transfer of *Elliott* to MDL 2543 will avoid unnecessarily duplicating that discovery, and also will conserve the parties’ and the judiciary’s resources by eliminating extensive parallel pretrial conferences, briefing, and rulings. Accordingly, New GM respectfully requests that the Panel transfer *Elliott* for coordinated or consolidated pretrial proceedings in MDL 2543.

DATED: July 1, 2014

Respectfully Submitted,

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Attorney for Defendant General Motors LLC

Case MDL No. 2543 Document 309-2 Filed 07/01/14 Page 1 of 1

SCHEDULE A - Motion to Transfer Tag-along Action
In re General Motors LLC Ignition Switch Litigation, MDL No. 2543

| NO. | CASE NAME | CASE NO. | COURT | JUDGE |
|------------|---|-----------------|--------------|----------------------------|
| 1 | <i>Lawrence M. Elliott and Celestine V. Elliott v. General Motors LLC</i> | 1:14-cv-00691 | D.D.C. | Hon. Ketanji Brown Jackson |

Case MDL No. 2543 Document 309-3 Filed 07/01/14 Page 1 of 1

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION

MDL No. 2543

This Document Relates To:

ALL CASES

PROOF OF SERVICE

In accordance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, the undersigned hereby certifies that a true and correct copy of the foregoing Motion to Transfer Tag-along Action was served on all CM/ECF registered users on the 1st day of July 2014, and by First Class Mail on the following counsel who have not registered with CM/ECF:

Elliott, et al. v. General Motors LLC, D.D.C., No. 1:14-cv-00691

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District of Columbia live database

Page 1 of 3

JURY,TYPE-F

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:14-cv-00691-KBJ**

ELLIOTT et al v. GENERAL MOTORS LLC
Assigned to: Judge Ketanji Brown Jackson
Demand: \$580,000
Case in other court: Superior Court of the District of Columbia,
2014 CA 0001980
Cause: 28:1441 Petition for Removal

Date Filed: 04/23/2014
Jury Demand: Defendant
Nature of Suit: 385 Prop. Damage Prod.
Liability
Jurisdiction: Diversity

Plaintiff

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ATTORNEY TO BE NOTICED

Plaintiff

CELESTINE V. ELLIOTT

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V.

Defendant

GENERAL MOTORS LLC

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| Date Filed | # | Docket Text |
|------------|--------------------|---|
| 04/23/2014 | 1 | NOTICE OF REMOVAL from Superior Court for the District of Columbia, case number 14-CA-0001980 Filing fee \$ 400, receipt number 0090-3693777 filed by GENERAL MOTORS LLC. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit Summons and Complaint in DC Superior Court Action)(Hall, Matthew) (Additional attachment(s) added on 4/24/2014: # 3 Notice to Counsel/Party) (jf,). (Entered: 04/23/2014) |
| 04/23/2014 | 2 | Corporate Disclosure Statement by GENERAL MOTORS LLC. (Hall, Matthew) (Entered: 04/23/2014) |
| 04/23/2014 | 3 | MOTION to Dismiss <i>PLAINTIFFS' COMPLAINT</i> by GENERAL MOTORS LLC (Attachments: # 1 Exhibit Plaintiffs' Complaint)(Hall, Matthew) (Entered: 04/23/2014) |
| 04/23/2014 | | Case Assigned to Judge Emmet G. Sullivan. (kb) (Entered: 04/23/2014) |
| 04/23/2014 | 4 | ORDER directing planitiffs to respond to motion to dismiss by no later than June 5, 2014. Signed by Judge Emmet G. Sullivan on April 23, 2014. (lcegs4) (Entered: 04/23/2014) |
| 04/24/2014 | | Set/Reset Deadlines: Plaintiff's Response To Motion to Dismiss due by 6/5/2014. (mac) (Entered: 04/24/2014) |
| 04/24/2014 | | NOTICE: 4 Order mailed to CELESTINE V. ELLIOTT and LAWRENCE M. ELLIOTT at court's address of record. (mac) (Entered: 04/24/2014) |
| 04/28/2014 | 5 | Case randomly reassigned to Judge Ketanji Brown Jackson. Judge Emmet G. Sullivan no longer assigned to the case. (gt,) (Entered: 04/28/2014) |
| 05/05/2014 | 6 | GENERAL ORDER AND GUIDELINES FOR CIVIL CASESBEFORE JUDGE KETANJI BROWN JACKSON. See attached Order for details. Signed by Judge Ketanji Brown Jackson on 05/05/2014. (lckbj1) (Entered: 05/05/2014) |
| 05/05/2014 | 7 | Receipt on 05/05/2014 of ORIGINAL FILE, certified copy of transfer order and docket sheet from Superior Court. Superior Court Number 2014 ca01980 B. (Attachments: # 1 Superior Court Documents)(jf,) (Entered: 05/06/2014) |
| 05/08/2014 | 8 | NOTICE by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT "LET THIS BE FILED" by Judge Ketanji Brown Jackson (rdj) (Entered: 05/08/2014) |
| 05/08/2014 | 9 | Memorandum in opposition to re 3 MOTION to Dismiss <i>PLAINTIFFS' COMPLAINT</i> filed by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT. "LET THIS BE FILED. as an opposition to 3 Defendant's Motion to Dismiss" by Judge Ketanji Brown Jackson (rdj) (Entered: 05/08/2014) |
| 05/08/2014 | 10 | NOTICE by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT (rdj) (Entered: 05/08/2014) |
| 05/28/2014 | 11 | STIPULATION <i>STAYING ACTION</i> by GENERAL MOTORS LLC. (Ryland, Robert) (Entered: 05/28/2014) |
| 06/02/2014 | 12 | NOTICE of Appearance by Robert Shapleigh Ryland on behalf of GENERAL MOTORS LLC (Ryland, Robert) (Entered: 06/02/2014) |
| 06/11/2014 | | On May 28, 2014, the parties filed 11 a Joint Stipulation that memorializes an agreement they have reached regarding a stay of this matter pending resolution of a motion that Defendant has filed in the United States Bankruptcy Court for the Southern District of New York to enforce a sale order and injunction. This Court does not to honor stipulations to stay proceedings and deadlines. Should the parties desire to stay proceedings and deadlines in this matter, they must file a motion and, in that motion, establish why this Court should exercise its discretion to order such a stay. See <i>Clinton v. Jones</i> , 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."); Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by |

| | | |
|------------|--------------------|--|
| | | motion."). Signed by Judge Ketanji Brown Jackson on 06/11/2014. (lckbj1) (Entered: 06/11/2014) |
| 06/18/2014 | 13 | NOTICE of Appearance by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT (Hornal, Daniel) Modified on 6/18/2014 (jf,). (Entered: 06/18/2014) |
| 06/20/2014 | 14 | MOTION for Order <i>Deferring Consideration of Defendant's Pending Motion to Dismiss</i> by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order, # 3 Certificate of Service)(Hornal, Daniel) (Entered: 06/20/2014) |
| 06/28/2014 | 15 | MOTION for Leave to File <i>First Amended Complaint</i> by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT (Hornal, Daniel) (Entered: 06/28/2014) |

| | | | |
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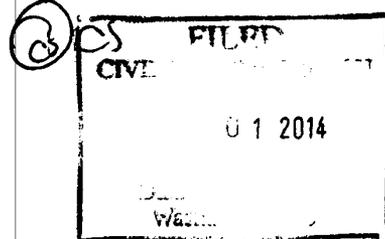
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION-CIVIL ACTIONS BRANCH

Lawrence M. Elliott
Celestine V. Elliott, et al
620 Nicholson Street NW
Washington, DC 20011-2020

Plaintiffs



14-0001980

Civil Action No. _____

General Motors LLC

Defendant

Serve:

Corporation Service Company
1090 Vermont Avenue, NW
Washington, DC 20005



page 1

Civil Action No.

Lawrence M. Elliott and Celestine V. Elliott, husband and wife for many years and family hereafter called WE, come before this Honorable Court for justice in a matter dealing with General Motors Corp. hereafter known as GMC . We are asking for the original cost plus all interest paid for the 2006 Trailblazer SS and the Chevy Cobalt SS about eighty thousand dollars (\$80,000.00) and five hundred thousand dollars (\$500,000.00) for punitive damages both bought new from Curtis Chevrolet located in Washington, DC, now no longer in existence. Five hundred eighty thousand dollars (\$580,000.00).

We are also asking for immediate relief in this matter forthwith in the form of two vehicles provided by GMC at their expense for our transportation until this issue is resolved. WHY? If GMC replaced the fuel pump in our Cobalt SS with the same design that split open, it could happen again with catastrophic results, such as the lose of life and/or serious injury. GMC should be made to declare what was used by this Court ,as soon as possible, so no one will be put in danger. This may well be another recall before someone has to die first or be hurt. We had no idea that we would find both by failure of major systems and other problems that GMC knew of. This problem that could have killed us or still others should be addressed immediately. GMC should be stopped from using old part numbers after fixed issues because it keeps one from knowing if it is the broken one and is safe to use. This was found to be what they did and has been documented. First the Cobalt was known to have problems with the ELECTRIC POWER STEERING that could render the car incapable of being steered or the air bags from deploying. This was fixed under a recall #10V073000.

page 2

Civil Action No.

While driving the Cobalt we had a strong odor of gasoline that was first thought to be from another vehicle or place. What we found upon close inspection for the source, was a gasoline leak that was from the bottom of the car. It left a puddle on the ground. It was weeks after it started since in the beginning it was not constant. This was very serious. When I researched it I found it had been known for some time by GMC, but was recklessly only stated by GMC after I called them and found it on the WEB.

I found they were only going to fix it if happened in States other than ours. I raised this with GMC and they fixed it by replacing the fuel pump assembly. Recall #09V419000. I saw the part they took from the car and was shocked to find that they had made it of what appeared to be plastic that had developed a split in it. The fuel pump assembly is no place to cut corners. (See attachment 1)

Look at the temperature the Catalatic Convertor Muffler operates at and how close it is to the leak. Temperature as high as above 1000 degrees C. (Attachments 2, 3, 4, and 5)

IF THEY REPLACED THE FUEL PUMP ASSEMBLY WITH THE SAME ONE THAT SPLIT. THAT IS CRIMINAL BEHAVIOR AND SHOULD BE YET ANOTHER RECALL. Look at the door lock complaints that did not let one leave the car except through the window (Cobalt). Another complaint.

Even though they say the key lock has been recalled (not until we get the parts) is it a recall.

The key turned the ignition off under many conditions in the Cobalt SS, (the ignition switch was also found to split at times and turn the run cycle to the accessory cycle). The accessory cycle does not have the Air Bags or many features that the Run position supports. They used the same

page 3

Civil Action No.

part number so how are we to know which is the replacement and which is the old defective one. This turns the air bags and steering (OFF) both of which are controlled electrically, which is how it kills.

According to what is in the public arena they knew this as early as 2002. It is now 2014. To make matters worse, they did not change the part number so you would not know if you were getting or buying the same defect.

The chrome on the door knobs is bubbling off.

The paint on th arm rest on the door is peeling off almost all looks bad and cheap.

All of the above and possibly more was reckless, fraudulent, wanton, inexcusable and unlawful to say the least. This is why we are bringing the Law Suit. No one (GMC) should ever be permitted

to keep one cent under these conditions and should be by any Honorable Court made to pay punitive damages as well as a deterrent that will send a message around the world. Further if, this

Honorable Court does justice in this case, we should not be kept silent as a matter of settlement.

This very often is done as a part of Settlements. We have to become more humane.

Our Trailblazer SS (SUV) is unsafe to drive. The Trailblazer SS is showing excessive rust,

although we live in an area that has not had that much snow since WE bought it. Many of the

critical electrical components that determines how and if the vehicle runs are grounded by a wire

from the component ending with a connector to a ground to the body in a rusting environment.

(screw, a washer into a thin piece of body sheet metal) When the electrical components of the

various systems lose the integrity of ground , they do not operate correctly.

ground, they do not operate correctly). I have a PO121 fault OBD light on that happened just

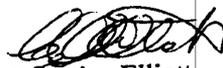
page 4

Civil Action No.

after the SUV cut off on my wife while she was driving twice in less than a few blocks. This reads the throttle position that tell the brain (ECM) what the gas peddle position (throttle plate) is. Wrong message, wrong outcome. This is probably why it cut off and has run so erratic since. All of the emission components depend on sound connections. The throttle position sensor error Code PO121 may be a ground issue from rust. GMC carefully stated they were only going to warrant for rust if it was ALL the way through. If this is legal, then GMC should have said when the vehicle stars to rust junk it for it will no longer be reliable. This caused her to loose all of her control of the vehicle. We have kept the family and children out of the vehicle since. Our daughter who lives with us has borrowed our neighbor's truck to carry the children, for fear of hurting or possibly killing them. The weather has been too cold for us to check it further. Considering how deceptive GMC has been, I cannot trust them to touch the vehicle, this is why its use has been very limited. The rust we found is unacceptable. My wife and I are CDL drivers, which may have been how she was able to survive this mess. We have been professional drivers for over forty years with many miles of experience.

Respectfully submitted,


Lawrence Elliott


Celestine Elliott

Form CA 101-A: Unsworn Declaration Supplement



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

1 Lawrence Elliott
Plaintiff(s)

v.
General Motors LLC
Defendant(s)

Case No: _____

This form supplements COMPLAINT and is being filed along with that document. (list title of pleading, motion, or other document)

(a) If Executed Inside the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 1st day of April, 2014
(date) (month) (year)

Lawrence Elliott
Printed Name

Lawrence Elliott
Signature

Washington, DC
(City and State, or Other Location)

202-744-5443
Phone Number

See D.C. CODE § 22-2402 (a)(3) (2010).

(b) If Executed Outside the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on _____ day of _____,

(date) (month) (year)

at _____ (city or other locations, and state), _____ (country)

Printed Name

Signature

Phone Number

See D.C. CODE § 16-5306 (2010).

Note: This form may be attached to any document to be used in place of sworn written declarations, verifications, certificates, statements, oaths, or affidavits unless otherwise provided by law; for example, this form may not be used to supplement a verified complaint in the Landlord and Tenant Branch or Small Claims Branch. See D.C. Code §§ 16-1501, 3902 (2001).

Form CA 101-A: Unsworn Declaration Supplement



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Celestine Elliott
Plaintiff(s)

v.

General Motors LLC
Defendant(s)

Case No: _____

This form supplements COMPLAINT and is being filed along with that document. (list title of pleading, motion, or other document)

(a) If Executed Inside the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Executed on 1st day of April, 2014.
(date) (month) (year)

Celestine Elliott
Printed Name

[Signature]
Signature

Washington, DC
City and State, or Other Location

202-744-3558
Phone Number

See D.C. CODE § 22-2402 (a)(3) (2010).

(b) If Executed Outside the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on _____ day of _____, _____
(date) (month) (year)

at _____ (city or other locations, and state) _____ (country)

Printed Name

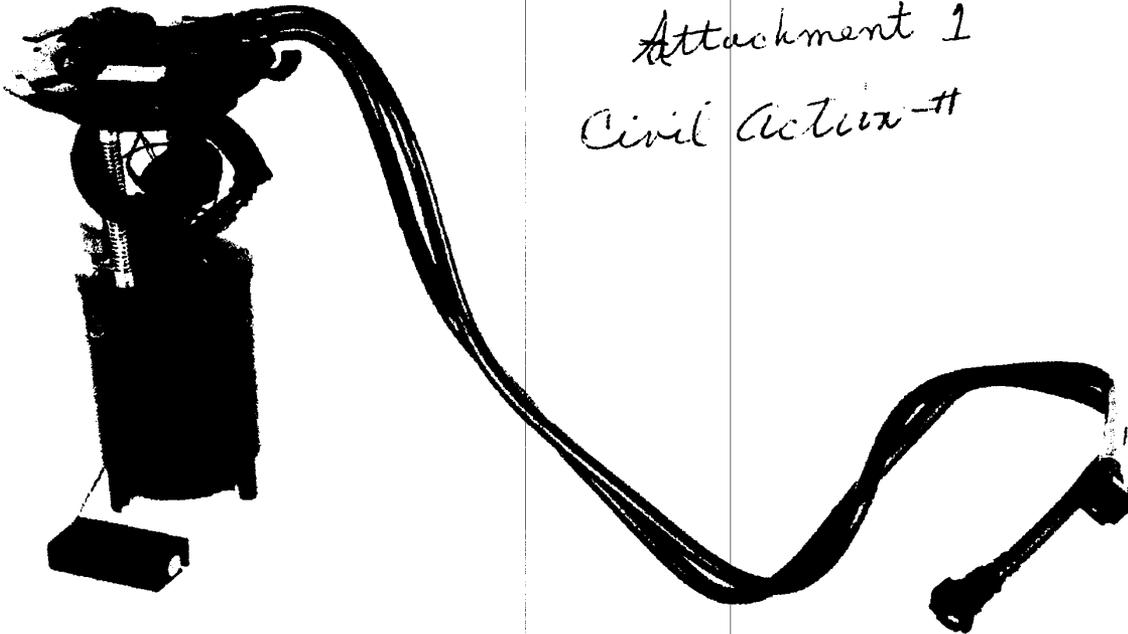
Signature

Phone Number

See D.C. CODE § 16-5306 (2010).

Note: This form may be attached to any document to be used in place of sworn written declarations, verifications, certificates, statements, oaths, or affidavits unless otherwise provided by law; for example, this form may not be used to supplement a verified complaint in the Landlord and Tenant Branch or Small Claims Branch. See D.C. Code §§ 16-1501, 3902 (2001).

Case MDL No. 2543 Document 309-4 Filed 07/01/14 Page 11 of 29
06 Chevrolet Cobalt Fuel Pump Assembly Parts from Buy Auto Parts http://www.buyautoparts.com/buynow_addcarttop.asp?year=2006&



*Attachment 1
Civil Action #*

- OEM New \$275.00
- OEM New \$205 \$202.95

Part Number:

Attachment # 2 Civil Action #

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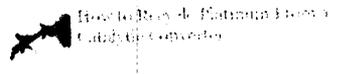
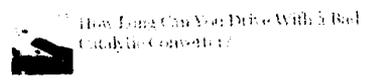
The Dangers of a Catalytic Converter

By [Debra Arnold](#) | [Photo Credit: iStock](#)

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Since 1975 most cars have included catalytic converters, which remove the most dangerous pollutants from engine exhaust before it is passed to the muffler and out the tailpipe. They do this by passing the exhaust through many clay sheets containing platinum and rhodium. The pollutants bond to these elements and react to form less dangerous molecules which are then emitted. There are several dangers associated with catalytic converters, all of which are avoidable. *[Have a question? Get an answer from a mechanic now!]*

Other People Are Reading



Burns

Catalytic converters get very hot when a car is running, with their exteriors reaching temperatures of 800 to 1,000 degrees F when the engine is working under extremely heavy load conditions. If the car has a partial failure in its ignition system, unburnt fuel will reach the converter and push temperatures into the 1,200 to 1,400 F degree range. This presents a clear danger to anyone working underneath the vehicle. To avoid being severely burned, always allow a catalytic converter time to cool before working on it or on anything near it. As a relatively dense structure, it will take longer to cool than other parts of the car.

Fire

The heat produced by a catalytic converter can be enough to ignite dry tinder. In most cases this only happens when a misfiring spark plug or fuel injector results in unburnt fuel reaching the converter. The converter burns the fuel off, raising the temperature high enough to be a fire risk. Never park a car over any dry leaves or brush, as these could be lit on fire by this heat. Be careful not to spray undercoating on the converter, as this could also ignite under high heat conditions and damage the vehicle.

Carbon Monoxide

Catalytic converters remove carbon monoxide, a potentially deadly gas, from car exhaust. If the converter is clogged it may not fully accomplish this. A catalytic converter also must warm up before it starts to work, meaning that even cars equipped with one should never be started in enclosed spaces or household garages. The gas is colorless and odorless, making it a danger to anyone

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connected to that area by ventilation.

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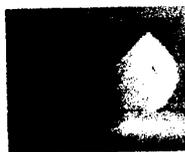


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Case MDL No. 2543 Document 309-4 Filed 07/01/14 Page 17 of 23
http://www.ehow.com/facts_137917001-catalytic-converter-get_.ht

Attachment #

3

Civil Action #

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eHow » Cars » Auto Repair » Mufflers » How Hot Does a Catalytic Converter Get?

How Hot Does a Catalytic Converter Get?

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The catalytic converter is an important component of a modern vehicle exhaust system. It uses the catalytic action of precious metals to convert combustion pollutants into naturally occurring gases, reducing emissions of hydrocarbons, nitrogen oxides and carbon monoxide to low levels.

Other People Are Reading



Two Important Design Parameters

The minimum temperature at which a catalytic converter begins to function, called the light-off temperature, is 600-700 degrees F.

Automotive manufacturers usually minimize the distance between the engine and catalytic converter. This reduces the time required for the converter to reach operating temperature, which in turn reduces cold-start emissions.

Normal Temperatures and Beyond

The ideal operating temperature range of catalytic converters is 900-1,000 degrees F, although they can, and often do, operate above this range.

However, when a converter operates above 1,300 degrees F for prolonged periods, catalysts and converter components begin to melt. The result is a gradual and usually permanent degradation in performance.

High Converter Temperatures Spell Trouble

A converter temperature can rise dramatically when an engine is badly malfunctioning or for some other reason producing an excessive amount of heat and pollutants. In such cases the catalyst temperature can exceed 2,000 degrees F. When this happens the converter becomes deactivated and conversion efficiency approaches zero.

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Parking *attachment # 4* *Civil Action #*

Always use the parking brake when you park your vehicle. The indicator on the instrument panel shows that the parking brake is not fully released; it does not indicate that the parking brake is firmly set. Make sure the parking brake is set firmly or your vehicle may roll if it is parked on an incline.

If your vehicle has an automatic transmission, set the parking brake before you put the transmission in Park. This keeps the vehicle from moving and putting pressure on the parking mechanism in the transmission — making it easier to move the shift lever out of Park when you want to drive away.

If the vehicle is facing uphill, turn the front wheels away from the curb. If you have a manual transmission, put it in first gear.

If the vehicle is facing downhill, turn the front wheels toward the curb. If you have a manual transmission, put it in reverse gear.

Make sure the parking brake is fully released before driving away. Driving with the parking brake partially set can overheat or damage the rear brakes.

Parking Tips

- Make sure the moonroof and the windows are closed.
- Turn off the lights.
- Place any packages, valuables, etc., in the cargo area or take them with you.
- Lock the doors and the tailgate with the key or the remote transmitter. Make sure the hatch glass is closed securely.
- Never park over dry leaves, tall grass, or other flammable materials. The three way catalytic converter gets very hot, and could cause these materials to catch on fire.

Attachment #5 Catal Action

presence of catalyst materials like - Platinum, Rhodium and/or Palladium. In a catalytic converter, large surface area is provided for the chemical reaction to take place and a very small amount of precious catalyst material is distributed throughout the structure in an ultra-thin layer. Catalytic reactions are generally exothermic, so heat-shields and temperature withstanding materials need to be used for its construction. Figure-1 shows the typical placement of a catalytic converter in an automobile.



Fig 1. Location of Catalytic Converter in a typical car.

Generally speaking, catalytic converters are good post-engine emission controlling devices capable of achieving more than 90% reduction of the emissions generated by a well tuned modern engine [1]. However, it should be noted that, this level of performance from a catalytic converter can be only expected, when a number of prerequisites are met. For a catalytic converter to function effectively, it is essential that the proper chemistry and operating temperature be present. These factors are critical to consider when retrofitting a converter on a vehicle which was not originally designed or equipped for its use. These generally include vehicles produced till late 80's in Japan and European countries and till early 80's in USA, many of which are still used in developing countries [2].

Catalytic converters operate under complicated highly dynamic conditions and catalytic reactions occur at typical exhaust gas temperatures leaving the cylinder. This in warmed-up gasoline engines, can vary from 300°C to 400°C during idle, raising even up to about 1000°C, depending on the driving conditions. Different engines possess different warm-up characteristics from cold-start as well. These catalytic reactions depend on the temperature and the composition of the exhaust gas. The activity of the catalyst as a function of its performance and is affected by a number of exothermic reactions. When the engine is started, the exhaust gas gradually heats up to initiate the catalytic reactions, once the 'light-off' (typically reaching 50% conversion efficiency) temperature is reached. NOx efficiency remains very high regardless of temperature. However, CO and HC efficiency varies significantly with temperature. As temperature increases CO oxidation reactions typically start first, followed then by HC oxidation [3,4]. Hence the placement of the converter in the exhaust system relative to the engine is important to

ensure that the exhaust temperature is sufficient for the operating range of the catalyst as suggested from figure 2a. On the other hand, if the converter is too close to the engine, it may be exposed to excessive temperature damaging the catalyst [5].

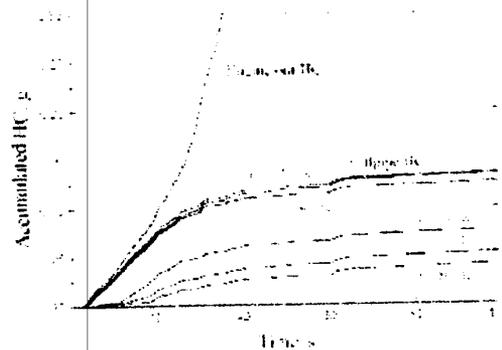


Fig 2a. Effect on HC emission in a FTP cycle as a function of CC start temperature [6].

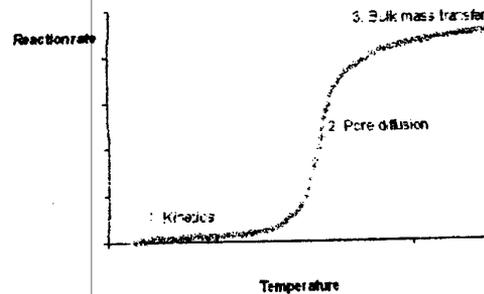


Fig 2b. Typical conversion regimes for controlling CC conversion rate as a function of temperature [7].

Figure 2b presents, a typical activity plot. At low temperatures, the reaction rate is so small that no conversion is reached over the catalyst. In this stage, the reaction kinetics is the controlling factor for the overall reaction rate, whereas in the second stage, the conversion is limited by the pore diffusion in the wash-coat. Catalyst light-off typically occurs in this temperature range. The high temperature region corresponds to bulk mass transfer between the gas phase and wash-coat [7].

Thermocouples (TC) are still the most reliable way of exhaust gas temperature measurement, if exposed to the gas. Unfortunately this is not very convenient to measure the temperature of automotive exhaust passing through the piping. Resistance temperature detectors (RTD) in addition may cause significant disturbances to exhaust flow. To overcome these limitations a number of other techniques are being employed [8]. Infra-Red (IR) sensors are being used to estimate internal exhaust temperature from pipe surface IR measurements [9], systems with high accuracy are expensive. High-temperature stable air borne ultrasonic sensors have been successfully used for exhaust gas



Superior Court of the District of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Suite 5000
Washington, D.C. 20001 Telephone: (202) 879-1133

LAWRENCE SUWOTT et al
Plaintiff

vs.

Case Number 14-0001980

General Motors LLC
Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Lawrence Elliott / Celestine Elliott
Name of Plaintiff's Attorney

620 Nicholson Street, NW
Address
Washington, DC 20001

Clerk of the Court

By [Signature]
Deputy Clerk

Date 04/01/14

Telephone

如需翻译, 请拨打 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bản dịch, hãy gọi (202) 879-4828
번역을 원하시면, (202) 879-4828 로 전화하십시오 ຖ້າຕ້ອງການ ທີ່ຕີ ການ ທີ່ຕີ (202) 879-4828 ຂໍຂໍບໍາລິຫານ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-682-2700) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
Vea al dorso la traducción al español

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

14 - 0001980

Lawrence Elliott et al

Case Number: _____

vs

Date: _____

General Motors LLC

One of the defendants is being sued in their official capacity.

| | |
|---|---|
| Name: (Please Print) | Relationship to Lawsuit |
| Firm Name: | <input type="checkbox"/> Attorney for Plaintiff |
| Telephone No.: _____ Six digit Unified Bar No.: | <input checked="" type="checkbox"/> Self (Pro Se) |
| | <input type="checkbox"/> Other: _____ |

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED
Case No.: _____ Judge: _____ Calendar #: _____
Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: (Check One Box Only)

| | |
|---|--|
| <p>A. CONTRACTS</p> <p><input type="checkbox"/> 01 Breach of Contract <input type="checkbox"/> 02 Breach of Warranty <input type="checkbox"/> 06 Negotiable Instrument <input type="checkbox"/> 15 Special Education Fees <input type="checkbox"/> 10 Mortgage Foreclosure D.C. Code § 42-815</p> <p><input type="checkbox"/> 07 Personal Property <input type="checkbox"/> 09 Real Property-Real Estate <input type="checkbox"/> 12 Specific Performance <input type="checkbox"/> 13 Employment Discrimination</p> | <p>COLLECTION CASES</p> <p><input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> 16 Under \$25,000 Consent Denied <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent <input type="checkbox"/> 18 OVER \$25,000 Consent Denied</p> |
| <p>B. PROPERTY TORTS</p> <p><input type="checkbox"/> 01 Automobile <input type="checkbox"/> 02 Conversion <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a)</p> <p><input type="checkbox"/> 03 Destruction of Private Property <input type="checkbox"/> 04 Property Damage</p> <p><input type="checkbox"/> 05 Trespass <input type="checkbox"/> 06 Traffic Adjudication</p> | |
| <p>C. PERSONAL TORTS</p> <p><input type="checkbox"/> 01 Abuse of Process <input type="checkbox"/> 02 Alienation of Affection <input type="checkbox"/> 03 Assault and Battery <input type="checkbox"/> 04 Automobile- Personal Injury <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) <input type="checkbox"/> 06 False Accusation <input type="checkbox"/> 07 False Arrest <input type="checkbox"/> 08 Fraud</p> <p><input type="checkbox"/> 09 Harassment <input type="checkbox"/> 10 Invasion of Privacy <input type="checkbox"/> 11 Libel and Slander <input type="checkbox"/> 12 Malicious Interference <input type="checkbox"/> 13 Malicious Prosecution <input type="checkbox"/> 14 Malpractice Legal <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice)</p> | <p><input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) <input type="checkbox"/> 19 Wrongful Eviction <input type="checkbox"/> 20 Friendly Suit <input type="checkbox"/> 21 Asbestos <input type="checkbox"/> 22 Toxic/Mass Torts <input type="checkbox"/> 23 Tobacco <input type="checkbox"/> 24 Lead Paint</p> |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

| | | |
|---|--|--|
| C. OTHERS | | |
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 10 T.R.O./ Injunction | <input type="checkbox"/> 25 Liens: Tax/Water Consent Granted |
| <input type="checkbox"/> 02 Att. Before Judgment | <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 26 Insurance/ Subrogation Under \$25,000 Consent Denied |
| <input type="checkbox"/> 04 Condemnation (Emin. Domain) | <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 27 Insurance/ Subrogation Over \$25,000 Pltf. Grants Consent |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only) |
| <input type="checkbox"/> 07 Insurance/Subrogation Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 17 Merit Personnel Act (OEA) (D.C. Code Title 1, Chapter 6) | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 08 Quiet Title | <input type="checkbox"/> 18 Product Liability | <input type="checkbox"/> 30 Liens: Tax/ Water Consent Denied |
| <input type="checkbox"/> 09 Special Writ/Warrants (DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify, Vacate Arbitration Award (DC Code § 16-4401) | <input type="checkbox"/> 31 Housing Code Regulations |
| | | <input type="checkbox"/> 32 Qui Tam |
| | | <input type="checkbox"/> 33 Whistleblower |
| | | <input type="checkbox"/> 34 Insurance/Subrogation Over \$25,000 Consent Denied |
| II. | | |
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena [Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment | <input type="checkbox"/> 19 Enter Administrative Order as Judgment [D.C. Code § 2-1802.03 (h) or 32-1519 (a)] | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § 42-3301, et seq.) | <input type="checkbox"/> 23 Rule 27(a) (1) (Perpetuate Testimony) |
| <input type="checkbox"/> 14 Correction of Marriage Certificate | | <input type="checkbox"/> 24 Petition for Structured Settlement |
| | | <input type="checkbox"/> 25 Petition for Liquidation |


Attorney's Signature

04/01/2014
Date



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

LAWRENCE M ELLIOTT et al
Vs.
GENERAL MOTORS LLC

C.A. No. 2014 CA 001980 B

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

- (1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.
- (2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).
- (3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).
- (4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**
- (5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.
- (6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge CRAIG ISCOE
Date: April 2, 2014
Initial Conference: 9:30 am, Friday, July 18, 2014
Location: Courtroom 200
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

Caio.doc

**ADDENDUM TO INITIAL ORDER AFFECTING
ALL MEDICAL MALPRACTICE CASES**

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Lee F. Satterfield

ELLIOTT, LAWRENCE M, et al. Vs. GENERAL MOTORS LLC, Docket No. 2014-CA-001980 (D.C. Super. Ct. Apr. 01, 2014), Court

General Information

| | |
|----------------------|-------------------------------------|
| Court | Superior Court of District Columbia |
| Docket Number | 2014-CA-001980 |
| Status | Open |

Notes

No Notepad Content Found

Case MDL No. 2543 Document 309-5 Filed 07/01/14 Page 1 of 54

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE THE
PROPOSED FIRST AMENDED COMPLAINT AND TO JOIN PARTIES**

On June 20, 2014, plaintiffs, Lawrence and Celestine Elliott, filed a motion in this Court requesting that consideration of General Motors LLC’s (“GM’s”) Motion to Dismiss be deferred until June 27, 2014, while plaintiffs drafted and filed a motion for leave to file an amended complaint.

Plaintiffs now file this motion, pursuant to Fed. R. Civ. P. 15(a)(2), for leave to file the attached First Amended Complaint against GM.

Plaintiffs additionally request leave to join Berenice Summerville as a Plaintiff and Delphi Automotive PLC and Delphi Automotive Systems LLC as defendants, pursuant to Fed. R. Civ. P. 21 and Fed. R. Civ. P. 20(a)(1)(b). Ms. Summerville’s claims against GM raise the same or common questions of law and fact as those of Mr. and Mrs. Elliott. The proposed Defendants are independently and jointly and severally liable with GM for many of the injuries that Plaintiffs allege.

Pursuant to Local Rule 7(m), counsel for Plaintiffs contacted counsel for GM regarding the filing of this motion. Counsel for GM stated that GM would not consent to Plaintiffs' request to amend their pleadings.

Respectfully submitted,

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

Daniel Hornal, Esq.
705 4th Street, NW
Suite 403
Washington, DC, 20001
(202) 709 9662
daniel@taloslaw.com
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAWRENCE M. ELLIOTT)
and)
CELESTINE V. ELLIOTT.,)
)
Plaintiffs,)
v.)
)
GENERAL MOTORS LLC,)
)
Defendant.)

Case No. 1:14-cv-00691-KBJ

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE
THE PROPOSED FIRST AMENDED COMPLAINT AND TO JOIN PARTIES**

I. Plaintiffs' Motion for Leave to File First Amended Complaint

On April 1, 2014, Lawrence and Celestine Elliott, as *pro se* plaintiffs, filed a Complaint in letter form in the Superior Court of the District of Columbia, which was docketed as Civil Action No. 14-001980. General Motors LLC ("GM") was served with a Summons and the Complaint on April 4, 2014, and on April 23, 2014, GM removed the case to this Court.

On April 23, 2014, GM moved to dismiss Mr. and Mrs. Elliott's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. No. 3). Plaintiffs' original Complaint was filed without the benefit of counsel and contains a variety of complaints stemming from their ownership of their 2006 Chevrolet Cobalt. *See* Complaint in Superior Court Documents, May 5, 2014 (Doc. No. 7).

As the Proposed First Amended Complaint alleges, Mr. and Mrs. Elliott are 78 and 73 years of age respectively. After they retired from over twenty-five years as taxi and commercial drivers, they paid the full manufacturers' suggested retail price for a new 2006 Chevrolet Cobalt. They had used this vehicle to transport their family, including grand and great-grand children who reside with them or nearby. This car has safety related defects that posed unreasonable and imminent danger of death or serious bodily injury. New GM and Delphi concealed these defects from them since the time of New GM's inception in October 2009.

On May 12, 2014, GM notified the United States Judicial Panel on Multidistrict Litigation that this action is related to the proceedings in *In re: General Motors LLC Ignition Switch Litigation*. *See* Notice of Related Action (*In re: General Motors LLC Ignition Switch Litigation* MDL No. 2543 Doc. No. 223). On June 11, 2014, that forum determined that Elliot et al. v. GM is not appropriate for inclusion in the Multidistrict Litigation proceedings. *See*

Notice to Counsel (*In re: General Motors Ignition Switch Litigation* MDL No. 2543 Doc. No. 269).

April 21, 2014, in *In re: Motors Liquidation*, GM filed a Motion to Enforce the Bankruptcy Court's July 5, 2009 Sale Order and Injunction. *See* Motion to Enforce (*Motors Liquidation Company*, (Bankr. S.D.N.Y), Doc. No. 12620). GM again unilaterally designated Mr. and Mrs. Elliotts' action, on a spreadsheet schedule, along with dozens of others, and based solely on the *pro se* letter, as an "ignition switch action" in its attempt to bar claims against it based on the bankruptcy proceedings of its predecessor. *See id.* GM is currently attempting to circumvent this Court's authority over its docket by appealing to the Bankruptcy Court in the Southern District of New York to bar Mr. and Mrs. Elliott even from presenting the instant motion to this Court. *See id.* Plaintiffs, through their counsel, are in contact with the Bankruptcy Court to determine how to proceed to correct GM's erroneous inclusion of the Elliott's claims in those proceedings.

Plaintiffs now move for leave to amend their original complaint, pursuant to Fed. R. Civ. P. 15(a)(2), to join parties, and to clarify their factual allegations and the legal claims they assert. Such clarification is indispensable to the ability of this Court and sister Courts considering related matters to give fair consideration to Plaintiffs claims. If a party seeks leave of the court to amend the complaint, the court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). This Court has previously found that amendments should only be denied where there is a clear justification for doing so, such as "futility, bad faith, undue delay, or dilatory motive." *See, e.g., Lopez v. JetSetDC, LLC*, ---F. Supp. 2d--- (D.D.C. 2014) (citing *Monroe v. Williams*, 704 F. Supp. 621, 623 (D.D.C. 1988)). Due to the *pro se* nature of Plaintiffs' original Complaint, the intent of this Amended Complaint is the opposite of dilatory. The Amended Complaint clarifies the position of Plaintiffs such that their claims

can be more easily evaluated in light of GM's Motion to Dismiss under Fed. R. Civ. P.

12(b)(6) and other issues that are reasonably expected to arise in the litigation.

Plaintiffs seek to join Berenice Summerville as a Plaintiff. Ms. Summerville bought a dark blue 2010 Chevrolet Cobalt in December of 2009 as a Christmas gift for her mother. Ms. Summerville primarily used the car to drive her mother, who is now eighty years old, to doctor appointments and run errands. Ms. Summerville resides in Maryland, just five miles outside the District of Columbia; she frequently drives her Cobalt within the District. Just like Mr. and Mrs. Elliott, Ms. Summerville has endured a litany of problems with her Cobalt; there has periodically been an odor of gasoline around the car, and she has noted the vehicle's particularly poor gas mileage – both indicators of a gas leak that would be consistent with the 2006 Cobalt's defective gas pump. Additionally, her 2010 Cobalt uses the same defective ignition switch as the 2006 Cobalt that belongs to Mr. and Mrs. Elliott.

Plaintiffs seek to join related Delphi entities as Defendants. As the Proposed First Amended Complaint alleges, Delphi manufactured the defective ignition switches in Plaintiffs and Ms. Summerville's vehicles, and collaborated with GM in an extensive and elaborate scheme to conceal the defect from Plaintiffs, class members, regulatory authorities, investors, and others

Fed. Rule Civ. P. 21 states, "the court may at any time, on just terms, add or drop a party." In this case, those just terms come from Fed. Rule Civ. P. 20. Rule 20 requires first that the claims of the two parties arise out of the same transaction, occurrence or series thereof – that the claims are logically related. Fed. Rule Civ. P 20(a)(1)-(2); *see, e.g., Disparte v. Corporate Executive Bd.* 223 F.R.D. 7, 11 (D.D.C. 2004) (citing *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610)). The claims that Mrs. Summerville brings, like Mr. and Mrs. Elliott's

claims, arise out of the same conspiracy between GM, Delphi, and their dealers to conceal the extent of the danger posed by the latent defects in the vehicles plaintiffs purchased and drove.

Second, Rule 20(a)(1)-(2) requires that there be *some* question of law or fact as to all of the plaintiffs' claims. Fed. Rule Civ. P 20(a)(1)-(2); *see, e.g., Disparte*, 223 F.R.D. at 11 (citing *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1334 (8th Cir. 1974)). The claims that Ms. Summerville brings share many questions of law and fact in common with the claims that Mr. and Mrs. Elliott bring, including but not limited to the following:

- A. Whether the ignition switches in Plaintiffs' and Class Members vehicles are defective;
- B. Whether the fuel pumps in Plaintiffs' and Class Members' Chevrolet Cobalts are defective;
- C. Whether Defendants violated 18 U.S.C. § 1962(c) by conducting the affairs of the RICO Enterprise through a pattern of racketeering activity; and
- D. Whether Defendants had a duty to disclose the latent safety defects in plaintiffs' cars upon Defendants' discovery of those defects.

Finally, joinder may not prejudice any party or cause needless delay. *See Call of the Wild Movie, LLC v. Does*, 770 F. Supp. 2d 332 (D.D.C. 2011). In this case, joinder does not prejudice any party and is explicitly intended to reduce delay by increasing the efficiency with which these common questions of law and fact can be resolved. Pursuant to judicial efficiency and expeditious resolution of disputes, joinder of parties and claims has been "strongly encouraged." *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966); *see also M.K. v. Tenet*, 216 F.R.D. 133 (D.D.C. 2002) (stating the interest of this Court in preventing "multiple lawsuits, extra expense to the parties, and loss of time to the court [and]...litigants.)).

Respectfully submitted,

/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

Daniel Hornal, Esq.
705 4th Street, NW
Suite 403
Washington, DC, 20001
(202) 709 9662
daniel@taloslaw.com
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------------|---|----------------------------|
| LAWRENCE M. ELLIOTT |) | |
| and |) | |
| CELESTINE V. ELLIOTT., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:14-cv-00691-KBJ |
| v. |) | |
| |) | |
| GENERAL MOTORS LLC, |) | |
| |) | |
| Defendant. |) | |

[PROPOSED] Order

Upon consideration of the Motion for Leave to File First Amendment Complaint filed by Plaintiffs, Mr. and Mrs. Elliott, IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED. The clerk is directed to file the First Amended Complaint.

Upon consideration of Plaintiffs’ Motion for Permissive Joinder of Berenice Summerville as a Plaintiff, IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED and Berenice Summerville is joined as a Plaintiff in this matter.

Upon consideration of Plaintiffs’ Motion for Permissive Joinder of Delphi Automotive PLC and Delphi Automotive Systems LLC (“the Delphi parties”), IT IS HEREBY ORDERED that the Plaintiffs’ motion is GRANTED and the Delphi parties are joined as Defendants in this matter.

ORDERED, District of Columbia, this _____ day of _____, 2014

UNITED STATES DISTRICT JUDGE

DISTRIBUTION:

Robert Sharpleigh Ryland
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Suite 1200
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Tel: (202) 879-5086
Fax: (202) 879-5200
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Tel: (202) 862-9700
Fax: (202) 862-9710
Attorney for General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Plaintiffs’ Motion to Amend Complaint and Join Plaintiffs and Defendants, Memorandum in Support thereof, and Proposed Order on the following parties by electronically filing them with the Court’s electronic case filing system this 28th day of June 2014:

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/s/ Daniel Hornal (D.C. Bar No. 1005381)

DATE: June 28, 2014

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Attorney for Plaintiffs

**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,)

Plaintiffs,)

v.)

GENERAL MOTORS LLC,)
DELPHI AUTOMOTIVE PLC,)
and DPH-DAS LLC f/k/a DELPHI)
AUTOMOTIVE SYSTEMS, LLC,)

Defendants.)

Case No. 1:14-cv-00691 (KBJ)

**CLASS ACTION FOR DECLARATORY,
INJUNCTIVE, AND MONETARY RELIEF**

**REPRESENTATIVE ACTION FOR
DECLARATORY, INJUNCTIVE, AND
MONETARY RELIEF**

**PURSUANT TO THE
D.C CONSUMER PROTECTION
PROCEDURES ACT, D.C. Code § 28-3901
et seq.**

JURY TRIAL DEMANDED

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 analogous 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 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 as 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/_____
Daniel Hornal
Talos Law
D.C Bar #1005381
705 4th St. NW #403
Washington, DC 20001
(202) 709-9662
daniel@taloslaw.com
Attorney for Plaintiffs

Exhibit F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**PLAINTIFFS LAWRENCE ELLIOTT AND CELESTINE ELLIOTTS’
NOTICE TO THE COURT OF DEVELOPMENTS IN RELATED
PROCEEDINGS BETWEEN THE PARTIES**

Lawrence Elliott and Celestine Elliott, Plaintiffs in *Elliott v. General Motors LLC*, 1:14-cv-00691 (D.D.C. Apr. 23, 2014), notify the Court of the entry of the attached Order by the United States District Court for Federal District before whom their lawsuit is pending.

On July 16, 2014, the Hon. Judge Jackson granted the Elliotts’ Motion to Amend and to Join Parties, and then stayed the litigation pending this Courts disposition of the Elliotts’ pending “No Stay Pleading” and a pending motion by GM before the JPML. The effect of her ruling is to render moot the provisions of this Court’s July 8, 2014, Order regarding the Elliotts’ then proposed, and now filed with leave of the Court, First Amended Complaint. The order is attached as Exhibit 1.

Respectfully submitted,

_____/s/_____
Daniel Hornal
Talos Law
D.C Bar #1005381
705 4th St. NW #403
Washington, DC 20001
(202) 709-9662
Attorney for Lawrence and Celestine Elliot
Date: June 30, 2014

Exhibit G

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|-------------------------|---|-----------------------------------|
| _____ |) | |
| LAWRENCE M. ELLIOTT and |) | |
| CHRISTINE V. ELLIOTT, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 14-cv-0691 (KBJ) |
| |) | |
| GENERAL MOTORS, LLC, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

ORDER

Plaintiffs Lawrence and Christine Elliott (the “Elliotts”) filed a pro se complaint in this case in the Superior Court of the District of Columbia on April 1, 2014. (*See* ECF No. 1-2.) Defendant General Motors, LLC (“GM”) removed the case to this Court on April 23, 2014. (*See* Notice of Removal, ECF No. 1.) The Elliotts’ original complaint consisted of a four-page letter that detailed some mechanical problems and other issues that the couple allegedly had experienced with two GM vehicles. GM moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) on April 23, 2014, arguing that it failed to state any cognizable legal theory. (GM’s Mot. to Dismiss, ECF No. 3.) That motion is still pending.

On May 28, 2014, GM filed a stipulated agreement to stay the case, signed by both GM’s counsel and the Elliotts, who, at that time, were still appearing pro se. (Stipulation, ECF No. 11.) This stipulation was the result of ongoing proceedings in the United States Bankruptcy Court for the Southern District of New York, where GM had filed a motion arguing that approximately 80 lawsuits, including the Elliotts’,

violated an injunction that court had entered in connection with GM's bankruptcy in 2009. *See In re Motors Liquidation Co.*, 09-50026, ECF No. 12629 (Bankr. S.D.N.Y. Apr. 22, 2014). In response to GM's motion, the Bankruptcy Court entered a scheduling order that included the requirement that certain parties should either enter into voluntary stipulations staying their lawsuits or file a motion with the Bankruptcy Court as to why no such stay was warranted. *See In re Motors Liquidation Co.*, 09-50026, ECF No. 12697 (Bankr. S.D.N.Y. May 16, 2014). The stipulation that the parties filed in this Court provided that the Elliotts would not seek to prosecute their case until the Bankruptcy Court had issued a ruling on GM's motion. This Court rejected the stipulation as to form, noting that this Court does not honor stipulations to stay proceedings and deadlines; instead, any such request must be made by motion. (*See Minute Entry of June 11, 2014.*)

On June 18, 2014, the Elliotts retained counsel, who entered an appearance that same day. (Notice of Appearance of Daniel Hernal, ECF No. 13.) Subsequently, on June 28, 2014, the Elliotts filed a motion for leave to amend their complaint, lodging the proposed amended complaint with their motion. (Pls.' Mot. to Amend, ECF No. 28.) In stark contrast to the original complaint, the proposed amended complaint is 53 pages long and includes a statement of jurisdiction, a description of the parties, discrete claims, and a prayer for relief. The proposed amended complaint also seeks to add a new plaintiff (Bernice Summerville), a new defendant (Delphi Automotive Systems, LLC), and class action allegations.

On July 2, 2014, counsel for the Elliotts appeared before the Bankruptcy Court to argue for relief from the Elliotts' obligations under the required stipulation, which,

although this Court had rejected it, was still a binding agreement based on the required procedures of the Bankruptcy Court. On July 8, 2014, the Bankruptcy Court issued an order purportedly directing the Elliotts to, among other things, withdraw their pending motion to amend the complaint by July 10, 2014, and refrain from filing any subsequent motion to amend the complaint that included any new plaintiffs or class claims. *See In re Motors Liquidation Co.*, 09-50026, ECF No. 12763 (Bankr. S.D.N.Y. Jul. 8, 2014). The Elliotts have not complied with the Bankruptcy Court's directive to withdraw their motion to amend.

This Court is mindful of the Bankruptcy Court's desire and ability to manage its own exceedingly complex docket in the most efficient manner possible, as well as the fact that the Bankruptcy Court is in all likelihood substantially more well-versed in the substance of the Elliotts' proposed claims than is this Court. However, this Court is also mindful of its own constitutionally-mandated duty to decide issues before it, including the Elliotts' pending motion to amend the complaint, which is properly subject to disposition because this case is not stayed. Moreover, it appears that all parties are considering the underlying questions pending before the Bankruptcy Court—and also those that are before the Judicial Panel on Multidistrict Litigation ("JPML"), *see In re General Motors Ignition Switch Litigation*, 1:14-md-02543, ECF No. 309 (U.S.J.P.M.L. Jul 1, 2014)—in light of the Elliotts' proposed *amended* complaint, rather than their initial pro se filing. *See, e.g., In re Motors Liquidation Co.*, 09-50026, ECF No. 12748 (Bankr. S.D.N.Y. Jul. 1, 2014) (letter from GM discussing the proposed amended complaint at length and noting that "there is no need for the DC District Court to decide the Motion to Amend—much less to allow the Elliotts to continue to litigate

their individual action in the DC District Court—for this Court to be able to consider the allegations in the Proposed Amended Complaint and decide whether their case is an Ignition Switch Action.”); *In re Motors Liquidation Co.*, 09-50026, ECF No. 12766-1 (Bankr. S.D.N.Y. Jul. 10, 2014) (transcript of July 2, 2014, Bankruptcy Court hearing discussing proposed amended complaint at length). This means that granting the motion to amend could be helpful to all concerned insofar as it would clarify the claims that the Elliotts are pressing before this Court.

Although this Court duly recognizes, and does not wish to disrupt, the carefully constructed procedures of the Bankruptcy Court and the JMPL, nor does it have any desire to allow the Elliotts and their counsel to exploit the fact that the initial pro se complaint was facially deficient as a means of escaping the potential effect of the Bankruptcy Court’s injunction, this Court is satisfied that addressing the pending motion to amend would have no such result. Accordingly, it is hereby

ORDERED that the Elliotts’ motion to amend their complaint (ECF No. 15) is **GRANTED**, and, as a result, GM’s motion to dismiss the initial complaint (ECF No. 3) is **DENIED** as moot. It is further

ORDERED that all other proceedings in this case are **STAYED** pending the outcome of the proceedings before the Bankruptcy Court and the JPML. It is further

ORDERED that, within 30 days after the resolution of the proceedings before the Bankruptcy Court or the JMPL, the parties shall submit a joint status report advising the Court of such resolution and of any effect it has on the stay in this case.

DATE: July 16, 2014

Ketanji Brown Jackson

KETANJI BROWN JACKSON
United States District Judge

Exhibit H

JURY,TYPE-F

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:14-cv-00691-KBJ**

ELLIOTT et al v. GENERAL MOTORS LLC
Assigned to: Judge Ketanji Brown Jackson
Demand: \$580,000
Case in other court: Superior Court of the District of
Columbia, 2014 CA 0001980
Cause: 28:1441 Petition for Removal

Date Filed: 04/23/2014
Jury Demand: Defendant
Nature of Suit: 385 Prop. Damage Prod.
Liability
Jurisdiction: Diversity

Plaintiff

LAWRENCE M. ELLIOTT

represented by **Daniel James Hornal**
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(202) 709-9862
Email: daniel@taloslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

CELESTINE V. ELLIOTT

represented by **Daniel James Hornal**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

GENERAL MOTORS LLC

represented by **Andrew B. Bloomer**
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| Date Filed | # | Docket Text |
|------------|--------------------|--|
| 07/16/2014 | 19 | MOTION by CELESTINE V. ELLIOTT, LAWRENCE M. ELLIOTT (Attachments: # 1 Exhibit, # 2 Text of Proposed Order, # 3 Certificate of Service)(Hornal, Daniel) (Entered: 07/16/2014) |
| 07/16/2014 | 20 | ORDER granting 15 Plaintiffs' Motion to Amend the Complaint; denying 3 Defendant's Motion to Dismiss as moot; and staying the case in light of other proceedings. See attached order for details. Signed by Judge Ketanji Brown Jackson on 07/16/2014. (lckbj2) (Entered: 07/16/2014) |
| 07/16/2014 | | MINUTE ORDER. In light of 20 this Court's order granting 15 Plaintiffs' Motion to Amend the Complaint and denying 3 Defendant's Motion to Dismiss, both 14 Plaintiff's Motion for Order Deferring Consideration and 19 Plaintiff's Motion to Notify the Court are hereby DENIED as moot. Signed by Judge Ketanji Brown Jackson on 07/16/2014. (lckbj2) (Entered: 07/16/2014) |

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