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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WILLIAM J. ENDRESS, LEE FORD, GARY CLARK, and IRA BONDSTEEL, Individually And On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

GENERAL MOTORS LLC, GENERAL MOTORS HOLDINGS LLC, GENERAL MOTORS COMPANY, and APTIV SERVICES US, LLC,

Defendants.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs William J. Endress, Lee Ford, Gary Clark, and Ira Bondsteel, individually and on behalf of all others similarly situated allege the following against General Motors LLC, General Motors Holdings LLC, General Motors Company (collectively "General Motors"), and Aptiv Services US, LLC (f/k/a) Delphi Automotive Systems, LLC ("Delphi" together with General Motors, "Defendants") based upon personal knowledge as to allegations specifically pertaining to Plaintiffs and, as to all other matters, upon the investigation of counsel.[1]

I. INTRODUCTION

1. During the sudden shock of a car crash, life or death of the occupants often hinges on several thousandths of a second and the functionality of systems designed by Defendants. Upon impact, sensors located throughout the vehicle fire warnings to these systems to brace for impact. Passive systems in the vehicle become active: pre-tensioned seat belts tighten; designed areas of the vehicle may crumple; and signals race to the airbag control unit to determine whether to deploy the airbags. When activated properly, these systems drastically reduce the risk of injury and death.[2] Likewise, when the systems fail the resulting injuries may be horrific.

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[1] Counsel's investigation includes an analysis of publicly available information, including Defendants' Technical Service Bulletins, National Highway Traffic Safety Administration documents and consumer complaints. Plaintiffs believe that a reasonable opportunity for discovery will provide further support for the claims alleged herein.

[2] *See* Air Bags, NHTSA, https://www.nhtsa.gov/equipment/air-bags (last visited

2. This Action concerns a catastrophic system failure in the airbag control unit for General Motors' vehicles. At the time of failure, airbags and/or seatbelts fail to deploy properly and vehicle occupants have no protection when they need it most. This unnecessarily risks the lives of millions of consumers.

3. This airbag control unit in General Motors' vehicles is referred to as a Sensing and Diagnostic Module ("SDM" or "SDM System"). The SDM is essentially a computer dedicated to the airbag and seatbelt system. Generally, it contains an electronic control unit that receives sensor inputs, and an algorithm determines whether to deploy the airbags in the event of a crash. Delphi engineers developed the system in the late 1990s, and Delphi has since manufactured SDMs for General Motors throughout the past two decades.

4. More specifically, the SDM in Class Vehicles (defined below) contains a dangerous defect in its software.[3] The software in the SDM engages the airbags and/or seatbelt pre-tensioners based on pre-programmed algorithms and thresholds. However, the software also contains a calibration ***not to deploy*** the

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Aug 16, 2021).

[3] The "Class Vehicles" include all vehicles in the United States, including but not limited to General Motors trucks and SUVs, that contain the SDM System Defect and were either: (1) manufactured, sold, distributed, or leased by General Motors; or (2) manufactured, sold, distributed, or leased by Old GM and purchased or leased by Plaintiff or a Class member after July 10, 2009. As detailed further below, Old GM filed for bankruptcy in 2009, which led to the creation of the contemporary General Motors entities named as Defendants.

airbags should the calibrated time for deployment pass (the "Deployment Window"), causing a 'dead-zone' where the airbags and/or seatbelts will not deploy despite further impacts or collisions (the "SDM System Defect" or the "Defect"). The consequences of the SDM System Defect manifest during specific accidents triggering this dead zone, such as those involving multiple impacts and/or accidents that increase in severity over time, causing the airbags and seatbelts in the Class Vehicles to fail to deploy. The Defect deprives consumers of life-saving protection.

5. The decision to design the SDM software to prematurely close the window for airbag deployment was made in the 1990s, overriding the concerns of a team of software engineers from Delphi (then operating as Delco Electronics). The Delphi engineers expressly warned General Motors in 1999 that preventing airbag and seatbelt deployment was a reckless and dangerous design decision if the calibrated window for deployment was too short. Yet Old GM's trucks group, which was in charge of design and development for trucks and SUVs, ignored this warning and insisted on using a defective SDM System that shut off the airbags in those trucks after 45 milliseconds. A separate team in charge of design and development for General Motors cars rejected this approach after hearing the Delphi team's concerns and included a much longer window (150 milliseconds) for the airbags and seatbelts to deploy for the vehicles they designed.

6. The decision to keep a smaller window for airbag deployment was

made at a time when airbag safety and electronic controls were less understood and late deployment of airbags was of greater concern. Yet the Defect persists in SDM modules contained in the Class Vehicles, and General Motors may still utilize a calibration that prematurely closes the window for airbag deployment.

7. In the wake of 2008-2010 automotive crisis, General Motors, LLC was formed and acquired books, records, and personnel from Old GM that reflected this reckless decision to use the dangerous SDM System in its trucks and SUVs. Despite this acquired knowledge, General Motors continued to use Delphi SDMs in its vehicles and, on information and belief, continued to use the defective calibration associated with those Delphi SDMs as well. General Motors has continued to acquire knowledge of the Defect through individual lawsuits, consumer complaints, and its own investigations into serious crashes where the airbags and seatbelts failed to deploy in the Class Vehicles.

8. Complaints to the National Highway Traffic and Safety Administration ("NHTSA") catalogue more than eight hundred instances in which airbags and/or seatbelts suspiciously failed in the Class Vehicles during frontal crashes. Many of these reports specifically state that General Motors knew about and investigated the crash after the reported airbag failures. A separate NHTSA dataset reveals that, from 1999 to the present, thousands have been killed or injured in a frontal collision in which the airbags did not deploy in one of these vehicles.

9. Similarly, Delphi exited bankruptcy in 2009 and acquired core assets including core books, core records, and core personnel from Delphi Corporation ("Old Delphi") that reflected the decision to design and/or manufacture a dangerous SDM System for General Motors. Despite this acquired knowledge, Delphi and its successors continued to manufacture SDMs for General Motors' vehicles and, on information and belief, continued to use the defective calibration.

10. Despite their knowledge of the Defect and its impact on safety, Defendants have concealed the Defect and failed to recall or repair the Class Vehicles, presumably to avoid the significant costs and inconveniences of recalling and/or repairing millions of vehicles. Defendants have hidden the Defect despite their obligation to disclose it, misrepresented the Class Vehicles to be safe and defect-free, and continued to sell them to consumers.

11. Defendants have knowingly omitted, concealed and suppressed material facts from consumers, who may only learn the truth when the Defect manifests in the moments following a car crash, at which time it may be too late. This Action seeks to hold General Motors accountable for its failure to disclose and remedy the Defect. As alleged herein, Defendants' wrongful conduct has harmed owners and lessees of the Class Vehicles, and Plaintiffs and members of the Class are entitled to damages and injunctive and declaratory relief.

II. PARTIES

A. Plaintiffs

12. Plaintiff Endress resides in Lebanon, New Jersey. Plaintiff Endress owns a 2012 Chevrolet Colorado, which was purchased on or around May 1, 2012 from Brown-Daub Chevrolet of Nazareth in Nazareth, Pennsylvania. The value of Plaintiff Endress' 2012 Chevrolet Colorado has diminished as a result of the SDM System Defect. Plaintiff Endress purchased his Class Vehicle for personal, family, and/or household use. Plaintiff Endress would not have purchased his 2012 Chevrolet Colorado or would not have paid as much for it had Defendants disclosed the SDM System Defect.

13. Plaintiff Ford resides in Egg Harbor City, New Jersey. Plaintiff Ford owns a 2011 Chevrolet Tahoe, which was purchased on or around November 1, 2020 from 322 Motors, LLC in Williamstown, New Jersey. The value of Plaintiff Ford's 2011 Chevrolet Tahoe has diminished as a result of the SDM System Defect. Plaintiff Ford purchased his Class Vehicle for personal, family, and/or household use. Plaintiff Ford would not have purchased his 2011 Chevrolet Tahoe or would not have paid as much for it had Defendants disclosed the SDM System Defect.

14. Plaintiff Clark resides in Michigan. Plaintiff Clark owns a 2012 Chevrolet Silverado, which was purchased on or around November 1, 2020 from George's Used Cars in Brownstown Charter Twp, Michigan. The value of Plaintiff

Clark's 2012 Chevrolet Silverado has diminished as a result of the SDM System Defect. Plaintiff Clark purchased his Class Vehicle for personal, family, and/or household use. Plaintiff Clark would not have purchased his 2012 Chevrolet Silverado or would not have paid as much for it had Defendants disclosed the SDM System Defect.

15. Plaintiff Bondsteel resides in Texas. Plaintiff Bondsteel owns a 2012 Chevrolet Silverado, which was purchased on or around January 1, 2018 from Texas 1 Auto Finance in Kemah, Texas. The value of Plaintiff Bondsteel's 2012 Chevrolet Silverado has diminished as a result of the SDM System Defect. Plaintiff Bondsteel purchased his Class Vehicle for personal, family, and/or household use. Plaintiff Bondsteel would not have purchased his 2012 Chevrolet Silverado or would not have paid as much for it had Defendants disclosed the SDM System Defect.

B. Defendants

1. The Delphi Entities

16. Aptiv Services US, LLC (f/k/a) Delphi Automotive Systems, LLC ("Aptiv" and together with the Delco Electronics division of Old GM, Delco Electronics Corporation, Delphi Corporation, Delphi Automotive, PLC, Delphi Automotive Systems, LLC, and Delphi Electronics & Safety to be hereinafter referred to collectively as "Delphi" or the "Delphi Entities") is organized in Massachusetts, and maintains its executive offices at 5725 Innovation Dr, Troy, MI

48098. Aptiv is the successor-in-interest to both Delphi Automotive Systems, LLC and the Delphi Entities that worked with General Motors to design, manufacture, and sell the SDM that contains the SDM System Defect present in the Class Vehicles. Aptiv Services US, LLC is a subsidiary of Aptiv PLC, a public company formed under the laws of Jersey, with its headquarters in Dublin, Ireland.

17. In 1918, General Motors Corporation ("Old GM") acquired Delco Electronics Corporation ("Delco"). In 1972, General Motors merged Delco with its AC Electronics division and it continued to operate it as the 'Delco Electronics' division of Old GM. In 1995, Old GM renamed its automotive components group to 'Delphi Automotive Systems' ("Delphi"). In 1997, the commercial portion of Delco was transferred to Delphi and Delphi used the Delco name for several of its subsidiaries until 2004.

18. On May 31, 1999, Delphi Automotive Systems was spun off into Delphi Corporation ("Old Delphi"), a public corporation whereby Old GM sold $3.8 billion worth of preferred shares in Delphi. While this arrangement legally separated the companies, they were still dependent on one another for providing parts for Old GM vehicles.

19. In 2009, as a result of Old Delphi's and Old GM's bankruptcy filings, it was agreed that General Motors would take back some of the Delphi plants it had previously owned. In 2015, Delphi spun off several businesses and renamed

itself Aptiv. As a result of these restructurings, Aptiv Services US, LLC (f/k/a) Delphi Automotive Systems, LLC acquired Delphi's (and its predecessors) core books, core records, and core personnel concerning the SDM module. Aptiv Services US, LLC thereby acquired knowledge about the SDM System Defect held by those books, records, and personnel.

20. Moreover, Delphi is still designing, manufacturing, and selling SDMs for General Motors vehicles. As Aptiv Services US, LLC recently conceded in court filings related to a personal injury action concerning a defective SDM module: Aptiv "formerly known as Delpi Automotive Systems, LLC, designed, manufactured, and sold sensing diagnostic modules for 2019 Chevrolet Suburban vehicles." *Finegold v. General Motor, LLC, et al.*, Civil Action No. 3:21-cv-362-PGS-ZNQ, Dkt. No. 20 (D.N.J. Jan. 8, 2021)

2. General Motors Entities

21. General Motors LLC ("General Motors LLC") is organized in Delaware and maintains its executive offices at 300 Renaissance Center, Detroit, Michigan. The sole member of General Motors LLC is General Motors Holdings LLC.

22. General Motors Holdings LLC ("General Motors Holdings") is organized in Delaware and maintains its principal executive offices in Detroit, Michigan. The sole member of General Motors LLC is General Motors Company.

23. General Motors Company ("General Motors Parent") is a Delaware corporation with its principal executive offices in Detroit, Michigan, and is a citizen of the States of Delaware and Michigan. General Motors Parent's only asset is its 100% ownership interest in General Motors Holdings. General Motors Parent is also responsible for making reports to NHTSA related to vehicle safety and deciding on vehicle recalls.

24. In June 2009, General Motors Corporation (previously defined as "Old GM") filed for bankruptcy. The General Motors entities were then created in connection with the sale of substantially all of their assets under their respective restructuring plans. As a result of the sale, General Motors LLC acquired substantially all of Old GM's books, records, and personnel. General Motors LLC then transferred some of these assets to General Motors Holdings (formed shortly after the bankruptcy sale). Defendants thereby acquired from Old GM the knowledge about the SDM System Defect (defined below) that those books, records, and personnel held. General Motors Parent and General Motors LLC also took responsibility for any necessary recalls of Old GM vehicles going forward.

25. The causes of action in this Complaint are directed to General Motors Parent, General Motors Holdings, and General Motors LLC (referred to collectively as "General Motors") and are based on their misconduct of their employees, agents, alter egos, and any person in active concert or participation with them.

III. JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because members of the proposed Plaintiff Classes are citizens of states different from Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs. This Court has jurisdiction over supplemental state law claims pursuant to 20 U.S.C. § 1367.

27. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction.

28. This Court has personal jurisdiction over Defendants because: Defendants conduct substantial business in this District; some of the actions giving rise to the Complaint took place in this District; and some of Plaintiffs' claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state, committing a tortious act in this state, and causing injury to property in this state arising out of Defendants' acts and omissions outside this state; and at or about the time of such injuries Defendants was engaged in solicitation or service activities within this state, or products, materials, or things processed, serviced, or manufactured by Defendants anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use. This Court also has personal jurisdiction over Defendants because Defendants consented to jurisdiction by registering to do business in New

Jersey. This Court has pendant or supplemental personal jurisdiction over the claims of non-New Jersey Plaintiffs.

29. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(a), (b) and (c) because Defendants have marketed, advertised, sold, and/or leased the Class Vehicles within this District through numerous dealers doing business in the District. Defendants' actions have caused harm to Plaintiffs Endress and Ford, New Jersey residents, as well as hundreds of members of the Classes residing in New Jersey. For over seventy years, Old GM maintained an assembly plant in Linden, New Jersey. Moreover, General Motors maintains 87 primary suppliers (direct and indirect) with a purchase order current within the last 365 days, 79 active dealers in New Jersey and delivered 58,177 vehicles in New Jersey just in 2020 alone.[4]

30. Likewise, Aptiv is the U.S. subsidiary of Aptiv PLC, a publicly traded company with 2019 net sales of $14B and outstanding shares valued at over $20B in 2019. In its 2019 10-K filed with the SEC for the fiscal year that ended December 31, 2019, Aptiv described itself as follows:

> We are one of the largest vehicle component manufacturers, and our customers include 23 of the 25 largest automotive original equipment manufacturers ("OEM's) in the world. We operate 126 major manufacturing facilities and 15 major technical centers utilizing a regional service model the enables us to efficiently and effectively serve our global customers from best cost countries. We have a

[4] General Motors in New Jersey, GENERAL MOTORS, https://www.gm.com/our-company/us/nj.html (last accessed Aug. 16, 2021)

> presence in 44 countries and approximately 20,200 scientists, engineers, and technicians focused on developing market relevant product solutions for our customers. Aptiv also provides regional support to its customers for its products.

31. As a result of Aptiv's design, manufacture, distribution, and sale of SDM modules and regional support in the State of New Jersey, Plaintiffs Endress and Ford, as well as hundreds of members of the Classes residing in New Jersey have been harmed. Venue in this District is therefore appropriate.

IV. SUBSTANTIVE ALLEGATIONS

32. General Motors offers various safety technologies in its vehicles, including active features to prevent a crash and passive safety features to guard occupants after a crash has taken place. Federal law mandates the use of these technologies to protect consumers. *See, e.g.*, 49 U.S.C. § 30127.

33. Safety features offered by General Motors for the Class Vehicles include seatbelt pre-tensioners, which tighten seatbelts to secure the occupants, and airbags, which are cushions that rapidly inflate from the steering wheel and other areas of the vehicle. During an accident, seatbelt pre-tensioners hold vehicle occupants in place, and airbags buffer or prevent impact between occupants and hard structures in the vehicle. Without the airbags, slamming into the hard structures (such as the steering wheel) during a crash can cause serious injuries or death.

A. The SDM System Determines Whether To Deploy A Vehicle's Airbags.

34. The SDM System needs to activate in milliseconds to ensure the protection of the driver and passengers. When functioning properly, the SDM System is highly effective in reducing the number of causalities and injuries in automobile collisions. According to the NHTSA, the use of frontal airbags has saved 50,457 lives from 1987 to 2017, with a countless number of injuries prevented.[5]

35. The SDM System initiates by input from crash sensors located throughout the vehicle, small pieces of electronics designed to tell when the vehicle is damaged in an accident or collision. The sensors respond to several different sets of stimuli, such as sudden stopping or increased pressure as pieces of the car move due to the force of the collision. Different sensors measure wheel speed, seat occupant status, brake pressure, impact, and more. The SDM measures these vehicle status indicators during operation.

36. Generally, airbag sensors are either electrical or mechanical in nature. Electrical sensors vary in design; some use an electromechanical 'ball and tube' mechanism, consisting of a small tube containing a circuit switch and ball held together by a small magnet. If a collision occurs, the ball dislodges from the magnet

[5] Air Bags, NHTSA, https://www.nhtsa.gov/equipment/air-bags (last visited Aug 16, 2021).

and rolls forward in the tube, hitting a switch that completes the electrical circuit. Other electrical designs are similar in principle, using a metal roller or spring-loaded weight instead of a ball, or in newer cars, an accelerometer to trip the sensor. Mechanical sensors work independent of the electrical system and respond similarly to electrical sensors, with a design that actuates a firing pin triggering a small explosion after a crash. Since a mechanical sensor does not require a power source, it cannot deactivate when a battery is disconnected.

37. Once the control unit determines there is an accident, it sends a signal to the inflator system. The inflator sets off a chemical charge, producing an explosion of nitrogen gas, filling up the airbag. As the airbag fills up, it bursts through the paneling that contains it and enters into the space of the car.

38. Although airbags work effectively to protect occupants as is necessary, they are not meant to deploy with every impact. A crash may be of lower intensity (e.g., a fender bender in a parking lot) such that the seatbelt alone will be sufficient protection for the occupant.[6] Airbags are designed to deploy in "moderate to severe" frontal or near-frontal crashes. A "moderate to severe" frontal crash is the equivalent of hitting a solid, fixed barrier at 8-14 miles per hour or higher.[7]

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[6] Dr. Ching-Yao Chan, *Fundamentals of Crash Sensing in Automotive Airbag Systems*. Copyright Society of Automotive Engineers, (2000), at p. 50

[7] *Id.*

39. The "brain" behind this operation is the airbag control unit (also known as an Electronic Control Unit or "ECU"). General Motors calls this component the "Sensing and Diagnostic Module" or "SDM," and that term is used throughout this Complaint. SDMs are effectively computers that control the car's safety systems. They are intended, where necessary, to issue a "command" to deploy airbags and tighten seatbelts to prevent or mitigate injury to the vehicle occupants in a crash.

40. The SDM operates in three basic phases. First, during normal vehicle operation, the SDM is set in a resting or "passive" mode. In this mode, the SDM continuously receives signals from sensors placed throughout the vehicle, which collect and report information on inputs such as acceleration, wheel speed, brake pressure, and impacts. The SDM monitors and interprets these signals to determine whether the vehicle is involved (or about to be involved) in a crash.

41. Second, while monitoring these signals in "passive" mode, if and when the SDM detects an irregular input that suggests a potential crash, it "wakes up" to search for confirmation of a crash (rather than, for example, an irregular input from slamming on the brakes and then avoiding a collision). In this second stage—known as "wake up" or "standby" mode—the SDM's crash-sensing software algorithm is engaged to quickly decipher crash status. After this "wake up" mode is triggered by an irregular input, if additional inputs confirm a moderate to severe

frontal crash, the SDM should issue a command to "fire" the airbag and/or tighten the seatbelts as needed.

42. Third, the final phase in this sequence is the "reset" phase. From "wake up" mode, after it detects that a crash or a potential crash has fully completed, (i.e., that the vehicle has returned to normal operation after an irregular input) the SDM ultimately returns to its normal operating state through "resetting."

43. A vehicle driving over a bump in the road illustrates the sequence for the operation of an SDM. The vehicle first operates with the SDM in "passive" mode as it drives down the road. Then, suddenly, the driver hits the bump in the road. This jolt from hitting the bump (and/or related inputs like deceleration) will trigger the SDM to "wake up" mode where it searches for more inputs, quickly asking: "How fast is the vehicle slowing down? Is the front bumper crushed? Is the vehicle speeding back up normally?". If the SDM senses that the vehicle returns to normal operation and continues down the road, it will stop looking for confirmation of a crash and reset back to passive after it determines the danger has passed. On the other hand, if, after it hits the bump, the vehicle veers out of its lane and crashes into another vehicle, the SDM should detect this second input and fire the airbag.

44. The entire sequence—from sensing an irregular signal to waking up and searching for confirmation of a crash, to firing the airbag where needed—might take only fractions of a second. Indeed, a typical "crash duration" in a frontal,

vehicle-to-barrier collision lasts for approximately 80-150 milliseconds (0.08-0.15 seconds).[8] For that reason, timing this sequence properly is vital to ensure that the seatbelts are tightened, and the airbags deploy to protect the occupants when they need to.

B. Defendants Used A Dangerous And Defective Deployment Window For The SDM System Contained In The Class Vehicles.

45. Throughout the three-phase sequence described above, SDMs rely on software algorithms to interpret signals, estimate crash dynamics, and issue a "deploy" or "do not deploy" command to the safety systems. For the SDM to function as intended, the SDM software must be designed to recognize and react to crashes so that the airbags inflate when they are needed.

46. Crash sensing occurs in "real-time," meaning that the sensing algorithm can only examine a limited window of data to predict and judge the severity of crash events *before* conclusion, so that the airbags can deploy and protect the occupant on impact. A decision to "deploy" the airbags should occur when thresholds set to tell the SDM a crash is severe enough (i.e., a moderate to severe frontal collision) are met or exceeded. These deployment thresholds are programmed into the SDM software through a process in which engineers "calibrate" the software

[8] Dr. Ching-Yao Chan, *Fundamentals of Crash Sensing in Automotive Airbag Systems*. Copyright Society of Automotive Engineers, (2000), at p. 169.

in the vehicle.

47. In the Class Vehicles, the software calibration that controls how the SDM detects accidents and deploys the safety system contains a serious Defect. For frontal crashes, General Motors and Delphi originally designed and calibrated the SDM to *prevent* deployment of airbags and pre-tensioners more than 45 milliseconds after it enters "wake up" mode. General Motors did this originally by terminating the deployment thresholds at the unattainable value of 45 milliseconds into the crash sequence. With this calibration in place, no matter how severe the inputs the SDM received after 45 milliseconds, the airbags and pre-tensioners would not deploy.

48. The Defect persists in the SDM modules contained in Class Vehicles, which prematurely terminates the Deployment Window for airbags. This Defect was no accident. Instead, as detailed below, General Motors included it *by design* when it modified the SDM software program in the Class Vehicles to include it.

49. In affirmatively blocking these critical safety features by prematurely closing the Deployment Window, Defendants greatly and needlessly increased the risk of injury and death in various frontal crashes. The Defect manifests in some Class Vehicles in frontal crashes that endure for 45 milliseconds or longer and require airbag deployment or seatbelt tightening after 45 milliseconds. The Defect may also manifest in Class Vehicles that contain different calibrations of the SDM System but still incorporate the original defective design decision to prematurely

close the Deployment Window for the airbags.

50. The Defect may manifest, for example, in frontal crashes with multiple, distinct points of impact known as "concatenated" events. A vehicle that first hits a curb and then veers and hits a tree, or first hits a speed bump and then crashes into the vehicle in front of it, are examples of concatenated crashes. By their nature, concatenated accidents involve multiple discrete inputs for the SDM to detect during a crash sequence.

51. In concatenated crashes, the first part of the incident (hitting a curb) sends the SDM into its "wake up" or "stand by" mode. The initial curb hit does not trigger the airbag or tighten the seatbelt, but the SDM "wakes up" to confirm whether further irregular signals will follow and indicate a need for the seatbelts or airbags. In the Class Vehicles—because of the software calibration that controls the SDM—the "wake up" mode lasts for only so long after the first irregular signal. After that time, and by Defendants' design, the deployment thresholds in the software drastically increase, such that *no* further input, *no matter how severe*, could exceed the thresholds and trigger the airbag to deploy or seatbelts to tighten.[9]

52. Along with concatenated crashes, the Defect is also implicated in frontal crashes that increase in severity and require airbag deployment or seatbelt

[9] As detailed in this section, the triggering thresholds are pre-set inputs in the software that tell the SDM that a crash is severe enough to deploy an airbag.

tightening *after* an initial, "soft" impact. These types of crashes are referred to as "prolonged" or "long-soft" crash onsets. This would include, for example, a crash into another vehicle's bumper which—because the bumper is comparatively "soft"—may take time before the "soft" bumper collapses, and a "hard" impact into the engine compartment begins.[10] "Soft" crashes involve a "relatively long crash duration" that may last 20-50 percent longer than a head-on crash into a rigid barrier, like a cement wall.

53. In a prolonged onset crash, the initial impact into a "soft" surface, such as a bumper, starts the SDM clock ticking. Depending on the crash conditions such as speed, road incline, angle of impact, weather, ice on the road, etc., this "soft" impact may last longer than the Deployment Window. Throughout the "soft" impact, the SDM will be in wake up mode to search for a confirmatory signal. But it will not find another input sufficient to trigger the airbags from the "soft" impact.

54. As explained above, the SDM clock in some Class Vehicles effectively times out when the 45 millisecond mark hits. If the crash proceeds through the "soft" layers and into the engine compartment of another vehicle at say, 70 milliseconds, no airbag or seatbelt deployment is possible no matter how severe

[10] An example of a "soft" crash is where a vehicle crashes into a deformable barrier, or crashes at an angle, which will create a "softer" impact than a head-on crash into a rigid barrier (which is a "hard" crash).

the later, "hard" impact gets. In practice, this means that the airbags and seatbelt pre-tensioners in these Class Vehicles can only be fired within 45 milliseconds of a first, irregular signal. If a second signal occurs *after* 45 milliseconds, the SDM *purposefully, by design,* disregards signals that would otherwise trigger airbag deployment.

55. Upon information and belief, Defendants have not redesigned the SDM System to correct the defective design decision to prematurely close the Deployment Window of the Class Vehicles. The resulting "dead zone" starts just several milliseconds into a crash, after which vehicle occupants are completely vulnerable. The dead zone lasts until the SDM detects that the crash has ended completely (meaning that the irregular signals have concluded, and the vehicle has resumed normal operation), and then resets back to normal mode.

56. This significant gap in protection following the Deployment Window is unreasonably dangerous because accidents—particularly complicated, real-world accidents—are not necessarily completed at that point. In many cases, a crash continues, and airbags and seatbelts are needed, well after that time. Yet, General Motors' SDM System in the Class Vehicles makes it *impossible* for the airbags to deploy and seatbelts to tighten in the "dead zone" in which a crash may still be underway—which is a serious, unjustified, and dangerous safety defect. Indeed, even General Motors' own cars division included a much longer window for

potential deployment.

C. Defendants knew that the SDM System Defect was dangerous and defective but has failed to warn or compensate consumers.

57. General Motors knew or had reason to know of the SDM System Defect and the safety risks it entails from at least July 10, 2009, when General Motors acquired substantially all of Old GM's books, records, and personnel, and the knowledge about the defective SDM software calibration those books, records, and personnel held. General Motors has continued to acquire knowledge—based on lawsuits implicating the SDM System Defect and hundreds of publicly reported accidents with airbag and seatbelt failures—from 2009 to the present. Likewise, the same is true for Delphi and its predecessor entities.

58. Still Defendants have continued to conceal the Defect and the pattern of accidents, injuries, and deaths that have resulted from it. Defendants have failed to share this information with the consumers who paid for and drive these Class Vehicles every day.

59. It is perhaps unsurprising that General Motors has unreasonably and unsafely delayed disclosure of the SDM System Defect following its history endangering the public. As is now public knowledge, millions of General Motors vehicles contain the dangerous and defective Takata airbag inflators that can explode with too much force and spray metal shrapnel into vehicle passenger compartments.

While the dangers of these Takata airbags were widely known for years, General Motors lobbied regulators to delay a recall for its affected vehicles to avoid a resulting hit to its profits. In 2016, General Motors reported that recalling its vehicles with Takata inflators would cost hundreds of millions of dollars.

60. Consumers brought a putative class action seeking redress. *See In re Takata Airbag Product Liability Litigation*, Case No. 14-cv-240009, Dkt. 2750, (S.D. Fl.). While other vehicle manufacturers had earlier and voluntarily recalled their vehicles with Takata airbags, it was only years later, with that consumer litigation pending, that General Motors finally issued a belated recall. And importantly, it did so *only after* regulators from NHTSA denied General Motors' petition for inconsequentiality, in which it attempted to argue that a recall was unnecessary.[11]

61. Here, as in Takata, General Motors knew or should have known that the SDM software calibration in the Class Vehicles—which includes a dead zone that prevents the airbag and seatbelts from deploying—was dangerous. But General Motors kept using it anyway, did not recall or repair the Class Vehicles to correct it, and *still* has not told consumers about it.

[11] *General Motors will recall 7 million vehicles for air bag issue worldwide,* REUTERS (November 23, 2020), https://www.reuters.com/article/us-gm- recall/gm-will-recall-7-million-vehicles-for-air-bag-issue-worldwide- idUSKBN2831TH (last visited August 16, 2021).

1. Old GM recklessly downplayed serious risks of injury when it chose to include the SDM System Defect in the Class Vehicles.

57. In general, the vehicle manufacturer sets the deployment thresholds in the SDM software calibration that will trigger a command to fire the airbags and/or tighten the seatbelts. The vehicle manufacturer uses results from laboratory crash testing to inform these parameters.

58. But laboratory results are not sufficient in themselves, because real-world accidents—which can occur from multiple angles and involve inputs from many variables like weather, temperature, or incline—will differ from the testing environment. For that reason, manufacturers must exercise appropriate care to design crash sensing frameworks that function to keep people safe in the real world Old GM worked with an team of engineers from Delphi (then called Delco Electronics) to develop the SDM software program later used in the Class Vehicles, starting with Model Year 1999. The team from Delphi developed a proposed software program, known as ALGO-S, which it presented to Old GM for review.

59. During this time, Old GM divided the design and development of its vehicles into a "cars" group and a "trucks" group, with the trucks group responsible for design, development, and production of larger model trucks and SUVs. After it reviewed the Delphi team's proposed SDM software algorithm, ALGO-S, the trucks group insisted on adding the 45-millisecond Deployment Window described above

when it calibrated the program for use in its trucks and SUVs. On information and belief, the trucks group proposed this cutoff based on test results which indicated that frontal-barrier accidents in its trucks and SUVs would be complete within 45 milliseconds or less *in laboratory conditions*.

60. In response, the Delphi team expressly warned the trucks group that such an aggressive cutoff could fail to capture additional signals in complex crashes outside the laboratory, leaving occupants completely unprotected during prolonged onset crashes or crashes with multiple impact points. The trucks group insisted, however, and the 45-millisecond cutoff was added in the SDM software calibration for General Motors trucks and SUVs.

61. On information and belief, documents, records, and personnel reflecting General Motors trucks' insistence—over Delphi's objection—to include this cutoff were passed on from Old GM to New General Motors in 2009. On information and belief, other major vehicle manufacturers throughout the industry include a significantly longer window for the SDM to detect a potential accident and deploy the airbags and seatbelts.

62. Indeed, in the ALGO-S program as it was designed by Delphi, the window in which the airbags and seatbelts can deploy in a crash is up to at least 150 milliseconds—over *three times* the interval that General Motors trucks added in the defective calibration. After the Delphi team repeated the same warnings about the

truck group's proposed 45 millisecond cutoff to General Motors' cars group, the cars group rejected the shorter cutoff. Instead, the cars group used the ALGO-S software with the Delphi-recommended period of 150 milliseconds for deployment.

63. Delphi's original 150 millisecond window allows for airbag and seatbelt deployment in real-world frontal crashes, which themselves can endure for up to 150 milliseconds. When General Motors trucks added the defective 45 millisecond cutoff to the software calibration in the Class Vehicles, it prematurely, and dangerously, prevented the airbags and seatbelts from functioning when a frontal crash may still be well underway.

2. The Deployment Window is unnecessary to protect against "late" airbag deployments and modern systems are better capable of monitoring deployment procedures.

65. General Motors trucks group's insistence on the 45 millisecond window after which the airbags and seatbelts cannot deploy was unjustified and unsafe. The defective design decision to prematurely terminate the Deployment Window persists in the Class Vehicles.

66. On information and belief, the trucks group chose to set this aggressive cutoff due to purported concerns about the potential for airbags to deploy "too late" during an accident. But as the trucks group also knew, these concerns were unwarranted given technology that mitigated the risks of "late" airbag deployments.

67. A brief history of airbags in motor vehicles puts this reckless decision

in context. Before 1998, airbag systems were effectively one-size-fits-all. Designed to protect against only frontal crashes, these "first-generation" airbags were built to meet a standardized government test that required they protect an unbelted, midsize adult male dummy (175 pounds) in a 30-MPH crash into a rigid barrier.[12] To do so, an airbag had to fill up quickly with gas, resulting in a deployment speed of up to 200 MPH.[13]

68. Not all vehicle occupants fit this description, however, and the intensity of first-generation airbag deployment could prove dangerous for children and those who were positioned too close to the bag when it inflated (for example, because they had been thrown forward toward the steering wheel during an under-way accident).[14]

69. Public perception about airbag safety in motor vehicles, and in turn, the vehicle manufacturers that sold them, turned increasingly unfavorable following

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[12] *Airbags Safe Insane? – Special Report*, MOTORTREND (Sept. 1, 2000), https://www.motortrend.com/news/airbags-safe-insane-special-report/ (last visited August 14, 2021).

[13] David B. Ottaway & Warren Brown, *From Life Saver to Fatal Threat*, THE WASHINGTON POST (June 1, 1997), https://www.washingtonpost.com/archive/politics/1997/06/01/from-life-saver-to-fatal-threat/56d05b9e-a1bc-49b7-beb4-43480762b25e/ (last visited August 14, 2021).

[14] Susan A. Ferguson & Lawrence W. Schneider, *An Overview of Frontal Airbag Performance with Changes in Frontal Crash-Test Requirements: Findings of the Blue Ribbon Panel for the Evaluation of Advanced Technology Airbags*, Traffic Injury Prevention 3 (Nov. 2008).

reports of late and aggressive deployments in first generation airbags. Both regulators and vehicle manufacturers recognized the need to address these issues.[15] Beginning in October 1995, NHTSA began a series of actions to minimize and eventually eliminate the adverse effects of late and aggressive airbag deployments while preserving their life-saving benefits.

70. In 1997, NHTSA issued modified federal rules to allow automakers to reduce the energy in frontal airbags. This led to "an industry-wide changeover" to "redesigned" airbags in the very next model years (1998-1999).[16] The "redesign" consisted of several new technology innovations. The first and immediate solution was "depowered" airbags: automobile manufacturers removed some of the gas-generating propellant or stored gas from the inflators to reduce the pressure and velocity of deployments. This change alone was highly effective in reducing low-to-moderate speed fatalities.

71. Other innovations to reduce the risk of aggressive deployments included reducing the volume or rearward extent of airbags, positioning them further from occupants, revised folding techniques, and tethering and shifting from

[15] NHTSA, *An Evaluation of the 1998–1999 Redesign of Frontal Air Bags,* NHTSA Technical Report No. DOT HS 810 685, p.11, (August 2006) [hereinafter "NHTSA Redesign Report"].

[16] *The Hidden Dangers of Older Airbags*, MOTORBISCUIT (May 8, 2015), https://www.motorbiscuit.com/the-hidden-dangers-of-older-airbags (last visited August 12, 2021).

pyrotechnic inflators to hybrids including stored gas.

72. Old GM knew about and employed these new technologies in its vehicles. Indeed, as the director of Old GM's Safety Center Terry Connolly said in 2000, there were no significant downsides to using this new "depowered" airbag technology, even for unbelted passengers.

73. Further innovations referred to as "advanced" or "smart" airbags followed soon after. "Advanced" airbags alter deployment patterns according to feedback from a number of sensors. These sensors tailor how the airbag deploys based on the severity of the crash, the size and posture of the vehicle occupant, whether the occupant is wearing a seatbelt, and how close the occupant is to the airbag.

74. Many "advanced" systems use dual-stage or multi-stage inflators. This means that they have two inflation stages that can be ignited sequentially or simultaneously depending on crash severity.

75. "Advanced" airbags were phased into production beginning September 1, 2003 and were required in all new vehicles by September 1, 2006.

76. Thus, based on the depowered and advanced airbag technology starting in 1998 and 1999, the risks posed by "late" deployments in early generation airbags had greatly diminished. Indeed, while NHTSA estimates that more than 290 deaths were caused by frontal airbag inflation between 1990 and 2008, nearly *90*

percent of those deaths occurred in vehicles manufactured *before* 1998 (i.e., with first generation airbag technology).[17] Today, with this new technology, serious injuries from properly functioning airbags are rare.[18]

77. Despite knowledge and use of the new technology mitigating the risks of late deployments, the trucks group *still* insisted on shutting off the airbags and seatbelts in the Class Vehicles after 45 milliseconds. On information and belief, despite these well-established advancements in airbag technology outlined above, General Motors continued to use this same defective software algorithm in its vehicles in 2009 and beyond.[19]

78. This reckless decision and continued disregard for clear warnings about the risks in shutting off the SDM too soon during an accident has had real and tragic consequences.

3. Defendants knew about a pattern of suspicious accidents involving the SDM System Defect but has failed to correct it.

79. As outlined above, Defendants have known about the SDM System Defect since their respective bankruptcy restructurings that provided them with

[17] Insurance Institute for Highway Safety. "Airbags" (2021), available at: https://www.iihs.org/topics/airbags (last visited August 14, 2021).
[18] *Id.*
[19] Publicly available crash data reports from NHTSA indicate that the Delco SDM was used in General Motors trucks vehicles up through at least MY 2015.

books, records, and personnel in 2009. Defendants have continued to accrue knowledge of the Defect, and its serious consequences, in the years since. Indeed, Defendants has known about, investigated, and even litigated several crashes in which airbags suspiciously failed to deploy in multi-impact or prolonged onset frontal crashes in the Class Vehicles—a clear indication of the SDM System Defect.

80. Despite obvious signs of a known and dangerous risk, Defendants concealed these accidents and the SDM System Defect from consumers and regulators to avoid or at least delay a recall and the attendant costs and reputational damage therefrom. To date, Defendants have taken no corrective action to repair or recall the Class Vehicles to address this Defect.

4. Defendants have litigated personal injury lawsuits for suspicious airbag failures in the Class Vehicles.

81. In addition to its institutional records and knowledge, General Motors was on notice of the SDM System Defect through litigating personal injury lawsuits involving airbag and seatbelts failures consistent with the SDM System Defect.

82. In one case filed in 2011—just two years after General Motors was formed—plaintiff James Nossar sued General Motors LLC following a crash in his 2005 Chevrolet Trailblazer (a Class Vehicle here). As detailed in that complaint, on or about February 25, 2010, Mr. Nossar drove his Trailblazer into the back of a 1999 Suburban "and sustained a moderate to severe frontal impact . . . at a rate of speed

that exceeded the airbag system's predetermined deployment threshold." *See Nossar v. General Motors LLC*, Dkt. 4, Case No. 1:11-cv-02129 (N.D. Ga.). Despite this "significant frontal collision," the airbag failed to deploy and seatbelt pre-tensioners failed to trigger. Without the airbag or seatbelt to protect him, Mr. Nossar's head slammed into the steering wheel, which caused "fracturing practically every bone in his face and brain injuries." *Id.*

83. In support of his claims, in April 2012, Mr. Nossar filed an expert report from Chris Caruso. Mr. Caruso is an expert in automotive crash sensing systems and worked for Delphi engineering during the development of the defective SDM software in the Class Vehicles. *See id.* at Dkt. 40-2.

84. In that report, Caruso detailed the same flaws in the SDM software calibration described here. He explained that the airbag sensing system in the Trailblazer was "defective by design and has the potential to not deploy frontal impact airbags in high speed frontal impacts where conditions vary slightly from the perfect laboratory conditions where the system was designed and tested." Based on Caruso's experience working in the development of the SDM software, he related that there were concerns, based on the calibration, **"that in longer duration, but high severity events and in concatenated events (such as a curb impact followed by a utility pole impact), the airbags would fail to deploy because the algorithm deployment thresholds were no longer active**." *Id.*

85. Caruso further related that as that litigation proceeded into discovery, he would "expect to identify emails and other correspondence between General Motors Truck Engineers and Delphi Crash Sensor engineers discussing the **concerns over General Motors Truck Groups' edict to set certain crash sensor calibration parameters outside the recommended minimum guidelines set by the crash sensing algorithm designers** [i.e., the Delphi/Delco engineers]." Caruso "ha[d] seen these documents before and kn[e]w the content," and summarized that "**the calibration values result in premature turning off of algorithm thresholds which effectively disables the front airbags after 45 to 50ms**." *Id.* (emphasis added).

86. As to Mr. Nossar's crash specifically, Caruso concluded that the airbags and seatbelts failed because, when the airbags should have deployed, "the SDM System had already timed out after 45-ms after the crash started." Caruso's conclusion there was that "[t]he failure by General Motors to understand the risks of certain dictated calibration values [in the SDM software calibration] led directly to the design defect that rendered the frontal impact airbag system in the 2005 Chevrolet Trailblazer defective and unreasonably dangerous in certain field relevant, real-world crashes." *Id.*

87. General Motors LLC, a named defendant in that case, knew about and received Mr. Caruso's report outlining the history of these issues in the SDM

software calibration.

88. Another plaintiff, Chad Vaith, sued General Motors LLC in 2017 after an accident in his MY 2014 Silverado. As that complaint relates, in December 2015, Mr. Vaith was involved in an accident in which he drove his Silverado "off the road into a ditch," after which he "continued through the ditch for approximately forty yards before launching over the driveway/culvert. . . before coming to a final rest approximately twenty yards south." *See Vaith v. General Motors LLC*, Dkt. 1, Case No. 18-cv-00031 (D. Minn.). Despite multiple impacts in that prolonged accident, the airbags and seatbelts did not deploy, causing Mr. Vaith to "suffer severe personal injuries." Mr. Caruso was also a disclosed expert in that case, although a report was not publicly filed. *See, e.g.*, *id.* at Dkt. 64.

89. Mr. Vaith's case proceeded into fact discovery and ultimately led to a "negotiated settlement" between Mr. Vaith and General Motors. *Id.* at Dkt. 82.

90. Apart from previous lawsuits against General Motors with Mr. Caruso as an expert, another automotive crash expert, Sal Fariello, wrote directly to General Motors' CEO Mary Barra twice in December 2016 to raise similar concerns about issues he had observed in the airbag sensing system in model year 2006 General Motors SUVs. Mr. Fariello's letters are available in NHTSA's public records.

91. Mr. Fariello's letters to General Motors' CEO focused on an accident

in a 2006 Trailblazer (a Class Vehicle here) for which he served as a litigation consultant in a lawsuit filed in or around 2014. There, he lists multiple technical issues with the airbag sensing system that he wanted to bring to General Motors' attention and urge them to address. For example, he cautions that, in his view:

a. "The deployment thresholds [i.e. the inputs that will trigger deployment] for the airbag were set too high and compromised driver and passenger safety as a result of General Motors' improper effort to mitigate lawsuits related to relatively low speed deployments of the airbag.";

b. "The deployment threshold did not meet General Motors' and generally accepted standards for when an airbag should deploy in order to prevent occupant death based on written technical papers and educational videos produced by General Motors or its employees."; and

c. "Failure of the SDM to independently process a crash pulse and deploy the airbag implicates a defective software algorithm; specifically 'Algo S-H' [the software algorithm in the Class Vehicles]."

92. At the time, in 2016, Mr. Fariello noted that the SDM could be re-programed "with a more responsive algorithm" to resolve these issues, and that General Motors' "only apparent motive for not doing this related to the cost of implementing a recall."

93. Frustrated by the response he received from General Motors' counsel

in response to these letters, Mr. Fariello then wrote to Senator Bill Nelson of Florida enclosing his correspondence to General Motors and escalating his concerns. Senator Nelson then forwarded that correspondence to NHTSA.

94. As Mr. Fariello concluded, in his view, General Motors was stalling on this issue "just as they did with the Takata airbag matter."

95. Another action, *Finegold v. General Motor, LLC, et al.*, Civil Action No. 3:21-cv-362-PGS-ZNQ (D.N.J. Jan. 8, 2021), arose out of a motor vehicle accident in which Plaintiff's decedent, a passenger in a 2019 Chevrolet Suburban manufactured by General Motors was killed because the front airbag failed to deploy. Plaintiff brought suit against General Motors and Aptiv, alleging "the sensing and diagnostic module, [] failed to trigger the deployment of the airbag in a high-speed frontal impact." *See Finegold,* Dkt. No. 20, at 3.

96. More specifically, "Plaintiff alleges that a component part incorporated into the subject vehicle, specifically the sensing and diagnostic module was defective and was designed, manufactured, sold, and distributed by Aptiv, and that said defect caused the front airbag to fail to deploy in a high velocity front-end impact." *Id.* at 5. On June 30, 2021, the Court denied Aptiv's motion to dismiss for lack of personal jurisdiction and partially denied General Motor's and Aptiv's motions to dismiss for failure to state a claim.

97. Accordingly, Defendants are aware and ***actively litigating in this***

District concerning defective SDMs in the Class Vehicles.

5. General Motors knew or should have known about hundreds of publicly reported airbag failures in the Class Vehicles.

98. General Motors was also on notice of the SDM System Defect and its attendant safety risks from consumer complaints. These complaints are publicly available online through NHTSA's website. Between 1999 and the present, hundreds of consumers reported to NHTSA that airbags and/or seatbelts had suspiciously failed during frontal crashes involving concatenated (multiple) impacts or potentially prolonged crash onsets.

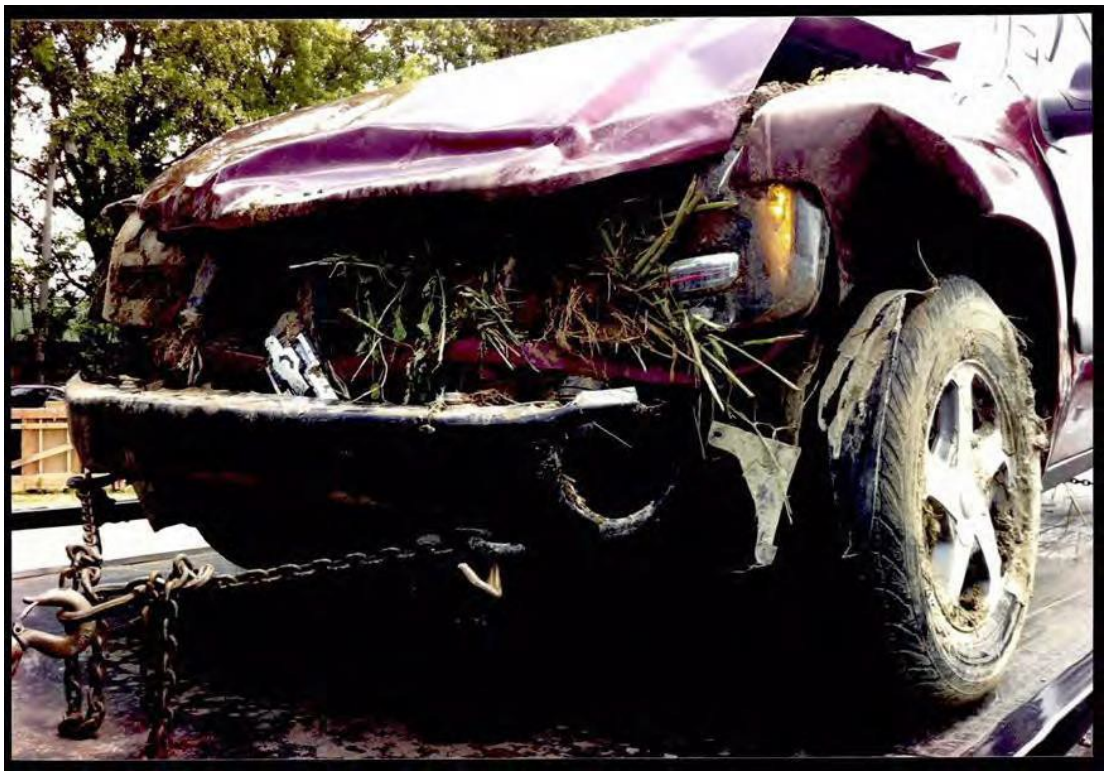
99. On information and belief, vehicle manufacturers such as General Motors monitor these public databases for complaints about their vehicles, in particular in light of their statutory obligations to report known safety defects in their vehicles to NHTSA and consumers. Moreover, in many of these reports, it is expressly clear that General Motors was directly informed of, and even investigated, the accident in question. While General Motors has access to the full body of these complaints from 1999 and onward in the public database, it bears mention that over ***three hundred*** of them were filed *after* the new General Motors entities were created in 2009.[20]

[20] Many publicly reported accidents occurred before 2009, which information would have likewise been available to Old GM. General Motors would have acquired Old

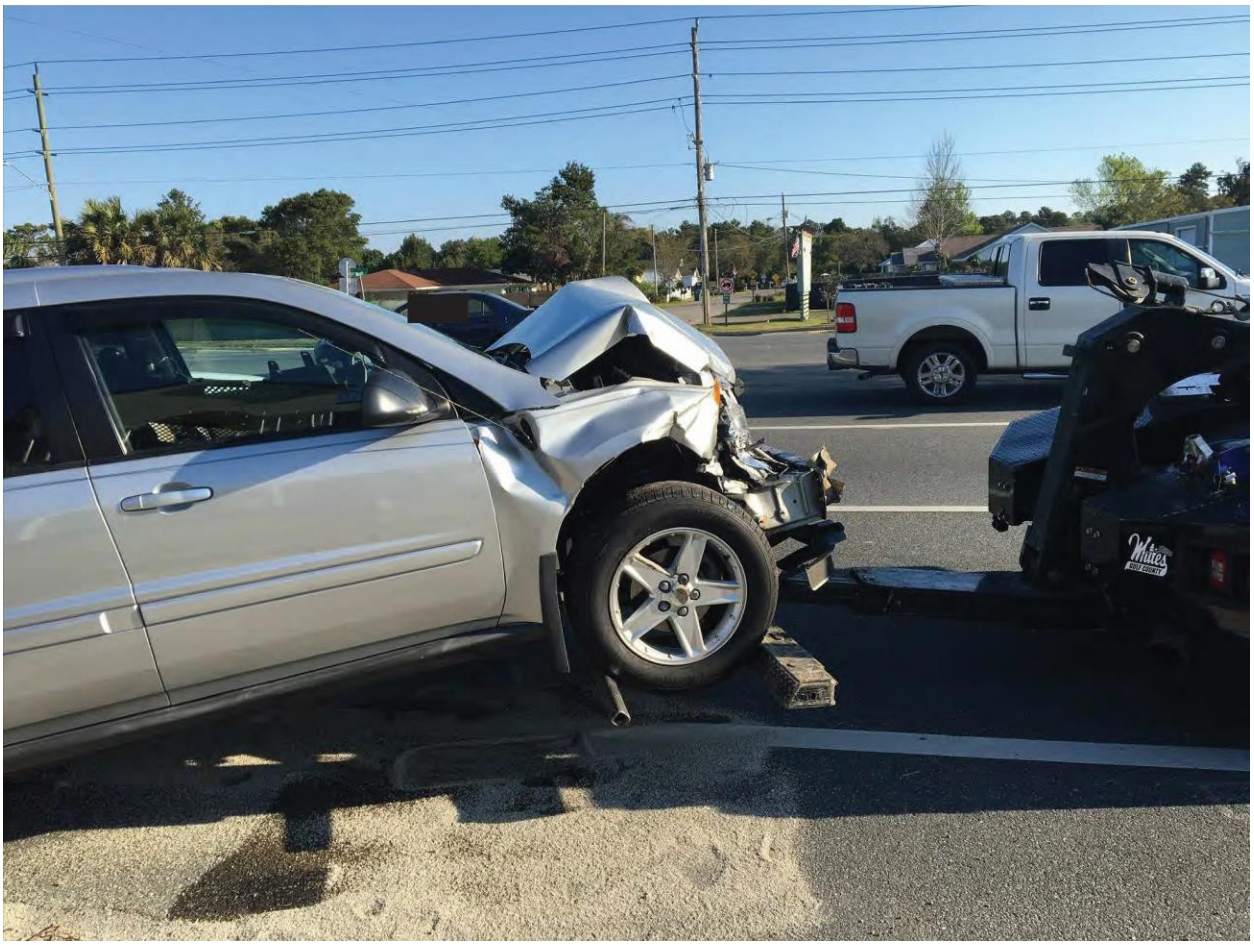
100. One such complaint details an accident in a 2004 Chevrolet Trailblazer in August 2014. The driver states that they were traveling 50 MPH on a four-lane highway where another vehicle, waiting to U-turn, "decided to turn right into me— oncoming traffic." The vehicles crashed, which then "sent [the driver] into a head on collision with the guard rail." The driver questions that "there were 2 incidents in that sequence of events that the airbags should have deployed, but did not! This accident caused several injuries to myself and my passenger. We definitely could have been killed and no airbags to help save our lives…" Photos of the damage to the vehicle from that accident follow. (NHTSA Complaint #1100694).

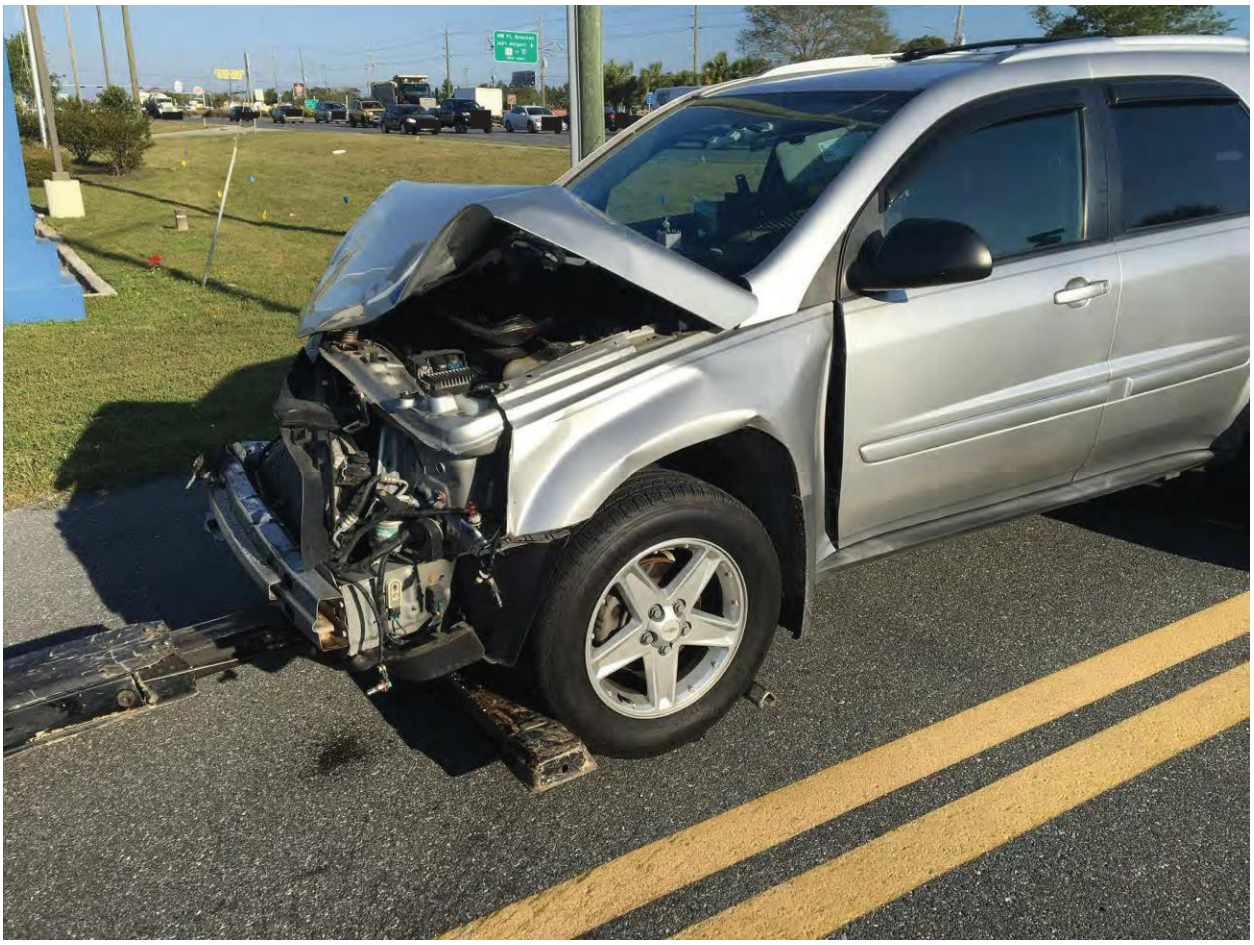
GM's knowledge of these accidents, reflected in its books, records, and personnel, when it was formed in 2009.

101. Another report describes a September 2012 accident in a 2005 Chevrolet Trailblazer. It states that the driver, at 30 MPH, swerved to avoid a deer in the road, which caused the vehicle to lose control, exit the road, and ultimately "crash[] off a 9 foot embankment." From there, the vehicle continued to crash through a field, into a dirt levy, and finally into a drainage ditch. None of the airbags deployed. The driver "became unconscious after his head crashed into the steering wheel" and "suffered severe neck injuries." The dealer later inspected the vehicle, but responded that the results were "inconclusive" and that the manufacturer "was notified but offered no assistance." Photos of the damage to the vehicle from that accident follow. (NHTSA Complaint #942950).



102. In another example, the complaint describes a serious accident in March 2019 involving a 2005 Chevrolet Equinox. The vehicle crashed into the front of another vehicle at 35 MPH. The airbags did not deploy. The driver sustained injuries to the head and ankle and required medical attention. Photos of the damage to the vehicle from that accident follow. (NHTSA Complaint #1550406).





103. Another account of a July 2007 accident in a model year 2001 Isuzu Rodeo describes a crash at 65 MPH so severe that "the median on the highway sustained property damage" and "the vehicle was destroyed," but the airbags did not deploy. This is how the vehicle looked after that accident:

104. Additional examples of similarly suspicious frontal accidents—i.e., frontal accidents with multiple discrete impacts, or potentially prolonged onset frontal crashes involving "soft" impacts—in which the airbags and/or seatbelts failed include:

a. NHTSA complaint #753287 dated Tuesday, October 16, 2001, reported an accident on Monday, October 8, 2001 involving a 1999 CHEVROLET SUBURBAN in Andover, KS. The complaint states: "60 MPH CROSS WIND BLEW THE SUBURBAN HEAD ON INTO THE CONCRETE MEDIAN. THE VEHICLE SPUN 360 DEGREES, WENT INTO THE DITCH, THE FRONT END HIT AGAIN THE VEHICLE WENT UP THE OTHER SIDE OF THE

EMBANKMENT AND STOPPED IN A FIELD. ENTIRE FRONT END OF THE FRAME NOT REPAIRABLE . . . FRONT CROSSMEMBER BENT AND ENGINE MOVED UPWARDS AT A 10 DEGREE ANGLE. **AIR BAGS FAILED TO DEPLOY**. *AK"[21]

b. NHTSA complaint #859858 dated Friday, April 7, 2000, reported an accident on Saturday, April 3, 1999 involving a 1999 CHEVROLET SILVERADO. The complaint states: "WHILE TRAVELING ON A WET ROAD AT HIGHWAY SPEED OF 60 MPH VEHICLE HYDROPLANED, SPUN INTO A DITCH, AND COLLIDED INTO A TREE WITH BOTH SIDES AND FRONT OF VEHICLE. UPON IMPACT, **AIR BAGS FAILED TO DEPLOY**. MFR. NOTIFIED. *AK"

c. NHTSA complaint #877320 dated Wednesday, January 3, 2001, reported an accident on Friday, December 1, 2000 involving a 1999 CHEVROLET SUBURBAN in Amarillo, TX. The complaint states: "CONSUMER WAS TRAVELING ABOUT 40MPH ON HIGHWAY AND ANOTHER VEHICLE VEERED INTO HER LANE, HITTING HER HEAD-ON, AND PUSHING VEHICLE INTO ANOTHER LANE. VEHICLE HIT TELEPHONE POLE, AND **DUAL AIRBAGS DIDN'T DEPLOY**. CONSUMER WAS

[21] All emphasis added.

INJURED. CHEVROLET HAS BEEN NOTIFIED. *AK"

d. NHTSA complaint #10060150 dated Tuesday, March 2, 2004, reported an accident on Tuesday, February 24, 2004 involving a 2001 CHEVROLET BLAZER in Austin, TX. The complaint states: "**DRIVER SIDE AIR BAG FAILED TO DEPLOY** IN A CRASH THROUGH: 1. A SIX FOOT TALL WOODEN FENCE AT ALMOST 30MPH, THEN 2. THE EXTERIOR SIDE OF A 2-STORY HOME THAT CONTAINED THE KITCHEN SINK AND PLUMBING FIXTURES, WHILE SMASHING UP AND OVER THE FIFTEEN- INCH CONCRETE FOUNDATION, FRONT-END FIRST.*AK"

e. NHTSA complaint #10082050 dated Thursday, July 15, 2004, reported an accident on Wednesday, July 14, 2004 involving a 2003 CHEVROLET SUBURBAN in Fresno, CA. The complaint states: "THE CONSUMER WAS INVOLVED IN AN ACCIDENT WHERE IT WAS HIT FROM THE FRONT DRIVER SIDE, THE IMPACT CAUSED THE VEHICLE TO HIT A TELEPHONE POLE HEAD ON. **THE AIR BAGS DID NOT DEPLOY**. *JB"

f. NHTSA complaint #10103512 dated Friday, December 10, 2004, reported an accident on Sunday, December 5, 2004 involving a 2001 CHEVROLET SILVERADO in Rialto, CA. The complaint states: "CONSUMER'S VEHICLE WAS REAR ENDED WHILE DRIVING 50 MPH. THE VEHICLE WAS FORCE[D] INTO A SPIN AND THEN, IT HIT A CONCRETE ROAD

DIVIDER. UPON IMPACT, **NEITHER FRONTAL AIR BAGS DEPLOYED**. DRIVER SUSTAINED INJURIES, AND HAD TO BE TRANSPORTED TO A LOCAL HOSPITAL. DEALER AND MANUFACTURER WERE NOTIFIED. THE CONSUMER STATED THAT **THE SEAT BELT DID NOT KEEP HER FROM** HITTING HER CHEST ON THE STEERING WHEEL."

g. NHTSA complaint #10108404 dated Tuesday, February 1, 2005, reported an accident on Tuesday, January 11, 2005 involving a 2000 CHEVROLET SILVERADO in Toney, AL. The complaint states: "A CAR PULLED OUT IN FRONT OF ME WHICH STILL HIT THE DRIVER'S SIDE OF MY VEHICLE (2000 CHEVY SILVERADO). THEN MY TRUCK HAD A FULL FRONTAL IMPACT AT GREATER THAN 30 MPH INTO A DIRT WALL IN WHICH **NEITHER THE DRIVER'S NOR PASSENGER'S AIRBAGS DEPLOYED** (THE TRUCK IS TOTALLED). **I HIT THE STEERING WHEEL** AND GOT A CONCUSSION WITH BLOOD AROUND THE BRAIN, A BROKE CHEEK BONE, AND FRACTURED HIP. MY WIFE WAS 33 WEEKS PREGNANT AT THE TIME AND HER WATER BROKE AND SHE GOT A COMPOUND FRACTURE IN THE LOWER LEG/ANKLE. AS A RESULT OF THE WATER BREAKING MY SON WAS BORN 3 DAYS LATER 7 WEEKS PREMATURE. AS FOR WHAT WAS DONE TO CORRECT THE PROBLEM I'M HOPING IT WILL AT LEAST BE INVESTIGATED TO MAKE SURE THIS

IS NOT A SYSTEMIC PROBLEM (I.E. SOFTWARE SCREWUP SOMETHING NOT HOOKED UP RIGHT IN THE AIRBAG SYSTEM ETC)."

h. NHTSA complaint #10115806 dated Thursday, March 24, 2005, reported an accident on Thursday, March 24, 2005 involving a 2002 CHEVROLET SILVERADO in Claremore, OK. The complaint states: "A PIECE OF FURNITURE WAS LOCATED IN THE MIDDLE OF THE HIGHWAY WHILE DRIVING, CAUSING THE DRIVER TO HIT THE FURNITURE. DRIVER LOST CONTROL OF A VEHICLE, AND IT CRASHED INTO A CONCRETE WALL. **DRIVER'S SIDE SEAT BELT FAILED, AND THE AIRBAGS DID NOT DEPLOY**."

i. NHTSA complaint #10158090 dated Tuesday, May 23, 2006, reported an accident on Sunday, February 26, 2006 involving a 2004 CHEVROLET TRAILBLAZER in Fayetteville, NC. The complaint states: "DT*: THE CONTACT STATED WHILE DRIVING 50 MPH THE VEHICLE WAS INVOLVED IN A HEAD ON COLLISION WITH ANOTHER VEHICLE. THE VEHICLE CONTINUED MOVING AND STOPPED BY COLLIDING WITH A STORE SIGN. **THE AIR BAGS DID NOT DEPLOY AND SEAT BELTS WERE WORN** . . . THE INSURANCE COMPANY DETERMINED THE VEHICLE WAS TOTALED DUE TO THE ACCIDENT. THE DEALER DOES NOT HAVE THE MEANS TO TEST FOR AIR BAG NON-DEPLOYMENT. UPDATED

1/24/2007 - *NM"

j. NHTSA complaint #10161658 dated Thursday, July 6, 2006, reported an accident on Saturday, June 3, 2006 involving a 1999 CHEVROLET BLAZER in Ludlow, MA. The complaint states in part: "CHEVY DRIVER HIT A CAR IN HER LANE FIRST, THEN RICOCHETED HEAD ON INTO A TREE. **NEITHER TIME DID AIRBAGS DEPLOY**. *TT"

k. NHTSA complaint #10163811 dated Friday, July 28, 2006, reported an accident on Thursday, July 20, 2006 involving a 2000 ISUZU RODEO in Nederland, TX. The complaint states: "A GIRL RAN A RED LIGHT AND I HIT HER IN THE PASSENGER SIDE OF HER CAR HEAD ON WITH MY 2000 ISUZU RODEO. IT WAS A FULL FRONTAL COLLISION FOR ME AND MY CHILDREN. LUCKILY, WE ARE ALWAYS BUCKLED UP BECAUSE **NONE OF MY AIRBAGS DEPLOYED AT ALL**. THE OTHER CAR WAS GOING ABOUT 60 MPH AND HER AIRBAG DEPLOYED WHEN I HIT HER BUT MINE DID NOT. LUCKILY, MY CHILDREN WERE NOT HURT BADLY BUT UNFORTUNATELY, I SUSTAINED NECK, BACK AND KNEE INJURIES. I WAS AND STILL AM VERY UPSET THAT **MY AIRBAGS FAILED. EVEN** THE OWNER OF THE BODY SHOP I USE WAS IN SHOCK THAT THEY **DID NOT DEPLOY AS THE IMPACT WAS ENOUGH TO SPLIT THE FRAME OF MY RODEO AND TOTAL IT OUT** . . . THANK YOU FOR YOUR TIME, I

HOPE I CAN HELP ANOTHER FAMILY FROM GETTING INJURED."

l. NHTSA complaint #10217793 dated Tuesday, February 12, 2008, reported an accident on Thursday, February 7, 2008 involving a 2006 CHEVROLET TRAILBLAZER in Lakewood, OH. The complaint states: "A 2006 CHEVY TRAILBLAZER TRAVELING OVER THE SPEED LIMIT ON MY STREET CRASHED INTO A TREE, A PARKED CAR, AND THEN CONTINUED TO ROLL OVER ACROSS MY FRONT LAWN, LANDING SIDEWAYS AFTER FLIPPING SEVERAL TIMES. THE OCCUPANTS WERE SEVERELY INJURED. **NO AIRBAGS DEPLOYED DURING THE CRASH**. THE DRIVER OF THE VEHICLE IS IN ICU NEEDING FACIAL RECONSTRUCTIVE SURGERY. *TR"

m. NHTSA complaint #10221319 dated Saturday, March 15, 2008, reported an accident on Thursday, February 21, 2008 involving a 2005 CHEVROLET TRAILBLAZER in Clay, NY. The complaint states: "I WAS DRIVING ON A 2 LANE ROAD GOING 45MPH. A CAR WAS FOLLOWING CLOSE BEHIND ME SO I WENT TO GET INTO RIGHT LANE AND MY TRUCK DID 5 360 AND HIT 3 TREES HEAD ON AND **AIR BAG NEVER DEPLOYED**. *TR"

n. NHTSA complaint #10263896 dated Wednesday, April 1, 2009, reported an accident on Thursday, March 26, 2009 involving a 2002

CHEVROLET TRAILBLAZER in Elizabeth, NJ. The complaint states: "I WAS IN A CAR ACCIDENT, WHERE I WAS TRAVELING AT ABOUT 35 MPH. AN AGGRESSIVE DRIVER SPEED AROUND ME AND CUT ME OFF AND THAN STOMPED ON THIS BRAKES IN FRONT OF ME. DUE TO THAT I SWERVED TO MISS HIM CLIPPING HIS RIGHT BACK LIGHT AD BUMPER WITH MY LEFT HEADLIGHT AND BUMPER. AS I WAS SWERVING I HIT A TREE JUST ABOUT DEAD ON WITH MY CAR . . . I HIT THE TREE AT A SPEED OF ABOUT 28-30 MPH. AFTER INITIAL IMPACT I WAS RUSHED TO THE HOSPITAL DUE TO UNCONSCIOUS AND FACIAL CONTUSIONS. DURING THE FIRST MOMENTS AFTER THE ACCIDENT, ONE OF THE FIRST THINGS OFFICERS, EMTS AND WITNESSES SAID WAS "**I CAN'T BELIEVE THE AIRBAGS DIDN'T GO OFF.**" IN THE RECENT DAYS AFTER THE ACCIDENT I HAVE HAD SEVERAL MECHANICS AND SUCH APPRAISE THE CAR, THE ONE COMMON THEME THEY ALL SHARE IS THAT THEY SUSPECT THERE MIGHT NOT BE AN AIRBAG WHERE IT BELONGS. OR THE LACK THERE OF. *TR"

o. NHTSA complaint #10463248 dated Wednesday, June 27, 2012, reported an accident on Friday, July 15, 2011 involving a 2005 General MotorsC in Richmond, VA. The complaint states: "THE CONTACT STATED WHILE DRIVING 55 MPH, HE CRASHED INTO A TREE. **THE AIR BAGS**

FAILED TO DEPLOY . . . A POLICE REPORT WAS FILED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE; HOWEVER, THEY PROVIDED NO ASSISTANCE . . . THE CONSUMER'S VEHICLE WAS DAMAGED WHEN HE TRIED TO AVOID HITTING THE VEHICLE BY SWERVING SIDEWAYS AND SLIDING INTO THE GRASS. HE TRIED STOPPING THE VEHICLE WHILE IT WAS STILL ON THE PAVEMENT BUT HE INEVITABLY RAN INTO THE DITCH AND FLEW AIRBORNE INTO A TREE, AND THE TRUCK OVERTURNED."

p. NHTSA complaint #10524151 dated Wednesday, July 10, 2013, reported an accident on Thursday, May 30, 2013 involving a 2006 CHEVROLET TRAILBLAZER in Mansfield, OH. The complaint states: "THIS COMPLAINT IS BEING FILED ON BEHALF OF THE VEHICLE OWNER AND DRIVER. THIS CHEVY TRAILBLAZER WAS INVOLVED IN A TWO VEHICLE, DOUBLE FATAL CRASH. THE FRONT OF THE TRAILBLAZER STRUCK THE DRIVER'S SIDE DOOR OF A CAVALIER THAT FAILED TO YIELD FROM A STOP SIGN. THE TRAILBLAZER STAYED CONNECTED WITH THE CAVALIER, FORCING IT OFF THE LEFT SIDE OF THE ROADWAY AND INTO A LARGE TREE. BOTH OCCUPANTS IN THE CAVALIER WERE FATALLY INJURED. THE FRONT **AIRBAGS DID NOT DEPLOY ON THE TRAILBLAZER** AND NO EVENT WAS RECORDED ON

THE AIRBAG CONTROL MODULE. *TR"

q. NHTSA complaint #10537593 dated Tuesday, August 27, 2013, reported an accident on Tuesday, August 13, 2013 involving a 2003 CHEVROLET BLAZER in Harrison Township, MI. The complaint states: "I WAS TRAVELING SOUTHBOUND WHEN I EXPERIENCED A SEIZURE AND LOST CONTROL OF MY VEHICLE. I PROCEEDED TO VEER TO THE LEFT WHERE I CLIPPED SEVERAL CARS THAT WERE HEADED NORTHBOUND . . . I THEN PROCEEDED OVER A TREE LAWN AND INTO A PARKING LOT. I HIT A DODGE RAM PICKUP WITH THE RIGHT FRONT CORNER OF MY VEHICLE AND PUSHED THAT VEHICLE INTO ANOTHER PARKED CAR THAT WAS NEXT TO IT. BOTH VEHICLES ENDED UP SIDEWAYS AND MY VEHICLE ENDED UP SPUN AROUND 180 DEGREES . . . THE JAWS OF LIFE WERE USED TO EXTRACT ME FROM MY VEHICLE. I WAS TAKEN TO A LOCAL HOSPITAL WHERE IT WAS DETERMINED THAT I SUFFERED BURST FRACTURES OF L1, L2, AND L3. I ALSO SUFFERED AN EVULSION FRACTURE OF MY LEFT ANKLE. THE POLICE REPORT STATES THAT I WAS TRAVELLING AT A HIGH RATE OF SPEED AND THAT THE VEHICLES WHICH WERE NORTHBOUND WERE JUST CLIPPED. **THE AIRBAGS ARE BOTH STILL WITHIN THEIR CASES AS NEITHER DEPLOYED . . . THE INSURANCE INVESTIGATOR EVEN EXPRESSED**

TO MY WIFE THAT HE WAS SURPRISED THAT THE AIR BAG DID NOT DEPLOY."

r. NHTSA complaint #10550276 dated Wednesday, October 30, 2013, reported an accident on Monday, October 28, 2013 involving a 2006 CHEVROLET TRAILBLAZER in Neihart, MT. The complaint states: "TL* THE CONTACT OWNS A 2006 CHEVROLET TRAILBLAZER. THE CONTACT STATED THAT WHILE DRIVING APPROXIMATELY 35 MPH, SHE LOST CONTROL OF THE VEHICLE WHILE DRIVING IN SNOWY WEATHER. THE VEHICLE NOSE DIVED INTO AN EMBANKMENT AND THEN CRASHED INTO A BOULDER. **THE AIR BAGS FAILED TO DEPLOY**. THE CONTACT WAS TRANSPORTED TO THE HOSPITAL VIA AMBULANCE FOR TREATMENT OF A CONCUSSION AND BRUISING. THE FRONT PASSENGER WAS ALSO INJURED AND SUSTAINED BRUISING. THE VEHICLE WAS DESTROYED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE."

s. NHTSA complaint #10574295 dated Sunday, March 23, 2014, reported an accident on Friday, February 21, 2014 involving a 2010 General MotorsC TERRAIN in Saint Joe, IN. The complaint states: "INVOLVED IN A 21 CAR PILE UP IN THE UPPER PENINSULA DURING A COMPLETE WHITE OUT. WE WERE ONLY TRAVELING APPROXIMATELY 25 MILES PER

HOUR BUT, WE DID HAVE SERIOUS IMPACT IN THE FRONT, AFTER HITTING A TRAILER AND ALSO SERIOUS IMPACT FROM BEHIND WHEN HIT BY A TRUCK AND TRAILER. **NO AIRBAGS DEPLOYED**. THE TRUCK TRAVELING AHEAD OF US, THAT WE HIT, THE AIRBAGS DID DEPLOY. **MY FATHER AND BROTHER, WHO WERE ALSO BOTH DRIVING CHEVY TRUCKS, AND ALSO HAD SERIOUS FRONT END DAMAGE DURING THE SAME ACCIDENT, THEIR AIRBAGS DID NOT DEPLOY EITHER**. *TR"

t. NHTSA complaint #10576031 dated Monday, March 31, 2014, reported an accident on Sunday, March 23, 2014 involving a 2012 CADILLAC SRX in Kaplan, LA. The complaint states: "I FELL ASLEEP WHILE DRIVING, JUMPED A LEVEE, RAN THROUGH A FENCE, AND WRECKED IN A GRASSY WATERY AREA. MY ENGINE WAS SMASHED, THE MOTOR MOUNT BROKE, AND MY TIRES ARE PUSHED BACK. **MY AIR BAGS DID** NOT DEPLOY. MY FACE HIT THE STEERING WHEEL AND MY NOSE IS BROKEN. I WOULD LIKE TO FIND OUT IF THERE IS ANY RECALLS ON THIS CAR. *TR"

u. NHTSA complaint #10583703 dated Saturday, April 19, 2014, reported an accident on Thursday, March 13, 2014 involving a 2012 General MotorsC TERRAIN in Moneta, VA. The complaint states: "I INADVERTENTLY

VEERED OFF SIDE ROADWAY, (VA HIGHWAY 220) COLLIDING WITH A TREE/ROADSIDE SHRUBS, ETC (**WAS KNOCKED UNCONSCIOUS AS** FOREHEAD HIT STEERING WHEEL ON INITIAL IMPACT). AIRBAGS **DID NOT DEPLOY** ALLOWING ME TO SUSTAIN A HEAD INJURY THAT KNOCKED ME UNCONSCIOUS... FOREHEAD WAS GASHED WITH SIGNIFICANT BLEEDING. I WAS TRANSPORTED BY AMBULANCE IN UNCONSCIOUS STATE. DAMAGE TO VEHICLE IS IN EXCESS OF $8,000 SO FAR AS VEHICLE STILL IN REPAIR SHOP WITH MASSIVE FRONT END DAMAGE THAT AFFECTS STEERING LINKAGE, ETC. THE IMPACT OF VEHICLE AGAINST FOLIAGE, TREES SHRUBS, SHOULD HAVE FORCED AIR BAGS TO DEPLOY AND I BELIEVE THAT I WOULD NOT HAVE SUSTAINED A HEAD INJURY THAT RENDERED ME UNCONSCIOUS WITH MILD CONCUSSION AND COULD NOT CONTROL VEHICLE LEAVING ROADWAY. *TR"

v. NHTSA complaint #10592423 dated Monday, May 19, 2014, reported an accident on Thursday, May 8, 2014 involving a 2003 CHEVROLET SILVERADO in Burtonsville, MD. The complaint states: "TRUCK COLIDED WITH GUARD RAIL. BOUNCED OFF, HIT VEHICLE 1, THEN INTO VEHICLE 2 THEN STOPPED AFTER HITTING VEHICLE 3 A SEMI TRUCK. ALL DAMAGE WAS DONE TO FRONT OF THE CHEVY SILVERADO. **AT**

NO TIME DID THE AIRBAGS DEPLOY."

w. NHTSA complaint #10622016 dated Wednesday, August 13, 2014, reported an accident on Saturday, August 9, 2014 involving a 2012 CHEVROLET TAHOE in The Colony, TX. The complaint states: "WHILE TURNING LEFT (TAHOE) WITH A PROTECTED GREEN ARROW AT AN X-SHAPED INTERSECTION, VEHICLE (KIA SEDAN) AT FAULT FAILED TO YIELD AND ENTERED THE INTERSECTION AT SPEEDS UPWARDS OF 40 MPH FROM THE LEFT OF THE TAHOE. FRONT-IMPACT COLLISION OCCURRED . . . TAHOE STRUCK PASSENGER SIDE OF KIA SEDAN. TRAJECTORY OF IMPACT CAUSED DIRECTIONAL CHANGES IN UPWARDS OF 90* FOR BOTH VEHICLES; THE FORCE OF THE PRIMARY ACCIDENT DESCRIBED ABOVE ALSO CAUSED MENTIONED VEHICLES TO COLLIDE WITH LEFT REAR OF ANOTHER VEHICLE (HONDA SEDAN) .. . DUE TO THE FORCE OF IMPACT, FRONT & SIDE AIRBAGS DEPLOYED ON BOTH THE KIA SEDAN AND THE HONDA SEDAN, BUT FAILED TO DEPLOY ON THE TAHOE . . . FORCE WAS SUCH THAT AFTER THE COLLISION, TAHOE TRANSMISSION WAS IN DRIVE, BUT REMAINED AT A COMPLETE STOP. DAMAGE SUSTAINED ON THE TAHOE INCLUDE FRONT-END BODY DAMAGE, ENGINE DAMAGE (VEHICLE REQUIRED TOWING AND WAS INOPERABLE), AND FRAME DAMAGE, AT A

MINIMUM . . . MULTIPLE FIRST-RESPONDERS COMMENTED ON THE ODDITY THAT, GIVEN THE DAMAGE SUSTAINED BY THE TAHOE AND THE VELOCITY AT IMPACT, THE AIRBAGS DEPLOYED ON ALL VEHICLES BUT THE TAHOE. *TR"

x. NHTSA complaint #10641399 dated Saturday, October 4, 2014, reported an accident on Tuesday, June 7, 2011 involving a 2002 CHEVROLET TAHOE in Cheney, WA. The complaint states: "THE CONTACT STATED THAT WHILE THE DRIVER WAS DRIVING AT 45 MPH AND ATTEMPTED TO AVOID A CRASH WITH ANOTHER VEHICLE. AS A RESULT, THE DRIVER CRASHED INTO A GUARDRAIL **AND THE AIR BAGS FAILED TO DEPLOY**. A POLICE REPORT WAS FILED. THE CONTACT WAS TAKEN TO A HOSPITAL AND SUSTAINED INJURIES TO THE RIBS, THE COLLAR BONES, A BRAIN TRAUMA AND A COLLAPSED LUNG. THE DRIVER SUFFERED FROM FATAL INJURIES."

y. NHTSA complaint #10767586 dated Tuesday, September 22, 2015, reported an accident on Saturday, August 1, 2015 involving a 2004 CHEVROLET TRAILBLAZER in Tallahassee, FL. The complaint states: "MY MOTHER WAS INVOLVED IN A 1 CAR ACCIDENT ON BAUM RD LOCATED IN TALLAHASSEE, FL. SHE WAS THE ONLY PASSENGER DETERMINED TO BE IN THE VEHICLE AT THE TIME OF THE ACCIDENT.

ACCORDING TO THE CRASH REPORT, D1 (DRIVER ONE) WAS TRAVELING WESTBOUND ON BAUM RD GOING THE NORMAL POSTED SPEED OF 55MPH, WHEN SHE VEERED TOWARDS THE CENTER OF THE RD AND SUDDENLY TURNED RIGHT VEERING OF THE RIGHT SHOULDER OF THE RD AND STRIKING SEVERAL TREES ON THE DRIVERS SIDE AND FRONT END . . . WHEN I WENT TO RETRIEVE MY MOTHERS THINGS FROM HER TRAILBLAZER, I NOTICED THAT **NO AIR BAGS HAD DEPLOYED**. AND AS FAST AS MY MOM WAS GOING AND THE TYPE OF IMPACT & DAMAGE HER SUV SUSTAINED, I WOULD THINK AND HOPE THE AIRBAGS WOULD DEPLOY IN THIS TYPE OF ACCIDENT, THUS PREVENTING SERIOUS INJURY OR DEATH. MY MOM WAS NOT SO LUCKY, AND MYSELF AND MY FAMILY HAVE ENDURED GREAT PAIN FROM LOOSING HER SO SUDDENLY."

z. NHTSA complaint #10907149 dated Friday, September 16, 2016, reported an accident on Thursday, September 1, 2016 involving a 2006 CADILLAC SRX in Happy Valley, OR. The complaint states: "THE VEHICLE HIT A CURB AND DROVE INTO A BUILDING. **THE AIR BAGS FAILED TO DEPLOY**. THE CONTACT SUSTAINED INJURIES THAT REQUIRED MEDICAL ATTENTION . . . THE MANUFACTURER WAS NOTIFIED OF THE FAILURE."

105. General Motors knew or had reason to know about these complaints, which are publicly available on NHTSA's website. Indeed, many complaints explicitly state that General Motors was directly informed of and/or investigated these suspicious accidents. For example:

a. A complaint about an August 2018 accident in a 2008 General MotorsC Acadia details that the airbags and seatbelt pre-tensioners did not deploy after the complainant's wife fell asleep at the wheel and struck a utility pole and then a large dirt embankment—which caused her to "hit the steering column so hard . . . it broke the column and broke her sternum," and caused the granddaughter in the passenger seat to break her back in two places. It continues that "GENERAL MOTORS . . .SENT A MAN TO DOWNLOAD THE COMPUTER INFORMATION THEY SENT ME A COPY OF THE INFO AND LATER CONTACTED ME SAYING THE INFO SHOWED EVERYTHING WAS WORKING PROPERLY." NHTSA

complaint #11066850.

b. After a July 2014 head on collision at 50 MPH where the airbags did not deploy in a 2007 Silverado, totaling the vehicle, another driver was "TOLD BY General Motors THAT CRASH DID NOT MEET CRITERIA FOR DEPLOYMENT." The driver expressed skepticism about this response, and in the complaint, stated "A HEAD ON COLLISION AT 50 MPH THAT TOTALED 2500

SERIES CHEVY TRUCK. HARD FOR ME TO BELIEVE . . . DO I NEED TO [BE] CONCERNED?" NHTSA complaint #10608220.

c. Another driver reported on a May 2014 accident in a 2012 General MotorsC Terrain in Moneta, VA. The driver struck "something" head on after veering off the highway and proceeded through trees and brush. They were knocked unconscious after hitting their head on the steering wheel upon the first impact, as the airbags had failed to deploy. They were transported to a hospital by ambulance and spent two days in inpatient care. The driver later "CONTACTED General MotorsC CORPORATE . . . TO ADVISE MY CONCERNS FOR SAFETY . . . RECEIVED A FOLLOW UP TELEPHONE CALL FROM General MotorsC REPRESENTATIVE . . . HE EXPRESSED NO INTEREST IN MY COMPLAINT . . . REFUSED TO COMMENT ON MY STATEMENT THAT AIR BAG FAILED TO DEPLOY RESULTING IN EXTENSIVE DAMAGE TO FRONT OF VEHICLE AND SUSTAINING A HEAD INJURY AS NO BAG DEPLOYED . . . I WAS ADVISED THAT General MotorsC HAD NO FURTHER INTEREST IN THIS MATTER AND WOULD NOT EVALUATE MY SAFETY CONCERNS." NHTSA complaint #10588334.

d. After a July 2012 accident involving a 2012 General MotorsC Terrain in San Clemente, CA in which the Terrain was hit multiple times in an intersection in the driver's front end, but no airbags deployed, resulting in whiplash

and contusions to the driver, a General Motors representative responded to a complaint lodged by the driver's parents and stated that there was "NO NEED FOR DEPLOYMENT" because it was a "LOW THRESHOLD EVENT." NHTSA complaint #10466384.

e. After hitting a patch of black ice at 58 MPH in a Chevrolet Silverado in January 2008, another complainant described that they lost control of the vehicle, ran off the road, crashed into a telephone pole and ultimately into a frozen embankment. The airbags did not deploy, causing the driver to hit the steering wheel. As the complainant relates, they "FILED A COMPLAINT WITH THE MANUFACTURER, BUT THE COMPLAINT WAS DENIED. THE MANUFACTURER WAS UNABLE TO DIAGNOSE THE VEHICLE; HOWEVER, AFTER INSPECTION OF THE VEHICLE, THE MANUFACTURER CONFIRMED THAT THE AIR BAGS WERE ENABLED AT THE TIME OF IMPACT. THEY DID NOT GIVE AN EXPLANATION FOR THE DEPLOYMENT FAILURE." NHTSA complaint #10238395.

f. In a report about a March 2006 accident involving a 2005 Cadillac Escalade in Louisville, KY, the complainant describes that after none of the airbags deployed in a front end collision in their 4-week old vehicle, they "CALLED CADILLAC CUSTOMER SERVICE AND WAS GIVEN AN AIRBAG HISTORY LESSON VIA TELEPHONE FROM SOMEONE THAT HAD NEVER SEEN MY

VEHICLE OR INSPECTED IT FOR DAMAGE AFTER THE ACCIDENT. AT THE END OF OUR CONVERSATION I WAS TOLD ALL WAS OK, NONE OF MY AIRBAGS SHOULD HAVE DEPLOYED AND NOT TO WORRY ABOUT IT. THE ENTIRE FRONT END OF MY VEHICLE WAS KNOCKED OFF, THE FRAME HAS MULTIPLE CRACKS AND IS BENT AS A RESULT OF THE COLLISION AND THE COLLISION CENTER IS 90% CERTAIN THE VEHICLE IS NOT REPAIRABLE. *JB" NHTSA complaint #10152376.

g. After an August 2004 accident involving a 1999 Chevrolet Astro in Norfolk, Virginia in which the vehicle jumped a curb, struck and fire hydrant, and then struck a tree without the airbags deploying, the driver was taken by ambulance to the hospital for head and neck injuries. After the accident, the "CONSUMER CONTACTED THE MANUFACTURER AND A REPRESENTATIVE CAME DOWN TO MEET WITH THE DEALER AND CONSUMER. THE REPRESENTATIVE INFORMED CONSUMER THAT THE VEHICLE WAS FUNCTIONING AS DESIGNED." NHTSA complaint # 10087718.

h. Another driver contacted General Motors after the airbags did not deploy in a February 2004 front end collision at 25-30 MPH in their 2000 Isuzu Rodeo in Westwood, NJ. "THE CONSUMER CONTACTED THE MANUFACTURER ABOUT THE AIR BAGS BUT THE REPRESENTATIVE

DID NOT SEEM TO BE TOO CONCERNED ABOUT THE SITUATION." NHTSA complaint #10087550.

i. Another driver described a head on collision at 39 MPH in their 2002 Chevrolet Tahoe in which the airbags did not deploy and the seatbelts did not tighten. The driver hit their head on the steering wheel, knocking them unconscious. A readout from the vehicle's computer showed the seatbelts were in working order, and General Motors responded by sending a representative to inspect the vehicle in person. The complainant was awaiting a response from General Motors at the time of the report. NHTSA complaint #10353935.

106. More than ***eight hundred*** similar complaints based on the Defect—i.e., frontal crashes in the Class Vehicles with airbag and seatbelt failures following multiple impacts, or, potentially long-soft frontal impacts—are attached as Exhibit A.[22]

107. In addition to these consumer complaints, a separate, public dataset from NHTSA, the Fatality Analysis Reporting System ("FARS") provides a nationwide census of crashes that resulted in fatal injuries. While the complaints outlined above are reported to NHTSA by consumers and can include any type of complaint or incident, FARS data is reported by state agencies responsible for

[22] The accidents in the preceding paragraph and Exhibit A include data for Class Vehicles in model years 1999-2014.

monitoring all qualifying fatal crashes in their states. To be included in FARS data, a crash must involve a motor vehicle traveling on a public road and cause the death of a person in one or more of the vehicles involved in the crash within 30 days of the crash. The dataset collects information on over 100 data elements that characterize the crash, the vehicles, and the people involved—including whether the airbags deployed.

108. NHTSA's FARS dataset also reveals a recurring pattern of suspicious nondeployments during frontal crashes (i.e., the crash dynamics that can implicate the SDM System Defect) and reinforces the extremely high stakes of such incidents. From 1999 to present, FARS data reflects at least ***1,946*** frontal crashes based on the Defect, where the airbags did not deploy in a Class Vehicle—1,167 of which occurred in 2009 or later, after New General Motors was formed. This same data reflects that at least 1,298 individual occupants (drivers or passengers) in a Class Vehicle were injured or killed in these crashes.

D. Despite its knowledge, General Motors and Delphi misrepresented and concealed important information about the SDM System Defect and Class Vehicle safety.

109. For Plaintiffs and many consumers, safety is one of the most important factors when buying or leasing a vehicle, and especially for trucks and family-oriented SUVs composing the Class Vehicles. General Motors capitalized on this fact in advertising and other consumer-facing representations about the Class

Vehicles and touted the safety of the Class Vehicles in national marketing campaigns.

110. In advertisements and promotional materials, General Motors maintained that the Class Vehicles were safe and reliable, and it did not correct representations about the Class Vehicles' safety and reliability made by Old GM in the past. Instead, General Motors has repeatedly touted the Class Vehicles' passenger safety systems and assured consumers they could be relied on to activate the airbags and seatbelts during a crash. These representations are false and misleading because of what they fail to say; General Motors uniformly failed to disclose that the Class Vehicles contain the SDM System Defect, which could—at the worst possible moment—prevent the airbags and seatbelts from activating.

111. Plaintiffs, directly or indirectly, were exposed to these advertisements and promotional materials before purchasing or leasing their Class Vehicles. If General Motors had instead chosen to disclose the truth about the SDM System Defect—including at dealerships, on its website, in brochures, press releases or in other promotional materials—Plaintiffs and Class members would have seen those disclosures and been capable of making an informed purchasing decision. The misleading statements about Class Vehicles' safety in General Motors' advertisements and promotional materials, as well as General Motors' omission of the truth about the SDM System Defect, influenced Plaintiffs and Class members'

decisions to purchase or lease Class Vehicles.

1. Labels and window stickers on the Class Vehicles stated that they were equipped with working airbags and seatbelts and failed to disclose the SDM System Defect.

109. To distribute its vehicles in the United States, General Motors had to "certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed" by NHTSA under Chapter 301 of Title 49 of the U.S. Code. Accordingly, General Motors "may not issue the certificate if, in exercising reasonable care," they have "reason to know the certificate is false or misleading in a material respect." 49 U.S.C. § 30115; *see also* 49 U.S.C. § 30112.

110. Further, since "[c]ertification of a vehicle must be shown by a label permanently fixed to the vehicle," all Class Vehicles have a permanent label certifying compliance with the safety regulations prescribed by NHTSA. Since all the Class Vehicles are passenger vehicles, the permanent label must state: "This vehicle conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture shown above." 49 C.F.R. § 567.4(g)(5).

111. These labels were false and misleading because they failed to warn consumers about the Defect and the risk that the SDM would fail during a frontal crash, and instead indicated that the passenger safety system would function

properly. *See* 49 C.F.R. § 571.208 (S4.1.5.4, S4.1.5.5) (Federal motor vehicle safety standards requiring Occupant Restraint Systems with airbags and seatbelts).

112. Vehicle manufacturers have a duty to disclose known safety defects to the public and to NHTSA. When a vehicle manufacturer learns of a safety defect, federal law requires it to disclose the defect to NHTSA and to the owners, purchasers, and dealers of the vehicle. 49 U.S.C. § 30118(c). Indeed, General Motors Parent acknowledges these obligations in its public SEC filings. In its Form 10-K for fiscal year 2019, General Motors Parent states: "If we or NHTSA determine that either a vehicle or vehicle equipment does not comply with a safety standard or if a vehicle defect creates an unreasonable safety risk, the manufacturer [must] notify owners and provide a remedy."

113. The interiors of the Class Vehicles also contain prominent labels that alert the driver and passengers to the vehicle's airbag system. For example, steering wheels and passenger dashboards typically have labels identifying the airbag and safety restraint system (or "SRS").

114. General Motors was also specifically required to include in their vehicles warning labels that alerted consumers of the need to perform airbag maintenance. For example, S4.5.1 of 49 C.F.R. § 571.208 states:

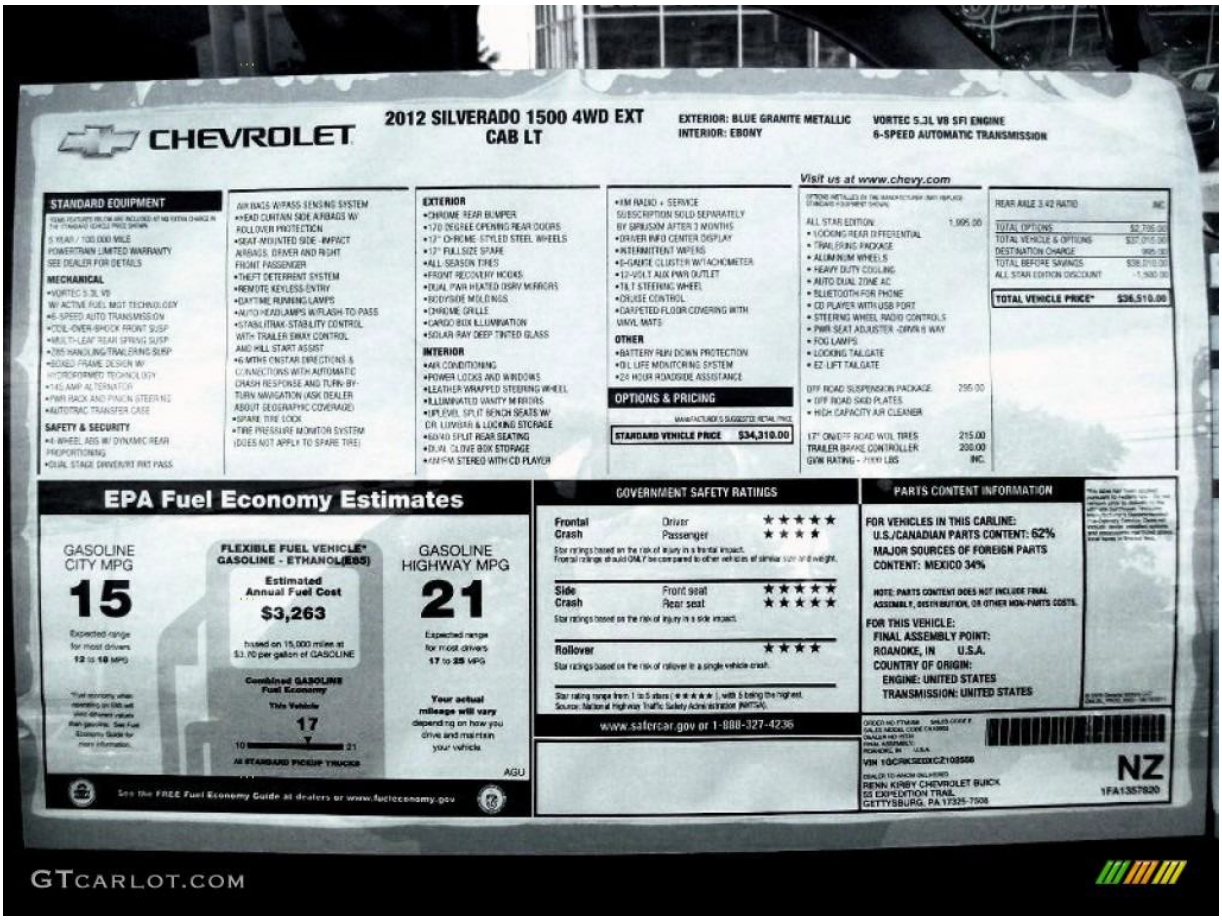
> Air bag maintenance or replacement information. If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this

> standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR Part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capital and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor.

115. Plaintiffs are unaware of any label in any Class Vehicle that alerted consumers to the SDM System Defect or the need to perform maintenance to protect the SDM from preventing airbag deployment or seatbelt tightening when they are needed.

116. General Motors also distributed the Class Vehicles with so-called "Monroney" labels (also known as "window stickers") that described the equipment and safety features of the vehicles, including airbags. Dealers sell Class Vehicles to consumers with these labels visible. An image of a Monroney label for the 2012 Silverado is included below as an example. In the center of the image, it features a "Five Star" frontal crash rating for drivers. Under "Safety & Security" features, it touts the "dual stage" airbags.[23]

[23] Monroney labels for many of the Class Vehicles are available at: https://monroneylabels.com.



117. As shown in these examples, Monroney labels uniformly assured consumers that the Class Vehicles had working airbags and seatbelts and failed to disclose the Defect. This information would have suggested to any reasonable consumer that the passenger safety system did not suffer from a defect and would perform its intended function of activating the seatbelts and airbags during a frontal collision.

118. Had General Motors disclosed the SDM System Defect on the Monroney labels or other labels or marketing for the Class Vehicles, Plaintiffs and Class members would have seen that disclosure and would have not purchased or

leased their Class Vehicles or would have paid less for their Class Vehicles.

2. General Motors published owners' manuals for the Class Vehicles that detailed their safety features but did not disclose the SDM System Defect.

120. General Motors (and Old GM before it) published owners' manuals for each of the Class Vehicles. These manuals were directed at consumers and included misleading statements regarding seatbelts, airbags, and passenger safety systems. These statements uniformly omitted any warning to consumers that the SDM could effectively shut off during a crash after just 45 milliseconds.

121. Examples of statements from owners' manuals with materially misleading omissions concerning the effectiveness of their airbags follow in the paragraphs below.

122. The manual for the 2002 Cadillac Escalade provides extensive detail about the vehicle's airbags, including the below details and images. In addition to explaining the types of airbags and where they are located, the manual specifically alerts consumers that the airbags "are designed to inflate in moderate to severe frontal or near-frontal crashes" where "the impact speed is above the system's designed 'threshold level.'" As to frontal airbags, it explains that they have been "designed to help reduce the risk of injury from the force of an inflating airbag."

Supplemental Restraint Systems (SRS)

This part explains the frontal and side impact Supplemental Restraint Systems (SRS) or air bag systems.

Your vehicle has four air bags -- a frontal air bag for the driver, another frontal air bag for the right front passenger, a side impact air bag for the driver, and another side impact air bag for the right front passenger.

Frontal air bags are designed to help reduce the risk of injury from the force of an inflating frontal air bag. But these air bags must inflate very quickly to do their job and comply with federal regulations.

When should an air bag inflate?

The driver's and right front passenger's frontal air bags are designed to inflate in moderate to severe frontal or near-frontal crashes. But they are designed to inflate only if the impact speed is above the system's designed "threshold level."

If your vehicle goes straight into a wall that doesn't move or deform, the threshold level is about 9 to 16 mph (14 to 26 km/h). The threshold level can vary, however, with specific vehicle design, so that it can be somewhat above or below this range.

If your vehicle strikes something that will move or deform, such as a parked car, the threshold level will be higher. The driver's and right front passenger's frontal air bags are not designed to inflate in rollovers, side impacts, or rear impacts, because inflation would not help the occupant.

How the Air Bag Systems Work

Where are the air bags?

The driver's frontal air bag is in the middle of the steering wheel.

The right front passenger's frontal air bag is in the instrument panel on the passenger's side.

The driver's side impact air bag is in the side of the driver's seatback closest to the door.

123. The manuals for the 2009 Chevy Traverse and 2010 Buick Enclave include similar details and images. Like the manual for the 2002 Cadillac Escalade,

they also assure consumers that the vehicle's airbags are "designed to help reduce the risk of injury from the force of an inflating bag" and, thus, that the aggressive deployment problems that plagued first-generation airbags had been alleviated. It also assures that the frontal airbags have been "designed to inflate in moderate to severe frontal crashes to help reduce the potential for severe injuries…." It continues that airbag "deployment thresholds are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants." While it gives precise detail on the way the passenger safety systems should function, the manual notably fails to say that the deployment thresholds are wholly and intentionally ignored just 45 milliseconds into a crash sequence, preventing the airbags and seatbelts from functioning when they need to.

Airbag System

The vehicle has the following airbags:

- A frontal airbag for the driver.
- A frontal airbag for the right fron passenger.
- A seat-mounted side impact airbag for the driver.
- A seat-mounted side impact airbag for the right front passenger.
- A roof-rail airbag for the driver, passenger seated directly behind the driver, and the third row outboard passenger position.
- A roof-rail airbag for the right front passenger, passenger seated directly behind the right front passenger, and the third row outboard passenger position.

All of the airbags in the vehicle will have the word AIRBAG embossed in the trim or on an attached label near the deployment opening.

For frontal airbags, the word AIRBAG will appear on the middle part of the steering wheel for the driver and on the instrument panel for the right front passenger.

With seat-mounted side impact airbags, the word AIRBAG will appear on the side of the seatback closest to the door.

With roof-rail airbags, the word AIRBAG will appear along the headliner or trim.

Airbags are designed to supplement the protection provided by safety belts. Even though today's airbags are also designed to help reduce the risk of injury from the force of an inflating bag, all airbags must inflate very quickly to do their job.

When Should an Airbag Inflate?

Frontal airbags are designed to inflate in moderate to severe frontal or near-frontal crashes to help reduce the potential for severe injuries mainly to the driver's or right front passenger's head and chest. However, they are only designed to inflate if the impact exceeds a predetermined deployment threshold. Deployment thresholds are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants.

Whether the frontal airbags will or should deploy is not based on how fast your vehicle is traveling. It depends largely on what you hit, the direction of the impact, and how quickly your vehicle slows down.

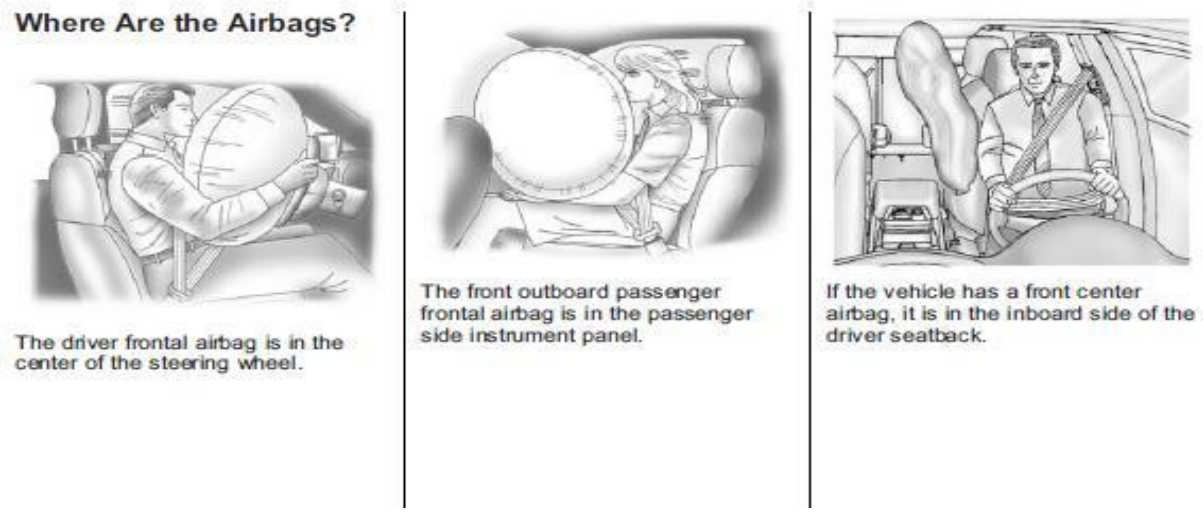
Where Are the Airbags?

The driver frontal airbag is in the middle of the steering wheel.

The right front passenger frontal airbag is in the instrument panel on the passenger side.

124. The manual for the 2014 General MotorsC Acadia provides additional detail about how the passenger safety system functions. It explains that "Airbags are designed to inflate if the impact exceeds the specific airbag system's deployment thresholds." Yet again, however, the manual does not indicate that the SDM and its sensors are rendered useless in multi-impact crashes that endure for

longer than a specific 45 millisecond time frame.



Where Are the Airbags?

The driver frontal airbag is in the center of the steering wheel.

The front outboard passenger frontal airbag is in the passenger side instrument panel.

If the vehicle has a front center airbag, it is in the inboard side of the driver seatback.

When Should an Airbag Inflate?

This vehicle is equipped with airbags. See *Airbag System on page 3-23*. Airbags are designed to inflate if the impact exceeds the specific airbag system's deployment threshold. Deployment thresholds are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants. The vehicle has electronic sensors that help the airbag system determine the severity of the impact. Deployment thresholds can vary with specific vehicle design.

Frontal airbags are designed to inflate in moderate to severe frontal or near frontal crashes to help reduce the potential for severe injuries, mainly to the driver's or front outboard passenger's head and chest.

Whether the frontal airbags will or should inflate is not based primarily on how fast the vehicle is traveling. It depends on what is hit, the direction of the impact, and how quickly the vehicle slows down.

Frontal airbags may inflate at different crash speeds depending on whether the vehicle hits an object straight on or at an angle, and whether the object is fixed or moving, rigid or deformable, narrow or wide.

Frontal airbags are not intended to inflate during vehicle rollovers, rear impacts, or many side impacts.

In addition, the vehicle has advanced technology frontal airbags. Advanced technology frontal airbags adjust the restraint according to crash severity.

The front center airbag, if equipped, is designed to inflate in moderate to severe side crashes depending upon the location of the impact, when either side of the vehicle is struck. In addition, the front center airbag is designed to inflate when the sensing system predicts that the vehicle is about to roll over on its side. The front center airbag is n designed to inflate in frontal impacts, near frontal impacts, or rear impacts.

Seat-mounted side impact airbag are designed to inflate in modera to severe side crashes dependin on the location of the impact. Seat-mounted side impact airbag are not designed to inflate in fro impacts, near frontal impacts, rollovers, or rear impacts. A seat-mounted side impact airb is designed to inflate on the side the vehicle that is struck.

Roof-rail airbags are designed to inflate in moderate to severe sid crashes depending on the locati of the impact. In addition, these roof-rail airbags are designed to inflate during a rollover or in a severe frontal impact. Roof-rail airbags are not designed to infla rear impacts. Both roof-rail airba will inflate when either side of th vehicle is struck, if the sensing

3. General Motors marketed the Class Vehicles as safe and reliable but failed to mention the SDM System Defect.

125. GM's advertisements for the Class Vehicles left out a vital part of the

story like its other consumer-facing representations. By uniformly omitting any information about the SDM System Defect, General Motors misled consumers into believing that their airbags would function properly in a crash, despite its knowledge to the contrary.

126. A 2013 press release about the 2014 Chevy Silverado 1500, General MotorsC Sierra, and Sierra Denali 1500 further illustrates General Motors' misleading statements about the Class Vehicles. Acknowledging that safety is "as important to truck buyers as it is to car buyers," Gay Kent, General Motors general director of Vehicle Safety and Crashworthiness, stated that the "Silverado and Sierra set a benchmark for pickup truck safety by offering a full array of advanced features designed to protect occupants before, during and after a collision." The press release noted the vehicle's "[s]ix standard air bags and 360-degree sensor system, including dual-stage frontal air bags, head-curtain side-impact air bags with rollover protect, and front outboard seat-mounted side-impact air bags."

127. Brochures and press releases for other Class Vehicles use similar language to send a misleading message of safety. Illustrative examples are described below.

a. Beginning with the 1999 Chevy Blazer, General Motors promised to go "to the ends of the earth to bring you driving security," assuring "peace of mind" with its "mainstay features such as Next Generation driver and

right-front-passenger airbags."

b. "Because safety and security are so important to your family," the brochure for the 2002 Chevy Astro reads, "Astro features a comprehensive system to help you feel secure while you're driving." Among other safety features, "[s]tandard driver and front-passenger air bags . . . [are] designed to give you peace of mind. Chevy Astro. It's the midsize van that's serious about safety and security."

c. The brochure for the 2006 General MotorsC Yukon promises, "should the worst happen, your Yukon will protect you and your passengers with front and rear crush zones, a sturdy steel safety cage, up to four air bags and a host of other important safety features."

d. The brochure for the 2008 Buick Enclave explains that "[s]afety and protection were top priorities in the design of the Enclave" and touts the vehicle's "360° perimeter safety system [that] will deploy the appropriate airbags."

e. Promising "[f]eelings of security and confidence," the brochure for the 2009 Chevy Equinox states the vehicle's "dual-stage frontal and head-curtain side-impact air bags" helped earn it "the highest possible government rating for frontal crash tests – five stars."

f. Declaring that "[s]afety never goes out of style," the brochure for the 2009 Chevy Traverse highlights the vehicle's "five-star frontal and side-

impact crash test ratings" and its "six air bags that help protect all three rows of seating."

g. A press release for the 2009 Cadillac Escalade ESV goes further, proclaiming that the "Escalade is designed to be among the industry's safest and most secure vehicles, with numerous safety systems and crash-avoidance technologies."

h. "Speaking of safety," the brochure for the 2010 Buick Enclave reads, "Enclave has earned an impressive five-star crash rating for both front and side impacts Five-star rating is for the driver and front passenger seating positions in the frontal crash test and for the front and rear seating positions in the side-impact crash test."

i. The brochure for the 2010 General MotorsC Terrain describes the vehicle as "the state of the art in air bags" and contends that "[s]egment-best safety is anticipated, with features that include six standard air bags: dual frontal airbags; head curtain side airbags and pelvic/thorax seat-mounted side airbags."

j. A press release for the 2011 Cadillac Escalade Hybrid explains, "[f]ront-image airbags for the driver and passenger have been designed to protect the head during a frontal crash."

k. According to the brochure for the 2011 Cadillac SRX, "[p]assenger safety is a primary consideration throughout the engineering process."

If an incident occurs, "the SRX looks out for you and yours," with its "six standard airbags, including advanced, frontal dual-stage and seat mounted side-impact airbags for the driver and front-seat passenger, as well as first- and second- row outboard head-curtain airbags."

l. Describing Buick's "holistic[]" approach to safety, the brochure for the 2012 Enclave proclaims, "Enclave's approach to safety helps you and your companions feel safe and secure before, during and after your travels." Inside the vehicle, "all rows have curtain side-impact air bags with rollover protection, along with driver and front-passenger side-impact and dual-sage airbags."

m. In a 2013 press release announcing that NHTSA gave "its highest possible 5-star Overall Score" to several Chevrolet vehicles, including the Traverse and the Silverado, Kent said, "We design safety and crashworthiness into our vehicles very early in development." He continued, "We are committed to offering advanced safety technologies on a broad range of models..... All of our vehicles are designed to provide continuous protection for customers before, during and after a crash."

n. A press release for the 2013 Buick Enclave likewise publicized Buick's safety record: "In 2012, every Buick model was named a Top Safety Pick by the Insurance Institute for Highway Safety, underscoring the brand's commitment

to safety leadership. The 2013 builds on that distinction with the industry's first front center side air bag – a standard feature."

o. "With head curtain side-impact air bags reaching from the front to the third row of seating for outboard passengers," the 2014 brochure for the General MotorsC Yukon XL reads, "Yukon is engineered to help protect passengers regardless of where they're seated."

p. Claiming to "set[] the standard . . . in everything from safety to performance," the brochure for the 2014 Cadillac Escalade touts the vehicle's "eight standard airbags," including "[d]ual-stage driver and front passenger, front-impact, Automatic Occupant Sensing System, driver and front passenger seat-mounted side-impact airbags for thorax and pelvic protection and head-curtain side-impact airbags with rollover protection for all outboard passenger rows."

q. The brochure for the 2014 Buick Enclave promises that the vehicle has "your back, front and sides, proclaiming that "in an industry first, the standard driver's seat side-mounted front center air bag adds another layer of protection by providing cushioning between you and your front passenger to help reduce injuries in side impacts." The brochure includes the below picture, indicating that the airbags will function as expected.

128. Based on information and belief, every single Class Vehicle advertisement omitted *any* mention of the Defect or that the vehicles' airbags and

seatbelts could fail in a serious frontal collision due to the SDM System Defect.

129. General Motors' deceptive actions harmed Plaintiffs and the Class. As a result of General Motors' unfair, deceptive, and/or fraudulent business practices and failure to disclose that the Class Vehicles contained a dangerous safety defect that would cause the passenger safety systems to shut off during certain types of accidents, owners and lessees of the Class Vehicles have overpaid for their Class Vehicles and lost money and/or property.

V. CLASS ACTION ALLEGATIONS

130. This case is about General Motors' and Delphi's legal responsibility for their knowledge, conduct, and products. The proposed Class members' claims all derive directly from a single course of conduct by Defendants. The objective facts are the same for all Class members. Within each Claim for Relief asserted by the respective proposed Classes, the same legal standards govern. Additionally, many states share the same legal standards and elements of proof, facilitating multistate or nationwide classes for some or all claims.

131. Accordingly, Plaintiffs bring this lawsuit as a class action on their own behalf, and on behalf of all other persons similarly situated, as members of the proposed Classes under Federal Rules of Civil Procedure 23(a), (b)(2), and/or (b)(3), and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

A. The Class Definition

132. The "Class Vehicles" include all vehicles in the United States, including but not limited to General Motors trucks and SUVs, that contain the SDM System Defect that were either: (1) manufactured, sold, distributed, or leased by General Motors; or (2) manufactured, sold, distributed, or leased by Old GM and purchased or leased by Plaintiff or a Class member after July 10, 2009, including but not limited to, General Motors trucks and SUVs.

133. On information and belief, the SDM System Defect exists in all General Motors trucks and SUVs starting with model year 1999. This would include, for example, trucks and SUVs such as the Silverado, Tahoe, Astro, and Trailblazer. Discovery will reveal when, if ever, General Motors stopped using the SDM System Defect in its trucks and SUVs.

134. The proposed Nationwide Class includes all persons and entities that purchased or leased a Class Vehicle in the United States. Plaintiffs also propose separate Classes: State Classes for New Jersey, Michigan and Texas, each of which includes all persons and entities that purchased or leased a Class Vehicle in that state for personal, family, and/or household use.

135. Excluded from the Classes are:

a. Defendants' officers, directors and employees and participants; Defendants' affiliates and affiliates' officers, directors, and employees; Defendants' distributors and distributors' officers, directors, and employees; and

b. Judicial officers and their immediate family members and associated court staff assigned to this case.

136. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, reduced, divided into additional subclasses under Rule 23(c)(5), or otherwise modified.

B. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

137. The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. There are millions of Class Vehicles and Class members nationwide. The precise number and identities of Nationwide Class and State Class members may be ascertained from Defendants' records and motor vehicle regulatory data. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

C. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

138. This action involves common questions of law and fact, which

predominate over any questions affecting individual Class members. These include, without limitation, the following:

a. Whether the Defect exists in the Class Vehicles;

b. Whether Defendants knew, or should have known, about the Defect, and, if so, how long they have known or should have known about it;

c. Whether Defendants had a duty to disclose the Defect in the Class Vehicles and the associated safety risks to consumers including Plaintiffs and Class members;

d. Whether Defendants' representations and certifications concerning vehicle safety were deceptive, false, and/or misleading given the Defect and the risk that the SDMs will not trigger airbags and seatbelts during certain types of collisions;

e. Whether Defendants' fraudulently concealed the Defect;

f. Whether Defendants misrepresented that the Class Vehicles were safe;

g. Whether Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices, in trade or commerce, by failing to disclose the Defect and/or that the Class Vehicles were designed, manufactured, and sold with defective airbag components;

h. Whether the Class Vehicles were unfit for the ordinary

purposes for which they were used, in violation of the implied warranty of merchantability;

i. Whether Defendants' unfair and deceptive acts, misrepresentations, and failure to disclose and/or concealment of the Defect caused Plaintiffs and Class members to overpay for their Class Vehicles; and

j. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

D. Typicality: Federal Rule of Civil Procedure 23(a)(3)

139. Plaintiffs' claims are typical of the Class members' claims whom they seek to represent under Fed. R. Civ. P. 23(a)(3), because Plaintiffs and each Class member purchased or leased a Class Vehicle and were comparably injured through Defendants' wrongful conduct as described above. Plaintiffs and the other Class members suffered damages as a direct proximate result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same practices and courses of conduct that give rise to the claims of the other Class members. Plaintiffs' claims are based on the same legal theories as the claims of the other Class members.

E. Adequacy: Federal Rule of Civil Procedure 23(a)(4)

140. Plaintiffs will fairly and adequately represent and protect the interests of the Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the interests of the Class members. Plaintiffs have retained counsel

competent and experienced in complex class action litigation, including automobile defect litigation and other consumer protection litigation. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor their counsel have interests that conflict with the interests of the other Class members. Therefore, the interests of the Class members will be fairly and adequately protected.

F. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)

141. Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, for the Class as a whole.

G. Superiority: Federal Rule of Civil Procedure 23(b)(3)

142. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in its management. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to litigate their claims individually against Defendants such that it would be impracticable for members of the Classes to individually seek redress for Defendants' wrongful conduct.

143. Even if Class members could afford individual litigation, the court

system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED

144. Defendants have known of the SDM System Defect since at least 2009, when General Motors and Delphi respectively learned, through books, records, and personnel, that Old GM had launched the defective algorithm despite clear warnings of the risk by Old Delphi of doing so, and then continued to use and/or manufacture the defective software after that. They obtained further knowledge of the dangers of the SDM System Defect from lawsuits and multiple suspicious accidents (involving airbag and seatbelt failures in frontal accidents) occurring practically every year since, which provided additional and confirmatory notice of the continued risks of the SDM System Defect.

145. Any applicable statute of limitations has been tolled by Defendants' knowing and active concealment of the SDM System Defect and the misrepresentations and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and members of the Classes were deceived regarding the SDM System Defect and could not reasonably discover the latent nature of the Defect.

146. Plaintiffs and members of the Classes could not reasonably discover Defendants' deception with respect to the SDM System Defect in the Class Vehicles prior to experiencing a failure and being informed of the reason for the failure. Within the time period of any applicable statutes of limitations, Plaintiffs and members of the Classes could not have discovered through the exercise of reasonable diligence that Defendants were concealing the SDM System Defect.

147. Despite this knowledge, for years, Defendants did not disclose the seriousness of the issue and, in fact, concealed the prevalence of the problem. In so doing, Defendants have failed to warn consumers, initiate timely recalls, or inform NHTSA, as General Motors is obligated to do.

148. Defendants had a duty to disclose the SDM System Defect to consumers and NHTSA. Contrary to this duty, General Motors concealed the defect by continuing to distribute, sell, and/or lease the Class Vehicles to Plaintiffs and the Class members; to advertise the safety of the Class Vehicles; and to fail to notify regulators or the Plaintiffs and the Class members about the truth about the Class Vehicles.

149. Because of the highly technical nature of the SDM System Defect, Plaintiffs and Class members could not independently discover it using reasonable diligence. Before the retention of counsel and without third-party experts, Plaintiffs and Class members lack the necessary expertise to analyze the software algorithm

for the SDMs and understand its defective nature.

150. Accordingly: (1) Defendants' fraudulent concealment tolls the statute of limitations; (2) Defendants are estopped from relying on the statute of limitations; and (3) the statute of limitations is tolled by the discovery rule.

CAUSES OF ACTION

VII. NATIONWIDE CLASS CLAIMS

NATIONWIDE COUNT I: FRAUD BY CONCEALMENT (Common Law)

151. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

152. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class under the common law of fraudulent concealment, as there are no true conflicts among various states' laws of fraudulent concealment. Defendants are liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977). In the alternative, Plaintiffs bring this claim on behalf of the State Classes.

153. Defendants intentionally and knowingly concealed and suppressed material facts from regulators and consumers regarding the SDM System Defect that causes the airbags and seatbelts to fail in prolonged onset, complex, or otherwise multi-impact accidents, causing a serious risk of injury or death.

154. A reasonable consumer would not have expected that the Class Vehicles contained the Defect, including a software program calibrated to prevent seatbelt tightening and airbag deployment during certain types of frontal crashes. Defendants knew that reasonable consumers expect that their vehicle has working airbags and seatbelt pre-tensioners, and would rely on those facts in deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer.

155. Defendants ensured that Plaintiffs and the Class did not discover this information through actively concealing it and misrepresenting the Class Vehicles' safety systems without disclosing the truth. Defendants intended for Plaintiffs and the Class to rely on their omissions—which they did by purchasing and leasing the Class Vehicles at the prices they paid.

156. Defendants had a duty to disclose the SDM System Defect because:

a. General Motors and Delphi had exclusive and/or far superior knowledge and access to the facts about this hidden and complex safety Defect. Defendants also knew that these technical facts were not known to or reasonably discoverable by Plaintiffs and the Class;

b. General Motors and Delphi knew the SDM System Defect

(and its safety risks) was a material fact that would affect Plaintiffs' or Class members' decisions to buy or lease Class Vehicles;

c. General Motors and Delphi are subject to statutory duties to disclose known safety defects, including the Defect, to consumers and NHTSA; and

d. General Motors made incomplete representations about the safety and reliability of the Class Vehicles and their passenger safety systems, while purposefully withholding material facts about a known safety Defect. In uniform advertising and materials provided with each Class Vehicle, Defendants intentionally concealed, suppressed, and failed to disclose to Plaintiffs and the Class that the Class Vehicles contained the dangerous SDM System Defect. Because they volunteered to provide information about the Class Vehicles that they offered for sale to Plaintiffs and the Class, Defendants had the duty to disclose the whole truth. They did not.

157. To this day, Defendants have not made full and adequate disclosure of the Defect, continue to defraud Plaintiffs and the Class, and continue to conceal material information regarding the SDM System Defect. The omitted and concealed

facts were material because a reasonable person would find them important in purchasing, leasing, or retaining a new or used motor vehicle, and because they directly impact the price and the value of the Class Vehicles purchased or leased by Plaintiffs and the Class.

158. Defendants actively concealed or suppressed the Defect and these material facts, in whole or in part, to maintain a market for their Class Vehicles, to protect profits, and to avoid recalls that would hurt the brand's image and cost money. They did so at the expense of Plaintiffs and the Class. Had Plaintiffs and Class Members been aware of the SDM System Defect in the Class Vehicles, and Defendants' callous disregard for safety, Plaintiffs and the Class either would not have paid as much as they did for their Class Vehicles, or they would not have purchased or leased them.

159. Accordingly, Defendants are liable to Plaintiffs and the Class for damages in an amount to be proven at trial, including, but not limited to, overpayment for the Class Vehicles at the time of purchase or lease.

160. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud; in reckless disregard of Plaintiffs' and the Class' rights and well-being; and to enrich themselves. Their misconduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount shall be determined according to proof at trial.

NATIONWIDE COUNT II:
UNJUST ENRICHMENT
(Common Law)

161. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

162. Plaintiffs assert this Unjust Enrichment count on behalf of themselves and the Nationwide Class or, in the alternative, on behalf of the State Subclasses.

163. Because of their conduct, Defendants caused damages to Plaintiffs and Class members.

164. Plaintiffs and Class members conferred a benefit on Defendants by overpaying for Class Vehicles at prices that were artificially inflated by Defendants' failure to disclose and/or concealment of the SDM System Defect and misrepresentations regarding the Class Vehicles' safety.

165. As a result of Defendants' fraud and deception, Plaintiffs and Class members were not aware of the facts concerning the Class Vehicles and did not benefit from the Defendants' misconduct.

166. Defendants knowingly benefitted from their unjust conduct. They sold and leased Class Vehicles containing an SDM System Defect for more than what the vehicles were worth, at the expense of Plaintiffs and Class members.

167. Defendants readily accepted and retained these benefits from Plaintiffs and Class members.

168. It is inequitable and unconscionable for Defendants to retain these benefits because they misrepresented that the Class Vehicles were safe, and intentionally concealed, suppressed, and failed to disclose the SDM System Defect to consumers. Plaintiffs and Class members would not have purchased or leased the Class Vehicles or would have paid less for them had Defendants not concealed the SDM System Defect.

169. Plaintiffs and Class members do not have an adequate remedy at law.

170. Equity cannot in good conscience permit the Defendants to retain the benefits that they derived from Plaintiffs and Class members through unjust and unlawful acts, and therefore restitution or disgorgement of the amount of the Defendants' unjust enrichment is necessary.

VIII. STATE SPECIFIC CLAIMS

NEW JERSEY COUNT I:
Violation of the New Jersey Consumer Fraud Act ("NJCFA")
N.J. Stat. Ann. § 56:8-2 et seq.

171. Plaintiffs incorporate and re-allege each preceding paragraph as though fully set forth herein.

172. Plaintiffs William J. Endress and Lee Ford (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the New Jersey State Class against all Defendants.

173. The NJCFA prohibits:

> [t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice . . . .

N.J. STAT. ANN. § 56:8-2.

174. Plaintiffs and members of the New Jersey State Class are consumers who purchased or leased Class Vehicles for personal, family, or household use.

175. In violation of the NJCFA, Defendants employed unconscionable commercial practices, deception, fraud, false pretense and/or false promise by providing Class Vehicles that contain the SDM System Defect and present an undisclosed safety risk to drivers and occupants of the Class Vehicles. Further, Defendants misrepresented the standard, quality or grade of the Class Vehicles which were sold or leased with the latent defect and failed to disclose the SDM System Defect and corresponding safety risk in violation of the NJCFA.

176. Defendants' misrepresentations and fraudulent omissions were material to Plaintiffs and members of the New Jersey State Class. When Plaintiffs and members of the New Jersey State Class purchased or leased their Class Vehicles, they reasonably relied on the reasonable expectation that the Class Vehicles' did not

contain a Defect and the SDM Systems would not pose an unavoidable safety risk. Had Defendants disclosed that the SDM System was prone to an unavoidable safety risk, Plaintiffs and members of the New Jersey State Class would not have purchased or leased the Class Vehicles, or would have paid less for their vehicles.

177. Further, had Defendants disclosed the Defect in the Class Vehicles, Plaintiffs and members of the New Jersey State Class would have demanded repair or replacement during the warranty periods at no cost to Plaintiffs and members of the Classes—as provided for in Defendants' warranties.

178. Defendants knowingly concealed, suppressed and/or omitted the existence of the SDM System Defect and safety risk in the Class Vehicles at the time of sale or lease and at all relevant times thereafter.

179. Defendants unconscionably marketed the Class Vehicles to uninformed consumers in order to maximize profits by selling additional Class Vehicles containing the undisclosed latent Defect and corresponding safety risk.

180. Defendants owed a duty to disclose the SDM System Defect and its corresponding safety risk to Plaintiffs and members of the New Jersey State Class because Defendants possessed superior and exclusive knowledge regarding the Defect and the risks associated with the Defect and SDM System's failure. Rather than disclose the Defect, Defendants intentionally concealed the Defect with the intent to mislead Plaintiffs and members of the New Jersey State Class in order to

sell additional Class Vehicles and wrongfully transfer the cost of repair or replacement of the SDM System to Plaintiffs and members of the New Jersey State Class.

181. Had Plaintiffs and members of the New Jersey State Class known about the SDM System Defect at the time of purchase or lease, including the safety hazard posed by the Defect, they would not have bought the Class Vehicles or would have paid much less for them.

182. As a direct and proximate result of Defendants' wrongful conduct in violation of the NJCFA, Plaintiffs and members of the New Jersey State Class have suffered and continue to suffer harm by the threat of the unexpected failure of the SDM System and/or actual damages in the amount of overpayment for the Class Vehicles or the cost to repair or replace the SDM System, and damages to be determined at trial. Plaintiffs and members of the New Jersey State Class have also suffered the ascertainable loss of the diminished value of their vehicles.

183. As a result of Defendants' fraudulent and/or deceptive conduct, misrepresentations and/or knowing omissions, Plaintiffs and members of the New Jersey State Class are entitled to actual damages, treble damages, costs, attorneys' fees, and other damages to be determined at trial. *See* N.J. STAT. ANN. § 56:8-19. Plaintiffs and members of the New Jersey State Class also seek an order enjoining Defendants' unlawful, fraudulent and/or deceptive practices, and any other just and

proper declaratory or equitable relief available under the NJCFA. *See* N.J. STAT. ANN. § 56:8-19.

NEW JERSEY COUNT II:
Breach of Express Warranty
N.J. Stat. Ann. §§ 12A:2-314 and 12A:2A-210

184. Plaintiffs incorporate and re-allege each preceding paragraph as though fully set forth herein.

185. Plaintiffs William J. Endress and Lee Ford (for the purposes of this count, "Plaintiffs") brings this claim on behalf of themselves and the New Jersey State Class against all Defendants.

186. Defendants are and were at all relevant times "merchants" under N.J. STAT. ANN. § 12A:2-104(1), and "sellers" and "lessors" of motor vehicles and/or automotive parts under § 12A:2-103(1)(d) and § 12A:2A-103(1)(p).

187. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J. STAT. ANN. §§ 12A:2-105(1) and 2A-103(1)(h).

188. Defendants provided Plaintiffs and members of the New Jersey State Class with one or more express warranties.

189. Defendants marketed the Class Vehicles as high quality, reliable, and safe vehicles, and that Defendants would stand behind the quality of their products and promptly repair any defects. These statements helped conceal the existence of the SDM System Defect and its corresponding safety risk from Plaintiffs and

members of the New Jersey State Class.

190. Under the warranties provided to Plaintiffs and members of the New Jersey State Class, Defendants promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the SDM System Defect, at no cost to owners and lessees of the Class Vehicles and within a reasonable time. As alleged herein, Defendants breached these warranties.

191. Defendants breached the express warranty promising to repair and correct a manufacturing defect or defect in materials or workmanship of any parts it supplied.

192. On information and belief, Defendants have not suitably repaired or replaced the defective SDM System for Plaintiffs and members of the New Jersey State Class despite the existence of the Defect in the Class Vehicles at the time of sale or lease.

193. Defendants further breached their express warranties by selling Class Vehicles that were defective with respect to engine materials, workmanship, design and manufacture.

194. Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of materials, workmanship, design and/or manufacturing defects which cause a failure to deploy the airbags as warranted.

195. Plaintiffs and members of the New Jersey State Class have had sufficient direct dealings with Defendants or their agents, their authorized dealerships, to establish privity of contract between Defendants, on the one hand, and Plaintiffs and members of the New Jersey State Class, on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other members of the Classes are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of their implied warranties. The dealers were not intended to be the ultimate users of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers and lessees of the Class Vehicles only.

196. Defendants were provided notice of the SDM System Defect by their engineers, numerous consumer complaints made to their authorized dealers nationwide, personal injury litigation, complaints to NHTSA and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because Defendants have known of and concealed the SDM System Defect and have failed to provide a suitable repair or replacement of the defective SDM System within a reasonable time.

197. Any attempt by Defendants to disclaim or limit recovery to the terms

of the express warranties is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the Defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiffs and members of the New Jersey State Class. Among other things, Plaintiffs and members of the New Jersey State Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Classes, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the SDM System Defect posed a safety risk.

198. Further, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and members of the New Jersey State Class whole because, on information and belief, Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

199. Defendants knew that the Class Vehicles were inherently defective and did not conform to their warranties, and Plaintiffs and members of the New Jersey State Class were induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

200. Defendants' warranties formed a basis of the bargain that was reached when Plaintiffs and members of the New Jersey State Class purchased or leased their Class Vehicles.

201. Plaintiffs and members of the New Jersey State Class experienced the existence of the SDM System Defect within the warranty periods but had no knowledge of the existence of the Defect, which was known and concealed by Defendants. Despite the existence of the warranties, Defendants failed to inform Plaintiffs and members of the New Jersey State Class that the Class Vehicles contained the SDM System Defect during the warranty periods.

202. Because of the SDM System Defect, the Class Vehicles are not reliable and owners of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation.

203. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and members of the New Jersey State Class have been damaged in an amount to be determined at trial.

204. Finally, because of Defendants' breach of express warranty as set forth herein, Plaintiffs and members of the New Jersey State Class assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and members of the New Jersey State Class of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other

incidental and consequential damages as allowed.

NEW JERSEY COUNT III:
Breach of Implied Warranty of Merchantability
N.J. Stat. Ann. §§ 12A:2-314, 12A:2A-103, and 12A:2A-212

205. Plaintiffs incorporate and re-allege each preceding paragraph as though fully set forth herein.

206. Plaintiffs William J. Endress and Lee Ford (for the purposes of this count, "Plaintiffs") brings this claim on behalf of themselves and the New Jersey State Class against all Defendants.

207. Defendants are and were at all relevant times "merchants" with respect to motor vehicles and/or automotive parts under N.J. STAT. ANN.§ 12A:2-104(1), and "sellers" and "lessors" of motor vehicles and/or automotive parts under § 12A:2-103(1)(d) and § 12A:2A-103(1)(p).

208. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J. STAT. ANN. §§ 12A:2-105(1) and 2A-103(1)(h).

209. Plaintiffs and members of the New Jersey State Class purchased or leased the Class Vehicles from Defendants by and through Defendants' authorized agents for retail sales, or were otherwise expected to be the eventual purchasers of the Class Vehicles when bought from a third party. At all relevant times, Defendants were the manufacturers, distributors, warrantors and/or sellers of Class Vehicles. Defendants knew or had reason to know of the specific use for which the Class

Vehicles were purchased or leased.

210. A warranty that the Class Vehicles and/or the defective SDM Systems installed in them were in merchantable condition and fit for the ordinary purpose for which such goods are used is implied by law pursuant to N.J. STAT. ANN. §§ 12A:2- 314 and 2A-212.

211. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and were and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect—the SDM System Defect—(at the time of sale or lease and thereafter) and present an undisclosed safety risk to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

212. Plaintiffs and members of the New Jersey State Class have had sufficient direct dealings with Defendants or their agents, their authorized dealerships, to establish privity of contract between Defendants, on the one hand, and Plaintiffs and members of the New Jersey State Class, on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other members of the Classes are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of their implied warranties. The dealers were not intended to be the ultimate users of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty

agreements were designed for and intended to benefit purchasers and lessees of the Class Vehicles only.

213. Defendants were provided notice of the SDM System Defect by their engineers, numerous consumer complaints made to their authorized dealers nationwide, personal injury litigation, complaints to NHTSA and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of implied warranties would be unnecessary and futile here because Defendants have known of and concealed the SDM System Defect and, on information and belief, have refused to repair or replace the defective SDM System within a reasonable time.

214. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and members of the New Jersey State Class have been damaged in an amount to be proven at trial.

215. Any attempt by Defendants to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the Defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiffs and members of the New Jersey State Class. Among other things, Plaintiffs and members of the New Jersey State Class did not determine these time limitations, the terms of which unreasonably

favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the New Jersey State Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the SDM System Defect posed a safety risk.

MICHIGAN COUNT I:
Violations of the Michigan Consumer Protection Act
Mich. Comp. Laws § 445.903, et seq.
(On Behalf of the Michigan State Class)

216. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

217. Plaintiff Gary Clark (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Michigan State Class against all Defendants.

218. Plaintiff and Michigan State Class members are "person[s]" within the meaning of the Mich. Comp. Laws § 445.902(1)(d).

219. Defendants are "person[s]" engaged in "trade or commerce" within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and (g).

220. The Michigan Consumer Protection Act ("Michigan CPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." Mich. Comp. Laws § 445.903(1).

221. In the course of their business, Defendants violated the Michigan CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or

failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.

222. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the Defect and the dangers and risk posed by the Class Vehicles and/or the SDM System Defect, Defendants engaged in one or more of the following unfair or deceptive business practices prohibited by Mich. Comp. Laws § 445.903:

a. Representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;

b. Representing that the Class Vehicles are of a particular standard, quality, and grade when they are not;

c. Advertising the Class Vehicles with the intent not to sell or lease them as advertised;

d. Failing to reveal the defective SDM System, which could not reasonably be known by the consumer;

e. Making a representation of fact or statement of fact regarding the safety of the Class Vehicles, which is material to the lease or purchase of the Class Vehicles, such that consumers reasonably believe the represented or suggested state of affairs to be other than it actually is; and

f. Failing to reveal the SDM System Defect in light of representations of fact regarding the safety of the Class Vehicles made in a positive manner.

Mich. Comp. Laws §§ 445.903(1)(c), (e), (g), (s), (bb), and (cc).

223. Defendants' unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiff and Michigan State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.

224. Defendants' scheme and concealment of the SDM System Defect in the Class Vehicles were material to Plaintiff and Michigan State Class members, as Defendants intended. Had they known the truth, Plaintiff and Michigan State Class members would not have purchased or leased the Class Vehicles, or would have paid significantly less for them.

225. Plaintiff and Michigan State Class members had no way of discerning that the Defendants' representations were false and misleading and/or otherwise learning the facts that the Defendants had concealed or failed to disclose. Plaintiff and Michigan State Class members did not, and could not, unravel the Defendants' deception on their own.

226. Defendants had an ongoing duty to Plaintiff and Michigan State Class members to refrain from unfair or deceptive practices under the Michigan CPA in the course of their business. Specifically, Defendants owed Plaintiff and Michigan State Class members a duty to disclose all the material facts concerning the SDM System Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Michigan State Class members, and/or they made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

227. Defendants' violations present a continuing risk to Plaintiff and Michigan State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

228. Plaintiff and the Michigan State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

229. Plaintiff and the Michigan State Class seek injunctive relief to enjoin Defendants from continuing its unfair and deceptive acts; monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of $250 for each Michigan State Class member; reasonable attorneys' fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911.

230. Plaintiff and the Michigan State Class also seeks punitive damages against Defendants because they carried out despicable conduct with willful and conscious disregard of the rights of others. Defendants intentionally and willfully misrepresented the reliability and safety of the Class Vehicles and concealed material facts that only they knew—all to avoid the expense and public relations nightmare of correcting a flaw in the Class Vehicles. Defendants' unlawful conduct constitutes oppression and fraud warranting punitive damages.

MICHIGAN COUNT II:
Breach of Express Warranty
Mich. Comp. Laws §§ 440.2313 and 440.2860
(On Behalf of the Michigan State Class)

231. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

232. Plaintiff Gary Clark (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Michigan State Class against all Defendants.

233. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and "sellers" of motor vehicles under § 440.2103(1)(d).

234. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

235. The Class Vehicles are and were at all relevant times "goods" within

the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

236. All Michigan State Class members who purchased Class Vehicles in Michigan are "buyers" within the meaning of Mich. Comp. Laws § 440.2103(1)(a).

237. All Michigan State Class members who leased Class Vehicles in Michigan are "lessees" within the meaning of Mich. Comp. Laws § 440.2803(1)(n).

238. In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiff and Michigan State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.

239. Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Michigan State Class members unknowingly purchased or leased Class Vehicles that came equipped with a SDM System Defect.

240. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM System Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Michigan State Class members.

241. Plaintiff and Michigan State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

242. Defendants knowingly breached their express warranties to repair

defects in materials and workmanship by failing to repair the SDM System Defect or replace the defective SDMs in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Michigan State Class members.

243. Plaintiff and Michigan State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties. However, any opportunity to cure the breach is unnecessary and futile.

244. As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Michigan State Class members have been damaged in an amount to be proven at trial.

MICHIGAN COUNT III:
Breach of Implied Warranty of Merchantability
Mich. Comp. Laws §§ 440.2314 and 440.2860
(On Behalf of the Michigan State Class)

245. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

246. Plaintiff Gary Clark (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Michigan State Class against all Defendants.

247. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and "sellers" of

motor vehicles under § 440.2103(1)(d).

248. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

249. All Michigan State Class members who purchased Class Vehicles in Michigan are "buyers" within the meaning of Mich. Comp. Laws § 440.2103(1)(a).

250. All Michigan State Class members who leased Class Vehicles in Michigan are "lessees" within the meaning of Mich. Comp. Laws § 440.2803(1)(n).

251. The Class Vehicles are and were at all relevant times "goods" within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

252. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Mich. Comp. Laws §§ 440.2314 and 440.2862.

253. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM System Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.

254. Defendants were provided reasonable notice of these issues.

However, any opportunity to cure the breach is unnecessary and futile.

255. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Michigan State Class members have been damaged in an amount to be proven at trial.

TEXAS COUNT I:
Violations of the Deceptive Trade Practices Act
Tex. Bus. & Com. Code § 17.41, et seq.
(On Behalf of the Texas State Class)

256. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

257. Plaintiff Ira Bondsteel (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Texas State Class against all Defendants.

258. Plaintiff and the Texas State Class are "consumers" pursuant to Tex. Bus. & Com. Code § 17.45(4); Tex. Bus. & Com. Code § 17.41.

259. Defendants are "person[s]" within the meaning of Tex. Bus. & Com. Code § 17.45(3).

260. Defendants engaged in "trade" or "commerce" or "consumer transactions" within the meaning Tex. Bus. & Com. Code § 17.46(a).

261. The Texas Deceptive Trade Practices – Consumer Protection Act ("Texas DTPA") prohibits "false, misleading, or deceptive acts or practices in the

conduct of any trade or commerce," Tex. Bus. & Com. Code § 17.46(a), and an "unconscionable action or course of action," which means "an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).

262. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles, as detailed above. Specifically, Defendants misrepresented the Class Vehicles as safe and/or free from defects and failed to disclose and actively concealed the dangers and risk posed by the Class Vehicles and/or the SDM System Defect, including serious injury or death.

263. These acts and practices were unconscionable, and to the Texas Plaintiffs' and Texas State Class members' detriment, took advantage of their lack of knowledge, ability, experience, or capacity to a grossly unfair degree.

264. Defendants thus violated the Act by, at minimum:

a. representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;

b. representing that Class Vehicles are of a particular standard, quality, and grade when they are not;

c. advertising Class Vehicles with the intent not to sell or lease them as advertised.

Tex. Bus. & Com. Code Ann. §§ 17.46(5), (7), and (9).

265. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiff and the Texas State Class.

266. Defendants knew or should have known that their conduct violated the Texas DTPA.

267. Plaintiff and Texas State Class members had no way of discerning that the Defendants' representations were false and misleading and/or otherwise learning the facts that the Defendants had concealed or failed to disclose. Plaintiff and Texas State Class members did not, and could not, unravel the Defendants' deception on their own.

268. Defendants owed Plaintiff and the Texas State Class a duty to disclose the safety risks associated with the SDM System Defect, the true nature of the Class Vehicles, because Defendants possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not perform as advertised; intentionally concealed the foregoing from regulators and Texas State Class members; and/or made incomplete representations about the Class Vehicles' airbag and safety features while purposefully withholding material facts that contradicted these representations.

269. Defendants' concealment of the true characteristics of the Class

Vehicles' safety systems was material to Plaintiff and the Texas State Class.

270. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiff and the Texas State Class, about the true safety features of the Class Vehicles, the quality of the Defendants' brands, and the true value of the Class Vehicles.

271. Defendants' violations present a continuing risk to Plaintiff and the Texas State Class as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

272. Plaintiff and Texas State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

273. Pursuant to Tex. Bus. & Com. Code § 17.50, the Texas State Class seeks an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, multiple damages for knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Texas DTPA. Pursuant to Tex. Bus. & Com. Code Ann. § 17.505, Defendants were provided reasonable notice of these issues. The Texas State Class seeks all damages and relief to which it is entitled.

TEXAS COUNT II:
Breach of Express Warranty
Tex. Bus. & Com. Code §§ 2.313 and 2A.210

(On Behalf of the Texas State Class)

274. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

275. Plaintiff Ira Bondsteel (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Texas State Class against all Defendants.

276. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and "sellers" of motor vehicles under § 2.103(a)(4)

277. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

278. All Texas State Class members who purchased Class Vehicles are "buyers" within the meaning of Tex. Bus. & Com. Code Ann. § 2.103(a)(1).

279. All Texas State Class members who leased Class Vehicles "lessees" within the meaning of Tex. Bus. & Com. Code Ann. § 2A.103(a)(14).

280. The Class Vehicles are and were at all relevant times "goods" within the meaning of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

281. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Texas State Class members with written express warranties covering the repair or replacement of components that are defective in

materials or workmanship.

282. Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Texas State Class members unknowingly purchased or leased Class Vehicles that came equipped with a SDM System Defect.

283. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM System Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Texas State Class members.

284. Plaintiff and Texas State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

285. Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM System Defect or replace the defective SDMs in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Texas State Class members.

286. Plaintiff and Texas State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties. However, any opportunity to cure the breach is unnecessary and futile.

287. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff and Texas State Class members have been damaged in an amount to be proven at trial.

TEXAS COUNT III:
Breach of Implied Warranty of Merchantability
Tex. Bus. & Com. Code §§ 2.314 and 2A.212
(On Behalf of the Texas State Class)

288. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

289. Plaintiff Ira Bondsteel (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Texas State Class against all Defendants.

290. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and "sellers" of motor vehicles under § 2.103(a)(4)

291. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

292. All Texas State Class members who purchased Class Vehicles are "buyers" within the meaning of Tex. Bus. & Com. Code Ann. § 2.103(a)(1).

293. All Texas State Class members who leased Class Vehicles "lessees" within the meaning of Tex. Bus. & Com. Code Ann. § 2A.103(a)(14).

294. The Class Vehicles are and were at all relevant times "goods" within the meaning of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

295. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Tex. Bus. & Com. Code §§ 2.314 and 2A.212.

296. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM System Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.

297. Defendants were provided reasonable notice of these issues. However, any opportunity to cure the breach is unnecessary and futile.

298. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Texas State Class members have been damaged in an amount to be proven at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court enter judgment against Defendants and

in favor of Plaintiffs and the Class, and award the following relief:

A. An order certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as the representatives of the Class, and Plaintiffs' counsel as counsel for the Class;

B. An order awarding declaratory relief and enjoining Defendants from continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged herein;

C. Injunctive and equitable relief in the form of a comprehensive program to repair or replace the SDM System in all Class Vehicles, and/or buyback all Class Vehicles, and to fully reimburse and make whole all members of the Class for all costs and economic losses;

D. Appropriate injunctive and equitable relief;

E. A declaration that Defendants are financially responsible for all Class notice and the administration of Class relief;

F. An order awarding costs, restitution, disgorgement, punitive damages, treble damages and exemplary damages under applicable law, and compensatory damages for economic loss, overpayment damages, and out-of-pocket costs in an amount to be determined at trial;

G. An order awarding any applicable statutory and civil penalties;

H. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

I. An award of costs, expenses and attorneys' fees as permitted by law; and

J. Such other or further relief as the Court may deem appropriate, just, and equitable.

X. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

DATED: August 17, 2021

Respectfully submitted,

/s/ James E. Cecchi

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