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

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IN RE: : Chapter 11
: :
MOTORS LIQUIDATION COMPANY, *et al.*, : No. 09-50026 (REG)
f/k/a GENERAL MOTORS CORP., *et al.*, :
: (Jointly Administered)
Debtors. :
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**JOINDER OF THE IGNITION SWITCH PLAINTIFFS AND
NON-IGNITION SWITCH PLAINTIFFS TO THE POST-CLOSING
IGNITION SWITCH ACCIDENT PLAINTIFFS' MEMORANDUM
OF LAW WITH RESPECT TO PUNITIVE DAMAGES ISSUE**

The Ignition Switch Plaintiffs¹ and Non-Ignition Switch Plaintiffs² (collectively, the “Joining Plaintiffs”), by and through their undersigned counsel, hereby join in Point II of the *Post-Closing Ignition Switch Accident Plaintiffs’ Memorandum of Law with Respect to Punitive Damages Issue* [ECF No. 13434] (the “Punitive Damages Brief”).³ In support of this Joinder, the Joining Plaintiffs respectfully state as follows:

JOINDER

1. The Joining Plaintiffs seek to recover punitive damages from New GM for its own independent, post-closing actions, affirmative cover-up and material omissions related to the Ignition Switch Defect and other defects in GM-branded vehicles. Because the Joining Plaintiffs do not seek to recover punitive damages based on the conduct of Old GM in their currently-pending Second Amended Consolidated Complaint, the arguments made in Points I and III of the Punitive Damages Brief are not relevant to the Joining Plaintiffs’ claims.

2. The Joining Plaintiffs agree with the legal arguments set forth in Point II of the Punitive Damages Brief and, accordingly, file this Joinder in support of the Punitive Damages Brief and request that the Court enter an Order: (i) deeming their requests for punitive damages

¹ The term “Ignition Switch Plaintiffs” shall mean those plaintiffs who own or lease a vehicle with the Ignition Switch Defect involved in the February and March 2014 Recalls (Recall No. 14-V-047).

² The term “Non-Ignition Switch Plaintiffs” shall mean all plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch in the vehicles subject to Recall No. 14-V-047, or based on or arising from economic losses and diminution in value of their GM-branded vehicles based on the Ignition Switch Defect or other alleged defects in Old and New GM vehicles.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Decision on Motion to Enforce Sale Order, *In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015) or in the *Judgment*, dated June 1, 2015 [ECF No. 13177], as applicable.

against New GM permissible under the Sale Order, Decision and Judgment; and (ii) permitting them to pursue such punitive damages against New GM in the MDL Action.

3. Following this Court's determination that an Independent Claim has been properly asserted, it is then up to the court or jury with jurisdiction over the suit to determine whether punitive damages against New GM are appropriate based upon facts regarding New GM's conduct adduced through discovery ongoing in the MDL and coordinated proceedings.

4. New GM can be held liable to the Joining Plaintiffs for punitive damages under at least two independent theories of liability: (i) New GM can be held liable for its own independent, post-closing actions and inactions predicated on the knowledge that it acquired when the 363 Sale closed, *see* Punitive Damages Brief at 21-22;⁴ and (ii) as "Independent Claims," based solely upon its own post-closing conduct and predicated on the knowledge it accumulated after the 363 Sale, *see* Punitive Damages Brief at 22-23.

5. At the appropriate time, the Joining Plaintiffs will prove their entitlement to punitive damages arising from New GM's post-363 misconduct under governing state law. Any award of punitive damages would of course be based on the jury's assessment of the degree of reprehensibility of New GM's own conduct.

6. In their Second Amended Consolidated Complaint, the Joining Plaintiffs plead various claims under state laws for which punitive damages are available.

7. For example, the Joining Plaintiffs plead claims of fraudulent concealment, or fraud by concealment, under the laws of various states, including New York. A copy of the New

⁴ Joining Plaintiffs will further demonstrate why charging New GM with knowledge of pre-363 Sale events is proper under the Sale Order in their brief on the Imputation Issue, to be filed on September 18, 2015.

York count from the Second Amended Consolidated Complaint, ¶¶ 3957-3970, is attached as Exhibit A.

8. The fraudulent concealment count alleges that New GM concealed and suppressed material facts concerning the Ignition Switch Defect and many other serious safety defects in GM-branded vehicles, and that it valued cost-cutting over safety. *Id.* at ¶¶ 3959-61. Joining Plaintiffs allege this conduct by New GM harmed *all* GM vehicle owners. *Id.* at 3967-68.

9. The fraudulent concealment count seeks punitive damages based on New GM's conduct. *Id.* at 3970. Under New York law, a plaintiff may recover punitive damages on a fraud claim if the defendant's conduct is shown to be willful and wanton, outrageously immoral or criminal in nature. *Giblin v. Murphy*, 536 N.Y.S.2d 54, 56, 73 N.Y.2d 769, 772 (1988); *Sforza v. Health Ins. Plan of Greater New York*, 619 N.Y.S.2d 734, 736, 210 A.D.2d 214 (1994). The Joining Plaintiffs believe that the evidence of New GM's conduct will warrant punitive damages under New York law, as well as under the law of many other states.

10. But regardless of whether the Joining Plaintiffs are ultimately able to recover punitive damages based on the post-363 Sale conduct of New GM, the Sale Order cannot be read to bar them from seeking punitive damages based on New GM's conduct.

CONCLUSION

11. Accordingly, for the reasons stated in the Punitive Damages Brief and this Joinder, the Joining Plaintiffs request that the Court affords the relief requested herein together with such other and further relief as it deems necessary and proper under the circumstances.

Dated: September 13, 2015

Respectfully submitted,

/s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2015, I caused the foregoing to be filed and served upon all parties receiving notice via the Court's ECF system.

Dated: September 13, 2015

/s/ Steve W. Berman
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Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

14-MD-2543 (JMF)

GENERAL MOTORS LLC IGNITION
SWITCH LITIGATION

**[CORRECTED] SECOND AMENDED
CONSOLIDATED COMPLAINT**

This Document Relates to All Actions

[REDACTED]

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relations nightmare of correcting the serious flaw in its culture and in millions of GM-branded vehicles. New GM's egregious conduct warrants punitive damages.

3956. Because New GM's willful and knowing conduct caused injury to Class Members, the New York Class seeks recovery of actual damages or \$50, whichever is greater, discretionary treble damages up to \$1,000, punitive damages, reasonable attorneys' fees and costs, an order enjoining New GM's deceptive conduct, and any other just and proper relief available under N.Y. GEN. BUS. LAW § 349.

COUNT II

FRAUD BY CONCEALMENT

3957. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3958. This claim is brought on behalf of Nationwide Class Members who are New York residents (the "New York Class").

3959. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

3960. New GM concealed and suppressed material facts concerning the culture of New GM – a culture characterized by an emphasis on cost-cutting, the studious avoidance of safety issues, and a shoddy design process.

3961. New GM concealed and suppressed material facts concerning the many serious defects plaguing GM-branded vehicles, and that it valued cost-cutting over safety and took steps to ensure that its employees did not reveal known safety defects to regulators or consumers.

3962. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles

are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the Affected Vehicles and because the representations played a significant role in the value of the vehicles.

3963. New GM had a duty to disclose the many defects in GM-branded vehicles because they were known and/or accessible only to New GM, were in fact known to New GM as of the time of its creation in 2009 and at every point thereafter, New GM had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the New York Class. New GM also had a duty to disclose because it made many general affirmative representations about the safety, quality, and lack of defects in its vehicles, as set forth above, which were misleading, deceptive and incomplete without the disclosure of the additional facts set forth above regarding its actual safety record, safety philosophy, and practices and the actual safety defects in its vehicles. Having volunteered to provide information to Plaintiffs, GM had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and the New York Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

3964. New GM actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the brand's image and cost New GM money, and it did so at the expense of Plaintiffs and the New York Class.

3965. On information and belief, New GM has still not made full and adequate disclosure and continues to defraud Plaintiffs and the New York Class and conceal material information regarding defects that exist in GM-branded vehicles.

3966. Plaintiffs and the New York Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased cars manufactured by New GM; and/or they would not have purchased cars manufactured by Old GM in the time after New GM had come into existence and had fraudulently opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would not have continued to drive their vehicles or would have taken other affirmative steps. Plaintiffs' and the New York Class's actions were justified. New GM was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the New York Class.

3967. Because of the concealment and/or suppression of the facts, Plaintiffs and the New York Class sustained damage because they own vehicles that diminished in value as a result of New GM's concealment of, and failure to timely disclose, the serious defects in millions of GM-branded vehicles and the serious safety and quality issues engendered by New GM's corporate policies. Had they been aware of the many defects that existed in GM-branded vehicles, and the company's callous disregard for safety, Plaintiffs who purchased new or Certified Previously Owned vehicles after New GM came into existence either would have paid less for their vehicles or would not have purchased or leased them at all; and no Plaintiffs regardless of time of purchase or lease would have maintained their vehicles.

3968. The value of all New York Class Members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which have greatly tarnished the GM brand and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3969. Accordingly, New GM is liable to the New York Class for damages in an amount to be proven at trial.

3970. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New York Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.Y. U.C.C. § 2-314)

3971. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

3972. This claim is brought only on behalf of New York residents who are members of the Nationwide Post-Sale Ignition Switch Defect Subclass (the "New York Post-Sale ISD Subclass").

3973. New GM was a merchant with respect to motor vehicles within the meaning of N.Y. U.C.C. § 2-104(1).

3974. A warranty that the Defective Ignition Switch Vehicles were in merchantable condition was implied by law under N.Y. U.C.C. § 2-314 in the transactions when Plaintiffs purchased or leased their Defective Ignition Switch Vehicles from New GM on or after July 11, 2009.

3975. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Ignition Switch Vehicles are inherently defective in that there are defects in the ignition switch systems

