

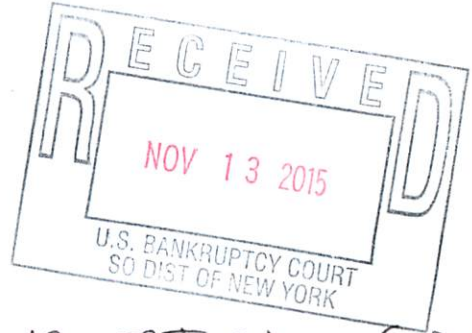
Endorsed Order:

Mr. Dunsmore's motion for relief from this Court's Endorsed Order, dated October 19, 2015, pursuant to Federal Rule 60(b) is denied for failure to assert a *prima facie* basis for the requested relief.

Dated: New York, New York
November 18, 2015

s/Robert E. Gerber
United States Bankruptcy Judge

Daryl Dunsen
AD6237 C3A 109
Box 32200
Stockton Ca 95213



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE

Case # 09-50026 (REG)

General Motors

IGNITION SWITCH LITIGATION

Daryl Dunsen
Plaintiff

v

General Motor et al
Defendants

Table of Contents
and Authorities in
support of 60(b)
Motion Relief from
Judgment

| | |
|---|---|
| Di Sabatino v State bar 1980 | |
| 27 C3d 159 162 458 - - - - - | 2 |
| Bus & Prof Code 6068(d) - - - - - | 2 |
| cal Rules of Prof Cond 5-200(B) - - - - - | 2 |
| Penal Code 134 - - - - - | 2 |

Motion - - - - - 2 pages
Memorandum - - - - - 2 pages

Lodgements

Exh. bit A
Court order - - - - - 1 page

Exh. bit A 1
Case FCS 045638 Dunsmuir v GMC
Amended Complaint Solano Superior Court - - 21 pages

Exh. bit B
Sutcliffe Brief Case 215653 - - - - - 9 pages

Exh. bit C
Defendants Motion to strike &
Dunsmuir Case FCS 045638 - - - - - 22 pages

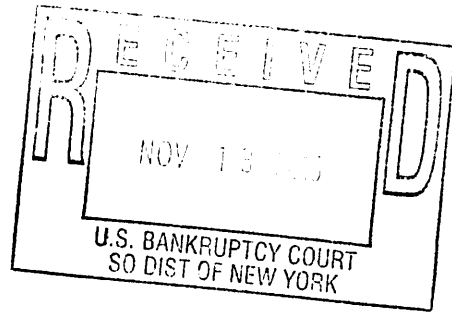
I declare the following lodgements are true and accurate

11/3/15

D/D

2072

Darryl Dunsware
AD6237 C3A 109
Box 32200
Stockton Ca 95213



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE

General Motors

IGNITION SWITCH Litigation

Darryl Dunsware

Plaintiff

v

General Motor et al

Defendants

Case 09 50026 (REG)

60(b) Motion
Relief from
Judgment

Contrary To This courts order of
endorcement on 10/19/15 This court has failed
to Consider plaintiffs Amended Complaint
which Directly Attacks (New GMC) actions
of Fraud, Concealment of Constitutionally

The 363 Sale in 2009 that if such disclosure would have been made previous to plaintiff's conviction in 2010 plaintiff may not have been found guilty and wrongfully convicted Exhibit B see Cause of Action # 5, 6 Exhibit A 1

Per endorsement order this plaintiff motions to bring relevant facts to this court's attention furthermore the defendants who are aware of this stay order certainly aren't Motoring the Solano Superior Court of this stay and are instead attempting to move the Solano Superior court to Action to strike a ~~Downer~~ The Complaint contrary to the stay imposed Exhibit C

This is the exact fraud all these plaintiffs are complaining about that this court seems to be ignorant of or indifferent

Conclusion

For ~~these~~ reasons this court should grant some type of relief

I declare under penalty of perjury the fore going is true

11/3/15

D/D

Daryl Dunsmuir
AD6237 C3A-109
Box 32200
Stockton Ca 95213

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE

General Motors

Case 09-50026 (REG)

IGNITION SWITCH LITIGATION

Daryl Dunsmuir
Plaintiff

v
General Motors et al
Defendants

Memorandum of Points
and Authorities in Support
of 60 b Motion Relief
from Judgment

A 60 (b) motion is grantable under Mistake and Fraud. Clearly a mistake of failure to consider plaintiff's Amended Complaint has occurred. However there is clearly No Mistake concerning the fraud the Defendant wish to Perpetrate on the Courts

No where in Defendants Memorandum in support of Demurrer Does The Defendant seek to enlighten The Superior Court of Solano Concerning The stay order of The 363 Sale This Court is enforcing on plaintiff

IN fact Defendants fraudulently presents facts of This Court to Solano Superior Court to take action Contrary to The stay order exhibit D Defendants Judicial Notice page 3 exhibit 1 citing only supposed liability protection but conveniently forgets the stay order

It is unethical for An Attorney to Mislead or lie to a Court Bus & PC 86068(d) Cal Rules of Prof Cond 5-200(B) Di. Sabatino v State bar (1980) 27 C3d 159 162 458

It is a felony to prepare a false paper or other matter with the intent that it will be introduced for a fraudulent or deceitful purpose at trial or at a legal proceeding or inquiry Per C 134

I declare under penalty of perjury The foregoing is true

11/13/15

D-AD -

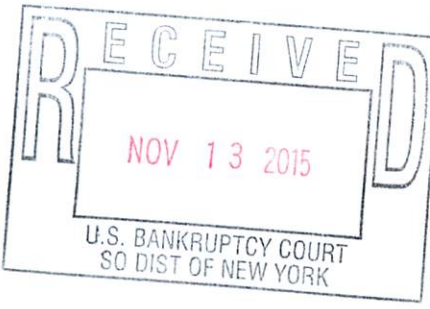
Exh. b. t A

Endorsed Order:

The Sale Order plainly covers Mr. Dunsmore's claims, and he has shown no basis for any exception. The relief requested by Mr. Dunsmore is denied. The stay imposed by the injunctive provisions of the Sale Order will remain in place with respect to Mr. Dunsmore's lawsuit in California state court until further action by this Court. This Endorsed Order is without prejudice to the rights of any party to bring any additional relevant facts to the Court's attention or to any future rulings by this Court.

Dated: New York, New York
October 19, 2015

s/Robert E. Gerber
United States Bankruptcy Judge

| | | |
|--|---------------------|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Darryl Dunsmore AD6237 G-2-224 PO Box 2000 Vacaville Ca 95696 | | FOR COURT USE ONLY  |
| TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Pro S | FAX NO. (Optional): | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Solano STREET ADDRESS: 586 Texas st MAILING ADDRESS: CITY AND ZIP CODE: Fairfield ca 94533 BRANCH NAME: Solano | | |
| PLAINTIFF/PETITIONER: Darryl Dunsmore DEFENDANT/RESPONDENT: GMC, Lobel, V. King Etal | | CASE NUMBER: PCS045638 |
| NOTICE OF RELATED CASE | | JUDICIAL OFFICER: DEPT.: |

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

- Title: Dunsmore v Kamala Harris Etal
 - Case number: 15-555-93
 - Court: same as above
 other state or federal court (name and address): 9th cfr Court of Appeals PO Box 193939 San Francisco Ca 94119-3939
 - Department:
 - Case type: limited civil unlimited civil probate family law other (specify): Federal Habeas
 - Filing date: 4/17/15
 - Has this case been designated or determined as "complex?" Yes No
 - Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h Actual motion claim New Evidence
 - Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment
- Title:
 - Case number:
 - Court: same as above
 other state or federal court (name and address):
 - Department:

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO): *New GMC et al
Coble v. King et al*

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Daryl Dunsmore

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exantos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

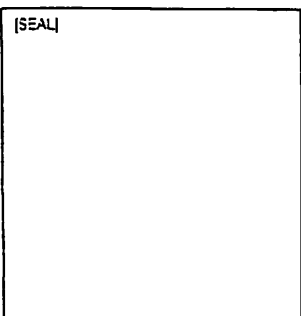
The name and address of the court is: *Old Solano Court house*
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso):
FC5045638

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

| | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |
4. by personal delivery on (date):

Pg 10 of 58 CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) **Darryl Dunsmuir AD6237 C3A 109**
Box 32200 Stockton Ca 95213

TELEPHONE NO.: _____ FAX NO.: _____

ATTORNEY FOR (Name): _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **Solano**
 STREET ADDRESS: **580 Texas ST**
 MAILING ADDRESS: **Scarsfield Ca 95233**
 CITY AND ZIP CODE: **Scarsfield Ca 95233**
 BRANCH NAME: **Old Solano Court House**

CASE NAME: _____

FOR COURT USE ONLY

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **SCS045638**

JUDGE: _____
 DEPT: _____

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|---|--|
| <p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p> | <p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p> | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input checked="" type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p> |
|---|---|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

| | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): _____

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **10/27/15**
Darryl Dunsmuir
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

| | |
|---|--|
| <p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Darryl Dausman AD6237 CJA 109 AD6237 CJA 109 Box 32200 Stockton Ca 95213</p> <p>TELEPHONE NO: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____</p> | <p>FOR COURT USE ONLY</p> |
| <p>NAME OF COURT: Solano Superior Court STREET ADDRESS: 580 Texas St MAILING ADDRESS: _____ CITY AND ZIP CODE: Fairfield Ca 94533 BRANCH NAME: Old Solano Court House</p> | |
| <p>PLAINTIFF: Darryl Dausman</p> <p>DEFENDANT: GMC, Opel, Viking et al</p> <p><input type="checkbox"/> DOES 1 TO <u>100</u></p> | |
| <p>COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input checked="" type="checkbox"/> AMENDED (Number): 157, 6 Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): _____ <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify): _____</p> | |
| <p>Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p> | <p>CASE NUMBER: PCS 045638</p> |

1. PLAINTIFF (name):

alleges causes of action against DEFENDANT (name):

2. This pleading, including attachments and exhibits, consists of the following number of pages: _____

3. Each plaintiff named above is a competent adult

- a. except plaintiff (name):
- (1) a corporation qualified to do business in California
 - (2) an unincorporated entity (describe):
 - (3) a public entity (describe):
 - (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
 - (5) other (specify):

- b. except plaintiff (name):
- (1) a corporation qualified to do business in California
 - (2) an unincorporated entity (describe):
 - (3) a public entity (describe):
 - (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
 - (5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Complaint—Attachment 3.

Dunsore v GMC et al

FC5045638

4. Plaintiff (name): Darryl Dunsore is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person.

- a. except defendant (name): GMC, Lobl v. Kelly et al
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):
(4) a public entity (describe):
(5) other (specify):

- b. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):
(4) a public entity (describe):
(5) other (specify):

- d. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):
(4) a public entity (describe):
(5) other (specify):

Information about additional defendants who are not natural persons is contained in Complaint—Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7. Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. at least one defendant now resides in its jurisdictional area.
b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
c. injury to person or damage to personal property occurred in its jurisdictional area.
d. other (specify): Real Property That is The Subject of this action is located here

9. Plaintiff is required to comply with a claims statute, and

- a. plaintiff has complied with applicable claims statutes, or
b. plaintiff is excused from complying because (specify): Medical incapacitation

| | |
|---|----------------------------------|
| SHORT TITLE: <u>Dunsmore v GMC ET AL</u> | CASE NUMBER: <u>FC5045638</u> |
|---|----------------------------------|

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- a. Motor Vehicle
 - b. General Negligence
 - c. Intentional Tort
 - d. Products Liability
 - e. Premises Liability
 - f. Other (specify): fraud

11. Plaintiff has suffered
- a. wage loss
 - b. loss of use of property
 - c. hospital and medical expenses
 - d. general damage
 - e. property damage
 - f. loss of earning capacity
 - g. other damage (specify): wrongful conviction

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
- a. listed in Attachment 12.
 - b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
- a. (1) compensatory damages
 - (2) punitive damages
- The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):
- (1) according to proof
 - (2) in the amount of: \$

15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: 6/12/15

Darryl Dunsmore
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

| | |
|-------------------------------------|--------------------------|
| SHORT TITLE Dunsmore v GMC ET AL | CASE NUMBER FCS045638 |
|-------------------------------------|--------------------------|

1 CAUSE OF ACTION—Intentional Tort Page _____
(number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

IT-1 Plaintiff (name): Darryl Dunsmore
alleges that defendant (name): GMC, Label, Viking ET AL

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): Dec 3 2007
at (place): East 5TH ST

(description of reasons for liability):

The Defendants willfully Manufactured or Sold knowingly Defective Vehicals Manufactured with Defective Parts The Defendants knew of should have known The Vehical had Defective Parts when Sold To plaintiff because a Duplicate title existed the Defendants further sold and INSUREO The Vehical knowing it was STolen and possibly Defective workmanship or Parts were involved upon such knowledg willfully Sought to Cover up such information and failed to contact authorities Resulting in Plaintiff's injuries and wrongful Conviction

Dunsmore v GMC ET AL

PCS045638

2 CAUSE OF ACTION—General Negligence Page _____
(number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Daryl Dunsmore

alleges that defendant (name): GMC, LOBEL, VIKING

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): 2007

at (place): VIKING insurance lobel financial

(description of reasons for liability):

The Defendants willfully or negligently sold and insured a Motor Vehicle to the plaintiff that they should have known was manufactured with defective parts by Defendant GMC or that a duplicate title existed and that the vehicle was possibly stolen and unauthorized workmanship or parts were involved and failed report such issues to authorities placing plaintiff at risk of injury and death or other liabilities that resulted on Dec 3 2007 in the form of an accident and wrongful conviction and that the defendant caused personal injury to a dependent adult with in the meaning of Penal Code 368 and continue to cover these facts and cause plaintiff to be held incarcerated and wrongfully convicted

| | |
|---|---------------------------------|
| SHORT TITLE: <u>Dunsmore v GMC ET AL</u> | CASE NUMBER: <u>CS045638</u> |
|---|---------------------------------|

PLD-PI-001(5)

3 CAUSE OF ACTION—Products Liability Page _____

ATTACHMENT TO Complaint Cross - Complaint
(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Darryl Dunsmore

Prod. L-1. On or about (date): Dec 3 2007 plaintiff was injured by the following product: GMC 2001 SAVANA VAN SL5

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being used in the manner intended by the defendants. used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a purchaser of the product. user of the product. bystander to the use of the product. other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. Count One—Strict liability of the following defendants who a. manufactured or assembled the product (names): GMC ET AL

Does 1 to 100 b. designed and manufactured component parts supplied to the manufacturer (names): GMC ET AL

Does 1 to 100 c. sold the product to the public (names): Label ET AL

Does 1 to 100 Prod. L-5. Count Two—Negligence of the following defendants who owed a duty to plaintiff (names): Viking ET AL

Does 1 to 100 Prod. L-6. Count Three—Breach of warranty by the following defendants (names): Label, Viking, GMC

Does 1 to 100 a. who breached an implied warranty b. who breached an express warranty which was written oral

Prod. L-7. The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are listed in Attachment-Prod. L-7 as follows: TREBLE Damage as Dependant Adult

| | |
|--|---|
| SHORT TITLE: <i>Dunsmore v GMC, Label, Viking</i> | PLD-PI-001(1) CASE NUMBER: <i>PCSO45638</i> |
|--|---|

4
(number) CAUSE OF ACTION—Motor Vehicle

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): *Darryl Dunsmore*

MV- 1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred

on (date): *2007 Dec 3*

at (place): *East 5th St Natural City, Ca 91950*

MV- 2. DEFENDANTS

a. The defendants who operated a motor vehicle are (names):

Does _____ to _____

b. The defendants who employed the persons who operated a motor vehicle in the course of their employment are (names):

Does 1 to _____

c. The defendants who owned the motor vehicle which was operated with their permission are (names): *Label et al*

Does _____ to _____

d. The defendants who entrusted the motor vehicle are (names): *Viking et al*

Does 1 to 100

e. The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names): *John June Does*

Does 1 to 100

f. The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are listed in Attachment MV-2f as follows: *The Defendants knowingly allowed a dependent adult Per Penal Code 368 to operate on stolen Detective product resulting in a wrongful conviction*

Does _____ to _____

Page _____

PLD-C-001(3)

| | |
|---|---------------------------------|
| SHORT TITLE: <i>Dunsmuir v GMC et al</i> | CASE NUMBER <i>FCS045638</i> |
|---|---------------------------------|

5
(number)

CAUSE OF ACTION—Fraud

FR-4. Promise Without Intent to Perform

a. Defendant made a promise about a material matter without any intention of performing it as stated in Attachment FR-4.a as follows:

That New GMC would except liabilities for incidents accidents arising After the 363 sale of July 10 2009 and have failed, Refused to do so contrary to that agreement contrary to state, local and Constitutional law and instead acted as accessories to the crimes and misconduct of old GMC according to penal Code 32

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act as stated in Attachment FR-5 as follows:

go to Jury Trial to exonerate himself of alleged crime that he intentionally used a GMC product as a weapon and that the GMC product was the actual cause by way of defective parts and workmanship

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged as stated in Attachment FR-6 as follows:

life, liberty and pursuit of Happiness Defendants conduct has caused plaintiff to suffer a wrongful conviction and incarceration of one actually innocent

FIR - 7. Other: *obstruction of Court access and due process*

OFF TITLE

CASE NUMBER

Dunsmore v GMC et al

PCS045638

6

CAUSE OF ACTION—Intentional Tort

Page _____

(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

T-1 Plaintiff (name): Darryl Dunsmore

alleges that defendant (name): New GMC

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): July 10 2009 To 10/27/15

at (place):

(description of reasons for liability):

Have intentionally Breach 363 Sale Contract to exempt liabilities of accidents and incidents arising after July 10 2009 Concerning GMC products in That They claim to be separate entities of the conduct and crime of the Defendants (old GMC) yet have acted contrary to California Penal Code 133, 134, 135 Hiding Destroying Concealing Evidence of Constitutionally Mandated Discovery which This complaint concern and have acted as an accessory to Those Acts of Misconduct and crimes per penal code 31.32 of old GMC That the acts of New GMC have caused plaintiff to suffer a wrongful conviction and are causing an actually innocent individual to remain illegally incarcerated and continue to withhold this Constitutionally Mandated Discovery plaintiff seeks contrary to Their assertions

FC5045638

7
Number

Cause of Action - Fraud

FR-4 Promise without intent to perform

A. Defendant made a promise about a material matter without any intention of performing it FR 4(a) as follows that the vehicle was safe from defect, part or poor workmanship and legal

b. Defendants promise without any intention of performing it was made with the intent to defraud and induce plaintiff to rely upon it and to act upon it as described in Item FR-5 At the time plaintiff acted plaintiff was unaware of Defendants intention not to perform the promise Plaintiff acted in justifiable reliance upon the promise

FR-5 The justifiable reliance upon Defendants conduct Plaintiff was induced to act as follows

To operate an unsafe vehicle that was stolen with defective parts and unauthorized workmanship,

FR-6 Because the plaintiff reliance upon Defendant conduct Plaintiff has been Damaged as follows wrongful conviction, lost property, emotional distress Personal injury, lost future earnings

Dunsmore v GMC et al FCS045638

7 Cause of Action - Fraud
Number

Attachment to Complaint

FR-1 Plaintiff Darryl Dunsmore

Alleges That Defendant GMC, Label, Viking, ET AL
On or about 2006-2007 defrauded plaintiff as follows

- FR-2 Intentional or Negligent Misrepresentation
 - a. Defendant made representation of material fact as follows
that the vehicle being sold was legal, safe free from
defect or unauthorize workmanship
 - b. These representations were in fact false The truth
was as follows

The vehicle was manufactured with defective parts
stolen, and illegal with UN Authorized parts or workma
ship performed on the product

- c. When Defendant made these representation
 - Defendant knew they were false or
 - Defendant had no reasonable ground for believing the
representations were true

d. Defendant made the representations with the intent to
defraud and induce plaintiff to act as described in Item
FR-5 At the time plaintiff acted plaintiff did not know
The Representations were false and believed they were true
Plaintiff acted in justifiable reliance upon the truth of
The Representations

Donsmore v BMC, Lohel, Viking et al | FCS 045638

7 Cause of Action - Fraud

FR 3 Concealment

a. Defendant concealed or suppressed material facts as follows

That the vehicle was stolen, illegal with defective parts or UN authorized workmanship

b. Defendant concealed or suppressed material facts

Defendant was bound to disclose

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in ITEM FR-5 At the time plaintiff acted plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts

PLD-C-001(1)

| | |
|---|----------------------------------|
| SHORT TITLE: <i>Dunsmore v GMC et al</i> | CASE NUMBER: <i>PCSO45638</i> |
|---|----------------------------------|

8

CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): *Darryl Dunsmore*

alleges that on or about (date): *July 10 2009*

a written oral other (specify):

agreement was made between (name parties to agreement):

Darryl Dunsmore and New GMC

A copy of the agreement is attached as Exhibit A, or

The essential terms of the agreement are stated in Attachment BC-1 are as follows (specify):

That the Defendants New GMC would be liable for incidents and accidents after July 10 2009 and that they are separate entities from the acts and conduct of Defendant old GMC

BC-2. On or about (dates): *July 10, 2009 To 10/27/15*

defendant breached the agreement by the acts specified in Attachment BC-2 the following acts (specify):

withholding, concealing. Constitutionally mandated discovery a violation of alleged contract and Penal Code 133 134 135 and is acting contrary to contract as an accessory to these acts of misconduct and crime Pr 31 32 of penal code

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

as stated in Attachment BC-4

as follows (specify): *Continued wrongful conviction of plaintiff and conviction of 2010*

BC-5. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

BC-6. Other:

PLD-C-001(1)

| | |
|--|----------------------------------|
| SHORT TITLE: <u>Unsure v GMC ETAL</u> | CASE NUMBER: <u>PCS045638</u> |
|--|----------------------------------|

9

CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Daryl Unsworth

alleges that on or about (date): 2006-2007

a written oral other (specify):

agreement was made between (name parties to agreement): Label, Viking

A copy of the agreement is attached as Exhibit A, or

The essential terms of the agreement are stated in Attachment BC-1 are as follows (specify):

That the vehicle was void of poor workmanship or part and was safe and legal

BC-2. On or about (dates): 2006-2007

defendant breached the agreement by the acts specified in Attachment BC-2 the following acts

(specify): by knowingly allowing plaintiff to purchase and insure the product known to have unauthorized work performed defective parts and stolen

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

as stated in Attachment BC-4 as follows (specify): Severe personal injury emotional distress, loss of property, future earning, wrongful conviction

BC-5. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

BC-6. Other: TREBLE Damages

Page _____

| | |
|--|--------------|
| SHORT TITLE: <i>Dunsmuir v GMC ST.M</i> | CASE NUMBER: |
|--|--------------|

Exemplary Damages Attachment

Page _____

ATTACHMENT TO Complaint Cross - Complaint

EX-1. As additional damages against defendant (name): *lobel, v. King et al*

Plaintiff alleges defendant was guilty of

- malice
- fraud
- oppression

as defined in Civil Code section 3294, and plaintiff should recover, in addition to actual damages, damages to make an example of and to punish defendant.

EX-2. The facts supporting plaintiff's claim are as follows:

The Defendants knew or should have known that the vehicle was defective and manufactured with defective parts and that a duplicate title existed and or that the vehicle may have stolen defective parts, mechanical problems or other defects and that Defendants willfully and fraudulently covered up these facts or failed to disclose resulting in personal injury, loss of property, incarceration, wrongful conviction and that the defendant knew the plaintiff was a dependent adult that they have oppressed the plaintiff by withholding exculpatory evidence to oppress the plaintiff and keep him incarcerated and wrongly convicted

EX-3. The amount of exemplary damages sought is .

- a. not shown, pursuant to Code of Civil Procedure section 425.10.
- b. \$ *TREBLE Damage*

AD6237 G-1-14
PO Box 2000
Vacaville ca 95696
Pro Se

received JUL 15 2015
Clerk of the Superior Court

IN THE SUPERIOR COURT STATE OF CALIFORNIA
COUNTY OF SOLANO

Darryl Dunsmore
Plaintiff

Case FS045638

GMC, LOBEL VIKING ETAL
Defendants

Attachments in support
of UNLIMITED civil
Action

- Attachment (A)
Viking insurance policy - - - - - 1 page
- Attachment (b)
Western General insurance Policy - - - - - 1 Page
- Attachment (c)
Correspondence with insurance - - - - - 16 Pages

Attachment (d)

correspondence Label financial - - - - 1 Page

Attachment (e)

Correspondence General Motors Corp - - - - 1 Page

Attachment (f)

Claim estimate - - - - - 35 Pages

Attachment (g)

Value scope Market report - - - - - 16 pages

Table of Contents

| | |
|-------------------------------|----------|
| civil Complaint | 14 Pages |
| TRO Motion | 3 Pages |
| order to Show Cause | 2 Page |
| letter to Clerk. | |
| for motion hearing Date | 1 Page |
| Declaration in support of TRO | 1 Page |

6/12/15
5/28/15 DJD

Service Request # 7F-1475390686

RE: Correspondance May 14 2015

Darryl Dunsmore AD6237

6-2-224 P.O. Box 2000

Vacaville Ca 95696

Because of The failure of My GMC Vehical
I am unable to Correspond by telephone as I
have been wrongly convicted behind The mechanical
failure of My Vehical and am in prison Seeking
Exculpatory evidence supporting The Defective
Parts that My Vehical was Manufactured with

I have been forced to file Civil litigation
and request that This correspondance be forwarded
to your legal Dept for processing of Discovery
and interrogatories

5/29/15

Page 20 of 50 B

0112

1 BONNIE M. DUMANIS
2 District Attorney
3 MARY G. LOEB
4 State Bar Number 254512
5 Deputy District Attorney
6 2851 Meadowlark Drive
7 San Diego, CA 92123
8 Ph: (858) 694-4264
9 Fax: (858) 514-8525
10 Email: Mary.Loeb@sdcdca.org

FILED

NOV 18 2010

By: Amy Heifers

11 Attorneys for Plaintiff

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN DIEGO, SOUTHERN DIVISION

14 THE PEOPLE OF THE STATE OF CALIFORNIA,
15
16 Plaintiff,

No. CS215653
DA BBA014

17 V.

PEOPLE'S SENTENCING
BRIEF

18 DARRYL LEE DUNSMORE
19 Defendant.

Date: June 3, 2010
Time: 1:30 PM
Dept: 12
Judge: Hon. H. Ronald Domnitz
Time Estimate: 30 minutes

20 Comes now the plaintiff, the People of the State of California, by and through their
21 attorneys, BONNIE DUMANIS, District Attorney, MARY GINETTE LOEB, Deputy
22 District Attorney, and respectfully submits the following Sentencing Brief.

23 ARGUMENT

24 I.

25 SENTENCING OBJECTIVES

26 "The Legislature finds and declares that the purpose of imprisonment for crime is
27 punishment. This purpose is best served by terms proportionate to the seriousness of the
28 offense. . . ." (Pen. Code, § 1170(a)(1).)

0113

1 The seriousness of the crimes, along with the following sentencing objectives and
2 circumstances in aggravation, should be of primary concern to this court.

3 The Judicial Council Rules provide the following objectives to be achieved in
4 sentencing:

5 Rule 4.410(a). Protecting society. Here, even though the jurors found that passion or
6 provocation was a mitigating factor in this case and thus convicted the Defendant of
7 attempted voluntary manslaughter instead of attempted murder, in finding the Defendant
8 guilty they affirmed that **the Defendant formed the intent to kill** Joseph Camacho. The
9 Defendant is a danger to society as demonstrated not only by the facts of this case, but also
10 his long history of violence with Rose Roach and his prior convictions for violent crimes.

11 Rule 4.410(b). Punishing the defendant. The Defendant fails to take accountability
12 for his actions. He has told multiple different stories in an attempt to mitigate his conduct.
13 He continues to place blame on the victims in this case and make excuses. He needs to
14 understand the seriousness of his conduct and **be punished accordingly**.

15 Rule 4.410(c). Encouraging the defendant to lead a law abiding life in the future and
16 deterring him from future offenses. The Defendant continues to refuse to take responsibility
17 and needs encouragement in order to remain law abiding. The Court should demonstrate to
18 this Defendant that his criminal activity is **totally unacceptable to society** and that he will
19 be held accountable.

20 Rule 4.410(d). Deterring others from criminal conduct by demonstrating its
21 consequences.

22 Rule 4.410(e). Preventing the defendant from committing new crimes by isolating
23 him for a period of incarceration. The imposition of a prison sentence will insure that the
24 **Defendant will not victimize others** for at least the period of incarceration. It will isolate
25 the Defendant and protect the victims in this case and society.

26 Rule 4.410(f). Securing restitution for the victim of the crimes. Both Joseph
27 Camacho's and Terry Rahn suffered not only physically but financially as a result of the
28 Defendant's deliberate conduct. Mr. Camacho will never truly be compensated for the

0114

1 damage that has been done.

2 Rule 4.410(g). Achieving uniformity in sentencing.

3 Rule 4.410 (b). Because in some instances these objectives may suggest inconsistent
4 dispositions, the sentencing judge must consider which objectives are of primary importance
5 in the particular case. The sentencing judge should be guided statutory statements of policy,
6 the criteria in these rules, and the facts and circumstances of the case.

7 **II.**

8 **THE DEFENDANT IS INELIGIBLE FOR PROBATION**

9 Except in unusual cases where the interests of justice would be served, the defendant
10 is ineligible for probation under several subdivisions of Penal Code section 1203.

11 Section 1203(e)(2). The Defendant personally used a deadly weapon against a human
12 being in connection with the perpetration of this crime.

13 Section 1203(e)(3). The Defendant personally inflicted great bodily injury on the
14 victims during the perpetration of this crime.

15 Section 1203(e)(4). The Defendant has more than two prior felony convictions.

16 Moreover, the Defendant is also absolutely ineligible for probation under Penal Code
17 Section 667, *et seq.*, because he has a prior serious felony conviction which the Court found
18 true and his current offenses are serious felony convictions.

19 **III.**

20 **THE DEFENDANT SHOULD BE SENTENCED TO PRISON**
21 **FOR THE UPPER TERM**

22 The facts and circumstances in aggravation outweigh the facts and circumstances in
23 mitigation which are defined by Rules 4.421 and 4.423 of the California Rules of Court. The
24 Defendant should be sentenced to the upper term. The applicable rule sections are discussed
25 below.

26 **A. Circumstances in Aggravation**

27 Rule 4.421(a). Facts relating to the crime, whether or not charged or chargeable as
28 enhancements, including the following:

0115

1 Rule 4.421(a)(1). The crime involved great violence, great bodily harm, threat of
2 great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or
3 callousness. It goes without saying that the crimes of attempted voluntary manslaughter and
4 assault with a deadly weapon are serious crimes. As the evidence showed, Joseph Camacho
5 was seriously and permanently injured as a result of the Defendant's crime. To this day, he
6 still walks with a cane and **will never be the same man again**. Terry Rahn was injured as
7 well. The Defendant's continued deflection of blame onto the victims is evidence of his
8 cruelty and callousness.

9 Rule 4.421 (a) (2). The defendant was armed with or used a weapon at the time of the
10 commission of the crime. The Defendant used his full size van to hit Terry Rahn and to run
11 over Joseph Camacho.

12 Rule 4.421 (a) (3). The victims were particularly vulnerable. The victims in this case
13 were vulnerable because the **Defendant made sure they were in a position of vulnerability**
14 before he attacked. He lured them to his house, waited until they were out of their car, and
15 callously ran them down with his van. They were in no position to fight back.

16 Rule 4.421 (a) (4). The defendant induced others to participate in the commission of
17 the crime or occupied a position of leadership or dominance of other participants in its
18 commission. Here the defendant was the sole planner and participant.

19 Rule (a) (6). The defendant threatened witnesses, unlawfully prevented or dissuaded
20 witnesses from testifying, **suborned perjury or in any other way illegally interfered with**
21 **the judicial process**. The Defendant lied to 911 and to police about how the incident
22 occurred. At trial, the Defendant continued his lies, taking the stand and suborning perjury.
23 So outrageous were the Defendants lies, that his own expert witnesses – his physician and an
24 accident reconstructionist – could not corroborate the Defendant's fabricated theories and
25 excuses for his conduct. Even the Defendant's story to the probation officer is different than
26 what he testified to at trial. At every turn, the Defendant said whatever he could to deny
27 culpability, minimize his actions, and place blame on the victims and elsewhere.

28 // // //

0116

1 Rule 4.421(a) (8). The manner in which the crime was carried out indicates planning,
2 sophistication, or professionalism. As mentioned above and as the evidence showed, the
3 **Defendant set this incident into motion.** He knew Mr. Camacho and Mr. Rahn were
4 coming to his house, and he waited for them. He then waited until they got out of their car
5 and were the most vulnerable before he ran them down with his van. He then fled the
6 scene. Even the Defendant's actions after the crime are evidence of his plan and criminal
7 sophistication – he called 911 and fabricated a story and then lied to the police.

8 Rule 4.421(a) (11). The defendant took advantage of a position of trust or confidence
9 to commit the offense. The victims in this case both testified that they thought the Defendant
10 was a friend. **They trusted him,** and that is why it was easy for him to take advantage of
11 their trust and **lure them into his trap.**

12 Rule (b) Facts relating to the defendant, including the following:

13 Rule (b) (1). The defendant has engaged in violent conduct which indicates a serious
14 danger to society. This was an extremely violent act. The Defendant chased Joseph
15 Camacho down until he ran him over, then backed over his body again. He then fled the
16 scene, leaving Camacho to die. Although this is certainly the most violent act the Defendant
17 has committed, he has a long history of violence with his ex-girlfriend and others.

18 Rule (b) (2). The defendant's prior convictions as an adult or sustained petitions in
19 juvenile delinquency proceedings are numerous or of increasing seriousness. The Defendant
20 has **six prior felony convictions.**

21 Rule (b) (3). The defendant has served a prior prison term. The Defendant has served
22 multiple prison terms dating back over twenty years.

23 Rule (b) (5). The defendant's prior performance on probation or parole was
24 unsatisfactory.

25 **B. Circumstances in Mitigation**

26 There are very few circumstances in mitigation which apply to this case.

27 Rule 4.423(a) (1). The defendant was a passive participant or played a minor role in
28 the crime. Here, the Defendant was the sole and primary planner and actor.

0117

1 Rule 4.423 (a) (2). The victim was an initiator of, willing participant in, or aggressor
2 or provoker of the incident. The Defendant claimed that he was provoked by the victims,
3 and the jury obviously found some of this evidence credible because they only convicted of
4 attempted voluntary manslaughter. However, there was no “great” provocation here. The
5 Defendant’s conduct and attitude is such that **his dangerous, violent behavior is likely to**
6 **occur again.** Besides the Defendant’s testimony, which was filled with inconsistencies and
7 lies, there is no evidence that the victims initiated any violence or were aggressors.

8 Rule 4.423 (a) (3). The crime was committed because of an unusual circumstance,
9 such as great provocation which is unlikely to reoccur. There is no evidence of any highly
10 unusual circumstance or “great” provocation. The Defendant simply claimed he was
11 “scared” (a regular excuse for his criminal conduct) and that his disease somehow makes him
12 more vulnerable. The evidence was clear, however, that the Defendant made his own
13 choices here – he could have done a lot of things including simply driving away, but chose
14 not to.

15 Rule 4.423 (a) (4). The defendant participated in the crime under circumstances of
16 coercion or duress, or the criminal conduct was partially excusable for some other reason not
17 amounting to a defense. There was no coercion or duress.

18 Rule 4.423 (a) (5). The defendant, with no apparent predisposition to do so, was
19 induced by others to participate in the crime. There is no evidence of this, and as stated
20 above, the defendant was the sole and primary actor.

21 Rule 4.423 (a) (6). The defendant exercised caution to avoid harm to persons or
22 damage to property, or the amounts of money or property taken were deliberately small, or
23 no harm was done or threatened against the victim. Here, the Defendant acted rashly and
24 with no caution. **He did nothing to prevent either property or personal damage.** The
25 injuries the victims were both physical and financial.

26 Rule 4.423(b). Facts relating to the defendant, including the fact that:

27 Rule 4.423(b)(1). The defendant has no prior record, or an insignificant record of
28 criminal conduct, considering the recency and frequency of prior crimes. This section does

1 not apply to this Defendant. The Defendant's has been in and out of the criminal justice
2 system and prison for most of his life. He has a history of thefts, drug use, violation of court
3 orders, and violence. His most recent conviction was for a serious and violent felony,
4 criminal threats. The Court heard testimony about his violence towards Rose Roach. The
5 Defendant's criminal conduct is not only continuous, but it is increasing in seriousness.

6 Rule 4.423 (b) (2). The defendant was suffering from a mental or physical condition
7 that significantly reduced culpability for the crime. The Defendant claims his arthritic
8 condition was in part to blame for his conduct, but **his own physician did not support this**
9 **theory.**

10 Rule 4.423(b) (3). The defendant admitted guilt at an early stage in the criminal
11 process. To date, the Defendant still refuses to take responsibility, admit any blame, or show
12 any remorse. He took the stand and lied, denying his culpability, placing blame on others,
13 minimizing his actions, and merely attempting to garner sympathy for himself. He did the
14 same during his probation interview, and this time his story changed yet again. He can't
15 keep his many lies straight, and his only concern is himself.

16 Rule 4.423 (b) (4). The defendant is **ineligible for probation** and but for that
17 ineligibility he would have been granted probation. As stated above, the defendant is
18 presumptively ineligible for probation.

19 Rule 4.423 (b) (5). The defendant made restitution to the victim. Unfortunately, in
20 this case the Defendant can never make restitution to these victims.

21 Rule 4.423 (b) (6). The defendant's prior performance on probation or parole was
22 satisfactory. In the past, the Defendant has violated the conditions of both his probation and
23 parole, usually by committing new offenses.

24 The circumstances in mitigation do not outweigh the circumstances in aggravation. In
25 fact, the circumstances in aggravation far outweigh any mitigating factors. Thus, imposition
26 of the upper term would be justified.

27 ////

28 ////

////

0119

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

CONCLUSION

The People respectfully submit the foregoing sentencing brief and ask the court to deny probation and impose a prison term of 22 years.

Dated: June 2, 2010

Respectfully submitted,

BONNIE DUMANIS

District Attorney

By 

MARY GINETTE LOEB

Deputy District Attorney

1 BOWMAN AND BROOKE LLP
Anthony S. Thomas (SBN: 149284)
2 David Shay (SBN: 241702)
970 West 190th Street, Suite 700
3 Torrance, CA 90502
Telephone: (310) 768-3068
4 Facsimile: (310) 719-1019

5 Attorneys for Defendant GENERAL MOTORS LLC

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**

11 DARREL DUNSMORE,

12 Plaintiff,

13 vs.

14 GMC, LOBEL VIKING et. al

15 Defendants.
16
17

CASE NO.: FCS045638

Assigned to: Harry S. Kinnicutt
Department: 3

**DEFENDANT GENERAL MOTORS LLC'S
DEMURRER TO PLAINTIFF'S
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
DAVID C. SHAY; AND [PROPOSED]
ORDER**

(filed concurrently with Motion to Strike)

Date: January 5, 2016
Time: 9:30 a.m.
Dept.: 3

Action Filed: July 15, 2015

18
19
20
21
22
23 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on January 5, 2016 at 9:30 a.m., or as soon
25 thereafter as the matter may be heard in Department 3 of the above-entitled court located
26 at 600 Union Avenue, Fairfield, California 94533 Defendant General Motors LLC (the
27 entity served herein), will and hereby does demur to the operative complaint on the
28 following grounds:

1 1. The entity served by the in pro per plaintiff, General Motors LLC, is not a
2 proper party to this case under California *Code of Civil Procedure* Section 430.10(e) as it
3 relates to the five causes of action asserted. Specifically, General Motors LLC did not
4 design manufacture or sell the 2001 GMC Savana van that is the subject matter of this
5 lawsuit. In fact, General Motors LLC did not even exist until 2009. As a result, although
6 served with the operative Complaint, it is not a proper party to this action. Instead, the
7 entity that designed, manufactured and originally sold the 2001 GMC Savana van was
8 Motor Liquidation Company f/k/a General Motors Corporation; and,

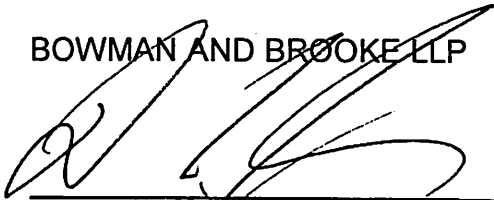
9 2. On the face of the complaint, the tort and misrepresentation claims are
10 barred by the statute of limitations under California *Code of Civil Procedure* Sections
11 335.1 (tort) and 338(d) (fraud).

12 This Demurrer is based upon this Notice, the Memorandum of Points and
13 Authorities set forth herein below, the attached Declaration of David C. Shay and the
14 complete files and records of this action.

15
16 DATED: September 25, 2015

BOWMAN AND BROOKE LLP

17
18
19 By:



Anthony S. Thomas
David C. Shay
Attorneys for Defendant
GENERAL MOTORS LLC

1 DEMURRER

2 General Motors LLC hereby demurs to the Complaint filed by plaintiff Darrel
3 Dunsmore generally and in its entirety on the following grounds:

4 DEMURRER AS TO THE FIRST CAUSE OF ACTION "MOTOR VEHICLE"

5 1. The first cause of action does not state sufficient facts to constitute a cause
6 of action against General Motors LLC and is otherwise barred by the Bankruptcy Court's
7 Sale Approval Order (See Exhibit 1 to Request for Judicial Notice); and,

8 2. The first cause of action directed against General Motors LLC is barred by
9 the applicable statute of limitations.

10 DEMURRER AS TO THE SECOND CAUSE OF ACTION "GENERAL NEGLIGENCE"

11 1. The second cause of action does not state sufficient facts to constitute a
12 cause of action against General Motors LLC and is otherwise barred by the Bankruptcy
13 Court's Sale Approval Order (See Exhibit 1 to Request for Judicial Notice); and,

14 2. The second cause of action directed against General Motors LLC is barred
15 by the applicable statute of limitations.

16 DEMURRER AS TO THE THIRD CAUSE OF ACTION "INTENTIONAL TORT"

17 1. The third cause of action does not state sufficient facts to constitute a cause
18 of action against General Motors LLC and is otherwise barred by the Bankruptcy Court's
19 Sale Approval Order (See Exhibit 1 to Request for Judicial Notice); and,

20 2. The third cause of action directed against General Motors LLC is barred by
21 the applicable statute of limitations.

22 DEMURRER AS TO THE FOURTH CAUSE OF ACTION "PRODUCTS LIABILITY"

23 1. The fourth cause of action does not state sufficient facts to constitute a
24 cause of action against General Motors LLC and is otherwise barred by the Bankruptcy
25 Court's Sale Approval Order (See Exhibit 1 Request for Judicial Notice); and,

26 2. The fourth cause of action directed against General Motors LLC is barred
27 by the applicable statute of limitations.

1 DEMURRER AS TO THE FIFTH CAUSE OF ACTION FOR "INTENTIONAL OR
2 NEGLIGENT MISREPRESENTATION"

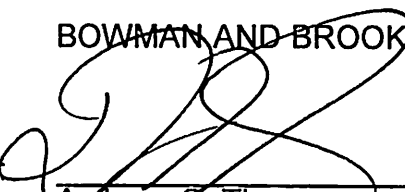
3 1. The fifth cause of action does not state sufficient facts to constitute a cause
4 of action against General Motors LLC and is otherwise barred by the Bankruptcy Court's
5 Sale Approval Order (See Exhibit 1 to Request for Judicial Notice); and,

6 2. The fifth cause of action is barred by the applicable statute of limitations.
7

8 DATED: September 25, 2015

BOWMAN AND BROOKE LLP

9
10 By



Anthony S. Thomas
David C. Shay
Attorneys for Defendant
GENERAL MOTORS LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Our incarcerated in pro per plaintiff filed the operative complaint asserting four
4 causes of action based in tort and one cause of action based on misrepresentation
5 (fraud) in connection with his purchase of a used 2001 GMC Savana van back in the
6 2006-2007 timeframe. He alleges damages in connection with a van versus pedestrian
7 incident (plaintiff was convicted of attempted voluntary manslaughter after the van was
8 used to run over his victims).¹ As discussed below, the instant demurrer should be
9 sustained without leave to amend for three reasons.

10 First, the entity served, General Motors LLC did not design, manufacture or
11 distribute the subject 2001 GMC Savana van. To the contrary, the correct entity
12 involved was Motors Liquidation Company f/k/a General Motors Corporation. Shay
13 Decl. ¶¶3-4. Therefore, General Motors LLC is not a proper party to this lawsuit.

14 Second, as it relates to the 2006-07 misrepresentation claims, since General
15 Motors LLC did not exist until 2009, it could not possibly make any misrepresentations
16 to plaintiff in connection with his purchase of the used van. More importantly, since
17 General Motors LLC is not liable for any pre-July 10, 2009 MLC conduct, it is not a
18 proper party to this lawsuit. Shay Decl. ¶¶3-4.

19 Finally, assuming arguendo that plaintiff served the correct manufacturing entity,
20 the claims are otherwise barred by the statute of limitations. Simply put, plaintiff Darrel
21 Dunsmore filed his lawsuit on **July 15, 2015** for alleged damages stemming from the
22 **December 3, 2007** incident. (See also, Exhibit A--Plaintiff's Complaint) Therefore,
23 these claims are untimely under both California *Code of Civil Procedure* Sections 335.1
24 (tort) and 338(d) (fraud).

25
26
27 ¹ See Exhibit A to Shay Declaration -- People v Dunsmore (unpublished opinion re the facts of the
28 underlying litigation) which is offered for background information only. (See also, Exhibit B—to Shay Decl.
Plaintiff's Complaint "Products Liability cause of action at PLD-PI-001(5) and handwritten fraud cause of
action at FR-1-FR-2.).

1 **II. OPERATIVE FACTS**

2 1. Plaintiff was the driver in a van versus pedestrian criminal incident on
3 December 3, 2007. (Exhibit A--Shay Decl. ¶1).

4 2. Plaintiff Darrel Dunsmore filed the instant action on July 15, 2015.
5 (Exhibit B--Shay Decl. ¶2). The operative Complaint list three defendants; namely,
6 Lobel , Viking and General Motors Corporation "GMC" (manufacturer of the subject
7 van).

8 3. General Motors LLC is a corporation formed in 2009 under the laws of
9 Delaware. A true and correct copy of the Delaware Secretary of State's website
10 identifying General Motors LLC is attached hereto as Exhibit "C".

11 4. On July 10, 2009, General Motors LLC acquired certain assets of Motors
12 Liquidation Company f/k/a/ General Motors Corporation following the filing of
13 bankruptcy by General Motors Corporation in the United States Bankruptcy Court for
14 the Southern District of New York. In acquiring these assets, General Motors LLC did
15 not assume all of the liabilities of General Motors Corporation, but rather, only product
16 liability claims arising out of incidents involving General Motors Corporation vehicles
17 that occurred after the July 10, 2009 closing date. (See Exhibit 1 to the Request for
18 Judicial Notice, *In re General Motors Corp.*, (S.D.N.Y. 2011) 447 B.R. 142, 144.

19 **III. LEGAL ARGUMENT**

20 Under California *Code of Civil Procedure* Section 430.10(f), it is essential that "a
21 pleading set forth actionable facts relied upon with sufficient precision to inform the
22 defendant of what plaintiff is complaining, and what remedies are being sought."
23 (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.) Hence, pursuant
24 to California *Code of Civil Procedure*, Section 430.50, a defendant may demur to any of
25 plaintiff's individual counts, if a defect appears on the face thereof. Specifically,
26 California *Code of Civil Procedure* Section 430.10, provides as follows:

1 "The party against whom a complaint . . . has been filed may
2 object by demurrer . . . on any one or more of the following
3 grounds:

4 * * *

5 (e) The pleading does not state facts sufficient to constitute the cause of
6 action."

7 In that regard, it is well settled that a demurrer can be used to challenge defects
8 that appear on the face of the pleading under attack, or from matters outside the
9 pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 C.3d 311, 318.) In
10 fact, California Code of Civil Procedure Section 430.30(a) specifically authorizes the
11 court to consider, as a ground for demurrer, any matter which the court must or may
12 judicially notice. (*Evidence Code* Section 451 and 452.) For example, in *Performance*
13 *Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659
14 the court properly took judicial notice of a court transcript regarding a settlement
15 agreement and considered their contents, even though they were outside the four
16 corners of the complaint.

17 **A. PLAINTIFF'S CLAIMS ARE BARRED AS TO GENERAL MOTORS LLC**

18 Since General Motors LLC did not assume liability in connection with "accidents
19 or incidents" occurring before July 10, 2009, it is not a proper party to this action
20 Specifically, in 2009, the New York Bankruptcy Court oversaw and approved the sale of
21 the bankrupt General Motors Corporation's assets and assumed liabilities. In 2011, the
22 Bankruptcy Court interpreted the agreement and issued a Court Order confirming that
23 "New" GM only assumed liability for products liability claims arising after the "Old" GM's
24 *Bankruptcy Code* Section 363 Sale Agreement closing date (i.e. July 10, 2009).

25 In the case at bar, the subject crash involving the 2001 GMC Savana van giving
26 rise to the claims asserted by plaintiff occurred on December 3, 2007. Hence, when
27 these parameters are applied to our facts, it is clear that "New" GM cannot be not a
28 proper party to this action because the incident pre-dates the bankruptcy. Since this court
has all of the facts (within the complaint or subject to judicial notice) demonstrating this
lawsuit is barred against "New" GM; the demurrer should be sustained since it fails to

1 state facts sufficient to constitute a cause of action. See e.g. *Carroll v. Puritan Leasing*
2 *Co.* (1978) 77 Cal. App. 3d 481, 485.

3 **B. PLAINTIFF'S TORT CLAIMS ARE BARRED BY THE APPLICABLE**
4 **STATUTE OF LIMITATION**

5 This Demurrer must be sustained without leave to amend because this action is
6 barred by the statute of limitation. The statute of limitation for personal injuries is 2
7 years pursuant to California Code of Civil Procedure Section 335.1. The crash
8 occurred on December 3, 2007. The Complaint was filed on July 15, 2015. The statute
9 has passed, and plaintiff's tort claims are time barred.

10 **C. PLAINTIFF'S MISREPRESENTATION CLAIM IS BARRED BY THE**
11 **APPLICABLE STATUTE OF LIMITATION**

12 This Demurrer must be sustained without leave to amend because this action is
13 barred by the statute of limitation. The statute of limitation for actions based on fraud
14 is 3 years pursuant to California *Code of Civil Procedure* Section 338(d). Plaintiff
15 alleges the misrepresentations were made in connection with his purchase of the 2001
16 GMC Savana van used in 2006-2007. (See Exhibit A--Plaintiff's Complaint handwritten
17 fraud cause of action at FR-1-FR-2.) The Complaint was filed on July 15, 2015. The
18 statute has passed, and plaintiff's claims are time barred.

19 **III. CONCLUSION**

20 There is no reasonable possibility that amendment could cure the defects. See
21 *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1044. Where
22 the defects in a pleading are matters of law, it is proper to sustain a demurrer without
23 leave to amend. *Estes v. Monroe* (2004) 120 Cal.App.4th 1347, 1365. Inasmuch as
24 General Motors LLC is not a proper party to this action, the claims asserted against
25
26
27
28

1 General Motors LLC must be dismissed. As such, for the reasons set forth above, it is
2 respectfully requested that this court sustain this demurrer with prejudice as to General
3 Motors LLC.

4

5 DATED: September 25, 2015

BOWMAN AND BROOKE LLP

6

7

By: 

Anthony S. Thomas
David C. Shay
Attorneys for Defendant
GENERAL MOTORS LLC

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DECLARATION OF DAVID C. SHAY

I, David C. Shay, declare as follows:

I am an attorney at law licensed to practice within the State of California and I am an associate attorney with the law firm of Bowman and Brooke, LLP attorneys of record for General Motors, LLC. This declaration is submitted in support of General Motors LLC's demurer in this action, which was filed in the Superior Court of the State of California, County of Solano, Case No. FCS045638

1. This litigation stems from a van versus pedestrian crash that occurred on or about December 3, 2007 (plaintiff was subsequently convicted of attempted voluntary manslaughter after the van was used to run over his victim). Attached hereto as Exhibit A is a true and correct copy of the *People v Dunsmore* unpublished appellate opinion which is offered for information concerning plaintiff's underlying criminal conviction concerning the subject van.

2. The operative Complaint was filed on July 15, 2015 and mailed to General Motors LLC. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's Complaint as served on General Motors LLC.

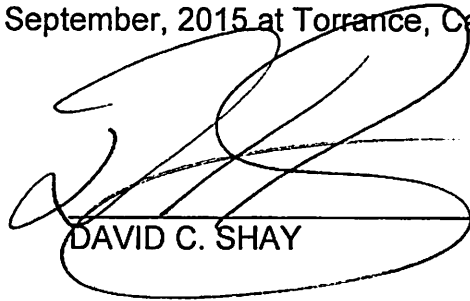
3. General Motors LLC is a corporation formed in 2009 under the laws of Delaware. A true and correct copy of the Delaware Secretary of State's website identifying General Motors LLC is attached hereto as Exhibit "C."

4. On July 10, 2009, General Motors LLC acquired certain assets of Motors Liquidation Company f/k/a/ General Motors Corporation following the filing of bankruptcy by General Motors Corporation in the United States Bankruptcy Court for the Southern District of New York. In acquiring these assets, General Motors LLC did not assume all of the liabilities of General Motors Corporation, but rather, only product liability claims arising out of incidents involving General Motors Corporation vehicles that occurred after the July 10, 2009 closing date. (See Exhibit 1 to the Request for Judicial Notice, *In re General Motors Corp.*, (S.D.N.Y. 2011) 447 B.R. 142, 144

1 5. At this time, the parties have not been able to resolve the jurisdictional
2 issues set forth in the motion without judicial intervention. General Motors LLC has
3 been unable to secure contact information for plaintiff, who is a prisoner.

4 I declare under penalty of perjury under the laws of the State of California that
5 the foregoing is true and correct.

6 Executed this 25 day of September, 2015 at Torrance, California.

7
8
9
10 
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DAVID C. SHAY

1 BOWMAN AND BROOKE LLP
Anthony S. Thomas (SBN: 149284)
2 David Shay (SBN: 241702)
970 West 190th Street, Suite 700
3 Torrance, CA 90502
Telephone: (310) 768-3068
4 Facsimile: (310) 719-1019

5 Attorneys for Defendant GENERAL MOTORS LLC

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SOLANO

9 DARREL DUNSMORE,

10 Plaintiff,

11 vs.

12 GMC, LOBEL VIKING et. al

13 Defendants.
14
15

CASE NO.: FCS 045638

Assigned to: Harry S. Kinnicutt
Department: 3

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
PLAINTIFF'S COMPLAINT AND MOTION
TO STRIKE

Date: January 5, 2016
Time: 9:30 a.m.
Dept.: 3

Action Filed: July 15, 2015

16
17
18 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

19 Pursuant to *Evidence Code* §452(a), General Motors LLC hereby requests that the
20 court take judicial notice of the following:

- 21 1. *In re General Motors Corp.*, (S.D.N.Y. 2011) 447 B.R. 142 ("interpreting liabilities
22 purchased by New GM").
23

24 DATED: September 25, 2015

BOWMAN AND BROOKE LLP

25 By: 

26 Anthony S. Thomas
27 David C. Shay
28 Attorneys for Defendant
GENERAL MOTORS LLC

EXHIBIT 1

In re Motors Liquidation Co., 447 B.R. 142 (2011)

447 B.R. 142
United States Bankruptcy Court,
S.D. New York.

In re MOTORS LIQUIDATION COMPANY, et
al., f/k/a General Motors Corp., et al., Debtors.

No. 09-50026(REG). | Jan. 5, 2011.

Synopsis

Background: Purchaser of assets of bankrupt automobile manufacturer that had filed for Chapter 11 relief moved to enforce terms of sales order to bar products liability claims against it by user of car manufactured by debtor.

[Holding:] The Bankruptcy Court, Robert E. Gerber, J., held that purchaser, in agreeing to assume liability only for products liability claims "aris[ing] directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date," did not assume liability for death of motorist who was killed due to accident that predated its closing on the purchase of assets, though it was not until after closing date that motorist died.

Motion granted.

West Headnotes (4)

[1] **Bankruptcy**

⇒ Rights and liabilities of purchasers, and right to purchase

Purchaser of assets of bankrupt automobile manufacturer that had filed for Chapter 11 relief, in agreeing to assume liability only for products liability claims "aris[ing] directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date," did not assume liability for death of motorist who was killed due to accident that predated its closing on the purchase of assets, though it was not until after closing date that motorist died; motorist's death was not separate

"incident" that first occurred after closing, but consequence of "accident or incident" that predated closing.

Cases that cite this headnote

[2] **Bankruptcy**

⇒ Rights and liabilities of purchasers, and right to purchase

Under rule against construing contract so as to render any contract term mere surplusage, term "incidents," as used in provision of master sales and purchase agreement where purchaser of bankrupt automobile manufacturer's assets agreed to assume liability only for products liability claims "aris[ing] directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date," could not be construed in such a way that it always covered same thing as "accidents," but had to be construed as having been put there for a reason, because it added something to the liability that purchaser assumed in at least some circumstances.

Cases that cite this headnote

[3] **Contracts**

⇒ Language of Instrument

Under the "noscitur a sociis" canon of contract construction, a word is known by the company it keeps, and words grouped in list should be given related meaning.

3 Cases that cite this headnote

[4] **Bankruptcy**

⇒ Rights and liabilities of purchasers, and right to purchase

Term "incidents," as used in provision of master sales and purchase agreement in which purchaser of bankrupt automobile manufacturer's assets agreed to assume liability only for products liability claims "aris[ing] directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing

In re Motors Liquidation Co., 447 B.R. 142 (2011)

Date,” could not be interpreted in such a way as to render purchaser liable for the post-closing consequences, such as victim's eventual death, of accident that predated closing date, as this would read the terms “first occurring” out of this assumption-of-liability provision; rather, term had to be construed in manner consistent with the preceding term “accidents,” as broadening the liability assumed to include claims relating to fires, explosions, or other definite events that, like “accidents,” caused injuries and resulted in right to sue.

Cases that cite this headnote

Attorneys and Law Firms

*143 Weil, Gotshal & Manges LLP, By: Stephen Karotkin, Esq. (argued), Harvey R. Miller, Esq., Joseph H. Smolinsky, Esq., New York, NY, for General Motors, LLC.

Barry Novack, By: Barry Novack, Esq. (argued), Beverly Hills, CA, for Plaintiff Sanford Deutsch.

Norris McLaughlin & Marcus, PA, By: Melissa Peña, Esq., New York, NY, Local Counsel for Sanford Deutsch.

Opinion

DECISION ON NEW GM'S MOTION TO ENFORCE SECTION 363 ORDER WITH RESPECT TO PRODUCT LIABILITY CLAIM OF ESTATE OF BEVERLY DEUTSCH

ROBERT E. GERBER, Bankruptcy Judge.

In this contested matter in the chapter 11 case of Motors Liquidation Company (formerly, General Motors Corp., and referred to here as “Old GM”) and its affiliates, General Motors LLC (“New GM”) seeks a determination from this Court that New GM did not assume the liabilities associated with a tort action in which a car accident took place before the date (“Closing Date”) upon which New GM acquired the business of Old GM, but the accident *144 victim died thereafter.¹ The issue turns on the construction of the documents under which New GM agreed to assume liabilities from Old GM—which provided that New GM would assume liabilities relating to “accidents or incidents”

“first occurring on or after the Closing Date”—and in that connection, whether a liability of this character is or is not one of the types of liabilities that New GM thereby agreed to assume.

Upon consideration of those documents, the Court concludes that the liability in question was not assumed by New GM. However, if a proof of claim was not previously filed against Old GM with respect to the accident in question, the Court will permit one to be filed within 30 days of the entry of the order implementing this Decision, without prejudice to rights to appeal this determination.

The Court's Findings of Fact and Conclusions of Law in connection with this determination follow.

Findings of Fact

In June 2007, Beverly Deutsch was severely injured in an accident while she was driving a 2006 Cadillac sedan. She survived the car accident, but in August 2009, she died from the injuries that she previously had sustained.²

In January 2010, the Estate of Beverly Deutsch, the Heirs of Beverly Deutsch, and Sanford Deutsch (collectively “Deutsch Estate”) filed a Third Amended Complaint against New GM (and others) in a state court lawsuit in California (the “Deutsch Estate Action”), claiming damages arising from the accident, the injuries which Beverly sustained, and her wrongful death. The current complaint superseded the original complaint in the Deutsch Estate Action, which was filed in April 2008, before the filing of Old GM's chapter 11 case.

In July 2009, this Court entered its order (the “363 Sale Order”) approving the sale of Old GM's assets, under section 363 of the Bankruptcy Code, to the entity now known as New GM. The 363 Sale Order, among other things, approved an agreement that was called an Amended and Restated Master Sale and Purchase Agreement (the “MSPA”).

The MSPA detailed which liabilities would be assumed by New GM, and provided that all other liabilities would be retained by Old GM. The MSPA provided, in its § 2.3(a)(ix), that New GM would not assume any claims with respect to product liabilities (as such term was defined in the MSPA, “Product Liability Claims”) of the Debtors except those that “arise directly out of death, personal injury or other injury

In re Motors Liquidation Co., 447 B.R. 142 (2011)

to Persons or damage to property caused by *accidents or incidents* first occurring on or after the Closing Date [July 10, 2009] ...”³ Thus, those Product Liability Claims that arose from “accidents or incidents” occurring before July 10, 2009 would not be assumed by New GM, but claims arising from “accidents or incidents” occurring on or after July 10, 2009 would be.

Language in an earlier version of the MSPA differed somewhat from its final language, as approved by the Court. Before its amendment, the MSPA provided *145 for New GM to assume liabilities except those caused by “accidents, incidents, or other distinct and discrete occurrences.”⁴

The 363 Sale Order provides that “[t]his Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order” and the MSPA, including “to protect the Purchaser [New GM] against any of the Retained Liabilities or the assertion of any ... claim ... of any kind or nature whatsoever, against the Purchased Assets.”⁵

Discussion

[1] The issue here is one of contractual construction. As used in the MSPA, when defining the liabilities that New GM would assume, what do the words “accidents or incidents,” that appear before “first occurring on or after the Closing Date,” mean? It is undisputed that the accident that caused Beverly Deutsch's death took place in June 2007, more than two years prior to the closing. But her death took place after the closing. New GM argues that Beverly Deutsch's injuries arose from an “accident” and an “incident” that took place in 2007, and that her death did likewise. But the Deutsch Estate argues that while the “accident” took place in 2007, her death was a separate “incident”—and that the latter took place only in August 2009, after the closing of the sale to New GM had taken place.

Ultimately, while the Court respects the skill and fervor with which the point was argued, it cannot agree with the Deutsch Estate. Beverly Deutsch's death in 2009 was the *consequence* of an event that took place in 2007, which undisputedly, was an accident and which also was an incident, which is a broader word, but fundamentally of a similar type. The resulting death in 2009 was not, however, an “incident[] first occurring on or after the Closing Date,” as that term was used in the MSPA.

As usual, the Court starts with textual analysis. The key provision of the MSPA, § 2.3(a)(ix), set forth the extent to which Product Liability Claims were assumed by New GM. Under that provision, New GM assumed:

(ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, “Product Liabilities”), *which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance* (for avoidance of doubt, Purchaser shall not assume or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including asbestos, silicates or fluids, regardless of when such alleged exposure occurs).⁶

The key words, of course, are “accidents” and “incidents,” neither of which are defined anywhere else in the MSPA, and whose interpretation, accordingly, must *146 turn on their common meaning and any understandings expressed by one side to the other in the course of contractual negotiations. Also important are the words “first occurring on or after the Closing Date,” which modify the words “accidents” and “incidents,” and shed light on the former words' meaning.

The word “accidents,” of course, is not ambiguous. “Accidents” has sufficiently clear meaning on its own, and in any event its interpretation is not subject to debate, as both sides agree that Beverly Deutsch's death resulted from an accident that took place in 2007, at a time when, if “accidents” were the only controlling word, liability for the resulting death would not be assumed by New GM. The ambiguity, if

In re Motors Liquidation Co., 447 B.R. 142 (2011)

any, is instead in the word “incidents,” which is a word that by its nature is more inclusive and less precise.

But while “incidents” may be deemed to be somewhat ambiguous, neither side asked for an evidentiary hearing to put forward parol evidence as to its meaning. Though it is undisputed that “incidents” remained in the MSPA after additional words “or other distinct and discrete occurrences,” were deleted, neither side was able, or chose, to explain, by evidence, why the latter words were dropped, and what, if any relevance the dropping of the additional words might have as to the meaning of the word “incidents” that remained. The words “or other distinct and discrete occurrences” could have been deleted as redundant, to narrow the universe of claims that were assumed, or for some other reason. Ultimately, the Court is unable to derive sufficient indication of the parties’ intent as to the significance, if any, of deleting the extra words.

So the Court is left with the task of deriving the meaning of the remaining words “accidents or incidents” from their ordinary meaning, the words that surround them, canons of construction, and the Court’s understanding when it approved the 363 Sale as to how the MSPA would deal with prepetition claims against Old GM. Ultimately these considerations, particularly in the aggregate, point in a single direction—that a death resulting from an earlier “accident [] or incident[]” was not an “incident[] first occurring” after the closing.

Starting first with ordinary meaning, definitions of “incident” from multiple sources are quite similar. They include, as relevant here,⁷ “an occurrence of an action or situation felt as a separate unit of experience”;⁸ “an occurrence of an action or situation that is a separate unit of experience”;⁹ “[a] discrete occurrence or happening”;¹⁰ “something that happens, especially a single event”;¹¹ “a definite and separate occurrence; an event”;¹² or, as proffered by the Deutsch Estate, “[a] separate *147 and definite occurrence: EVENT.”¹³ In ways that vary only in immaterial respects, all of the definitions articulate the concept of a separate and identifiable event. And, and of course, from words that follow, “arising from such motor vehicles’ operation or performance,” the event must be understood to relate to be one that that involves a motor vehicle. Accidents, explosions or fires all fit comfortably within that description. Deaths or other consequences that result from earlier accidents, explosions or fires technically might fit as well, but such a reading is much less natural and much more strained.

Turning next to words that surround the words “accidents or incidents,” these words provide an interpretive aid to the words they modify. The word “incident[]” is followed by the words “first occurring.” In addition to defining the relevant time at which the incident must take place (*i.e.*, after the closing), that clause inserts the word “first” before “occurring.” That suggests, rather strongly, that it was envisioned that some types of incidents could take place over time or have separate sub-occurrences, or that one incident might relate to an earlier incident, with the earliest incident being the one that matters. Otherwise it would be sufficient to simply say “occurring,” without adding the word “first.” This too suggests that the consequences of an incident should not be regarded as a separate incident, or that even if they are, the incident that first occurs is the one that controls.

[2] Canons of construction tend to cut in opposite directions, though on balance they favor New GM. The Deutsch Estate appropriately points to the canon of construction against “mere surplusage,” which requires different words of a contract or statute to be construed in a fashion that gives them separate meanings, so that no word is superfluous.¹⁴ The Court would not go as far as to say that the words “accident” and “incident” cannot *ever* cover the same thing—or, putting it another way, that they *always* must be different.¹⁵ But the Court agrees with the Deutsch Estate that they cannot *always* mean the same thing. “Incidents” must have been put there for a reason, and should be construed to add something in at least some circumstances.

[3] But how different the two words “accidents” and “incidents” can properly be understood to be—and in particular, whether “incidents” can be deemed to separately exist¹⁶ when they are a foreseeable consequence, or are the resulting injury, *148 from the accidents or incidents that cause them—is quite a different matter. A second canon of construction, “*noscitur a sociis*,” provides that “words grouped in a list should be given related meaning.”¹⁷ Colloquially, “a word is known by the company it keeps ...”¹⁸ For instance, in *Dole*, in interpreting a phrase of the Paper Work Reduction Act, the Supreme Court invoked *noscitur a sociis* to hold that words in a list, while meaning different things, should nevertheless be read to place limits on how broadly some of those words might be construed. The *Dole* court stated:

In re Motors Liquidation Co., 447 B.R. 142 (2011)

[t]hat a more limited reading of the phrase “reporting and recordkeeping requirements” was intended derives some further support from the words surrounding it. The traditional canon of construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning.¹⁹

Here application of the canon against surplusage makes clear, as the Deutsch Estate argues, that “incidents” must, at least sometimes mean something different than “accidents”—but application of that canon does not tell us when and how. The second canon, *noscitur a sociis*, does that, and effectively trumps the doctrine of surplusage because it tells us that “accidents” and “incidents” should be given related meaning.

The Deutsch Estate argues that the Court should construe a death resulting from an earlier “accident” or “incident” to be a separate and new “incident” that took place at a later time. But ultimately, the Court concludes that it cannot do so. While it is easy to conclude that “accidents” and “incidents,” as used in the MSPA, will not necessarily be the same in all cases, they must still be somewhat similar. “Incidents” cannot be construed so broadly as to cover what are simply the consequences of earlier “accidents” or other “incidents.”

Applying *noscitur a sociis* in conjunction with the canon against “mere surplusage” tells us that the two words “accidents” and “incidents” must be understood as having separate meanings in at least some cases, but that these meanings should be conceptually related. At oral argument, the Court asked counsel for New GM an important question: if an “incident” would not necessarily be an “accident,” what would it be? What would it cover? Counsel for New GM came back with a crisp and very logical answer; he said that “incident” would cover a situation where a car caught fire or had blown up, or some problem had arisen by means other than a collision.²⁰

*149 Conversely, the interpretation for which the Deutsch Estate argues—that “incidents” refers to *consequences* of earlier accidents or incidents—is itself violative or potentially violative, of the two interpretive canons discussed above. It is violative of *noscitur a sociis*, since a death or other particular injury is by its nature distinct from the circumstance—collision, explosion, fire, or other accident or incident—that causes the resulting injury in the first place. The Deutsch Estate interpretation also tends to run counter to the doctrine against mere surplusage upon which the Deutsch Estate otherwise relies, making meaningless the words “first

occurring” which follow the words “accidents or incidents,” in any cases where death or other particular injury is the consequence of an explosion, fire, or other non-collision incident that causes the resulting injury.

[4] The simple interpretation, and the one this Court ultimately provides, is that “incidents,” while covering more than just “accidents,” are similar; they relate to fires, explosions, or other definite events that *cause* injuries and *result* in the right to sue, as contrasted to describing the *consequences* of those earlier events, or that relate to the resulting damages.

Finally, this Court's earlier understanding of the purposes of New GM's willingness to assume certain liabilities of Old GM is consistent with the Court's conclusion at this time as well. When the Court approved GM's 363 Sale, this Court noted, in its opinion, that New GM had chosen to broaden its assumption of product liabilities.²¹ The MSPA was amended to provide for the assumption of liabilities not just for product liability claims for motor vehicles and parts delivered after the Closing Date (as in the original formulation), but also, for “all product liability claims arising from *accidents or other discrete incidents* arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, regardless of when the product was purchased.”²² As reflected in the Court's decision at the time, the Court understood that New GM was undertaking to assume the liabilities for “accidents or other discrete incidents” that hadn't yet taken place.

Finally, the Deutsch Estate notes another interpretive canon, that ambiguities in a contract must be read against the drafter.²³ If the matter were closer, the Court might consider doing so.²⁴ But the language in question is not that ambiguous, *150 and the relevant considerations, fairly decisively, all tip in the same direction. While it cannot be said that the Deutsch Estate's position is a frivolous one, the issues are not close enough to require reading the language against the drafter.

Conclusion

The Deutsch Estate's interpretation of “accident or incident” is not supportable. Thus, the Debtor's motion is granted, and the Deutsch Estate may not pursue this claim against New GM.²⁵ New GM is to settle an order consistent with this

In re Motors Liquidation Co., 447 B.R. 142 (2011)

opinion. The time to appeal from this determination will run from the time of the resulting order, and not from the date of filing of this Decision.

Footnotes

- 1 Technically speaking, the motion is denominated as one to Enforce the 363 Sale Order, which protects New GM from liabilities it did not assume. The Court here speaks to the motion's substance.
- 2 There is no contention by either side that her death resulted from anything other than the earlier accident.
- 3 Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).
- 4 Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (prior to modification by First Amendment) (emphasis added) (typographical error corrected).
- 5 363 Sale Order ¶ 71.
- 6 Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).
- 7 The word "incident" has other meanings, in other contexts, which most commonly follow definitions of the type quoted here. Particularly since the definition proffered by the Deutsch Estate is so similar to the others, the Court does not understand either side to contend that definitions of "incident" in other contexts are relevant here.
- 8 Webster's Third New International Dictionary Unabridged (1993) at 1142.
- 9 Merriam-Webster's Collegiate Dictionary (11th ed. 2003) at 629.
- 10 Black's Law Dictionary (8th ed. 2004) at 777.
- 11 Encarta Dictionary: English (North America), <http://encarta.msn.com/encnet/features/dictionary/dictionaryhome.aspx> (query word "incident" in search field).
- 12 American Heritage College Dictionary (4th ed. 2004) at 700.
- 13 Deutsch Estate Reply Br. at 4 (quoting Webster's II New College Dictionary (1999) at 559).
- 14 See, e.g., *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63, 123 S.Ct. 518, 154 L.Ed.2d 466 (2002) (a statute's preemption clause, which applied to "a [state or local] law or regulation" did not preempt common law tort claims, because if "law" were read that broadly, it might also be interpreted to include regulations, which would render the express reference to "regulation" in the preemption clause superfluous). See also *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995) ("*Alloyd*") (in statutory construction context, "the Court will avoid a reading which renders some words altogether redundant.").
- 15 As previously noted, "incident" is a word that is inherently broader than "accident." Every accident could fairly be described as an incident. But not every incident could fairly be described as an accident.
- 16 It is important to note that to prevail on this motion, the Deutsch Estate must show that the alleged "incident" that is the resulting death was a wholly separate "incident." Even if the death took place after the Closing Date, if the death was an incident that was part of an earlier incident, it could not be said to be "first occurring" after the Closing Date.
- 17 *Dole v. United Steelworkers of America*, 494 U.S. 26, 36, 110 S.Ct. 929, 108 L.Ed.2d 23 (1990).
- 18 *Alloyd*, 513 U.S. at 575, 115 S.Ct. 1061 (applying *noscitur a sociis* in context of statutory interpretation).
- 19 *Dole*, at 36, 110 S.Ct. 929. (internal quotations and citations omitted) (emphasis in original). See also *Massachusetts v. Morash*, 490 U.S. 107, 114-15, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989) (quoting *Schreiber v. Burlington Northern Inc.*, 472 U.S. 1, 8, 105 S.Ct. 2458, 86 L.Ed.2d 1 (1985)); *Alloyd*, 513 U.S. at 575, 115 S.Ct. 1061 ("This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." (emphasis added) (internal quotation marks deleted)).
- 20 Counsel for New GM answered:
Now, what's the difference between an accident or an incident, if it were relevant with respect to product liability claims? And I think there's an easy answer. You could have a car accident. Or you could have a car catching on fire; that's not necessarily an accident; that's an incident. Or a car could blow up with someone in the car. Or something else could happen; some other malfunction could cause a fire or injury to someone, not an accident with another vehicle necessarily; or an accident where you ran off the road. So I think that's easily explained.
Transcript, at 31.
- 21 See *In Re General Motors Corp.*, 407 B.R. 463, 481-82 (Bankr.S.D.N.Y.2009). *appeal dismissed and aff'd*, 428 B.R. 43 (S.D.N.Y.2010), and 430 B.R. 65 (S.D.N.Y.2010).
- 22 *Id.* (emphasis added and original emphasis deleted)

In re Motors Liquidation Co., 447 B.R. 142 (2011)

- 23 See *Jacobson v. Sassower*, 66 N.Y.2d 991, 993, 499 N.Y.S.2d 381, 489 N.E.2d 1283 (N.Y.1985) (“In cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it, and favorably to a party who had no voice in the selection of its language”); Cf. *Aetna Casualty & Surety Co. v. General Time Corp.*, 704 F.2d 80, 85 (2d Cir.1983) (“Since the insurer is assumed to have control over drafting the contract provisions, it is fair to hold it responsible for ambiguous terms, and accord the insured the benefit of uncertainties which the insurer could have, but failed to clarify”).
- 24 In that event, the Court would then have to consider the specifics of the negotiating environment at the time. The Deutsch Estate was of course not a party to those negotiations at all. But there was little in the record at the time of the 363 Sale, and there is nothing in the record now, as to who, if anybody, had control over the drafting of any MSPA terms.
- 25 Under the circumstances, however, since the Deutsch Estate's issues were fairly debatable and plainly raised in good faith, the Court will provide the Deutsch Estate with 30 days from the resulting order to file a claim against Old GM if it has not already done so, without prejudice to its underlying position and any rights of appeal.

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

PROOF OF SERVICE
CCP 1013A(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 970 West 190th Street, Suite 700, Torrance, California 90502.

On September 28, 2015 I served the foregoing document described as DEFENDANT GENERAL MOTORS LLC'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO PLAINTIFF'S COMPLAINT AND MOTION TO STRIKE on all interested parties in this action by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL (CCP §1013(a) and §2015.5): As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Gardena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing.

BY OVERNIGHT DELIVERY/NEXT DAY DELIVERY (CCP §1013(a) and §2015.5): I sealed such document(s) in separate envelopes for each addressee and deposited each for collection by mailing via overnight mail/next day delivery in a box or other facility regularly maintained by the U.S. Postal Service or an express service carrier, or delivered to an authorized courier or driver authorized by the U.S. Postal Service or an express service carrier to receive documents, with delivery fees paid or provided for.

BY FACSIMILE (CRC 2.306 and §2015.5): The document(s) were transmitted by facsimile transmission to each of the parties at the facsimile number(s) listed on the attached service/ mailing list and the transmission(s) reported as complete and without error. The facsimile machine I used complied with the California Rules of Court, Rule 2.306(g), and no error was reported by the machine. Pursuant to CRC, Rule 2.306(g), I caused the facsimile machine to print a transmission(s) record, a true and correct copy of which is attached hereto.

Executed on September 28, 2015, at Torrance, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Joyce T. Matsuoka

Service/Mailing List

DARREL DUNSMORE v. GENERAL MOTORS LLC et.al

Solano County Superior Court Case No.: FCS5045638

Darrel Dunsmore
AD 6237 G-2-224,
P.O. Box 2000
Vacaville, CA 95696

Plaintiff in Pro Per

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

District/Off: 0208-1
Case: 09-50026-reg

User: lnulty
Form ID: pdf001

Date Created: 11/18/2015
Total: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:
unk Darryl Dunsmore

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

5976035 Dale Earnhardt, Inc. 1675 Dale Earnhardt Highway #3 Mooresville, NC 28115

TOTAL: 1