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OCT 19 2017

SUPERIOR COURT OF NJ MERCER VICINAGE CIVIL DIVISION

SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MERCER COUNTY DOCKET NO.: MER-C-

CHRISTOPHER S. PORRINO, Attorney General of the State of New Jersey, and SHARON M. JOYCE, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

**COMPLAINT** 

Civil Action

V.

GENERAL MOTORS COMPANY

Defendant.

1. Plaintiff, the people of the State of New Jersey, by and through Christopher S. Porrino, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Sharon M. Joyce, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, (collectively, "Plaintiffs"), brings this action against

Defendant General Motors Company ("Defendant" or "GM"), for violating the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"),, as follows:

## JURISDICTION AND VENUE

- 2. This action is brought for and on behalf of the people of the State of New Jersey, by the Attorney General and the Director, pursuant to the provisions of the CFA.
- 3. This Court has jurisdiction over the Defendant pursuant to  $\underline{R}$ . 4:3-2 because Defendant has transacted business within the State of New Jersey at all times relevant to this complaint.
- 4. Venue for this action properly lies in Mercer County pursuant to  $\underline{R}$ . 4:3-2 because Defendant transacts business in Mercer County, the transactions out of which this action arose occurred in Mercer County, and this action is brought by the Attorney General, on behalf of the people of the State of New Jersey for the benefit thereof.

#### **PARTIES**

- 5. The Attorney General is charged with enforcing the CFA. The Director is charged with administering the CFA on behalf of the Attorney General.
- 6. Defendant is the automotive manufacturer, General Motors Company ("GM") and its present parents, subsidiaries (whether or not wholly owned), and affiliates. GM's headquarters are located in Detroit, Michigan.

## **COMMERCE**

- 7. The CFA, N.J.S.A. 56:8-1(a), defines "advertisement" as:
  - ... the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof . . .

- 8. The CFA, N.J.S.A., 56:8-1(c), defines "merchandise" as "any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale."
- 9. The CFA, N.J.S.A. 56:8-1(e), defines "sale" as "any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute."
- 10. The CFA, N.J.S.A. 56:8-1(d) defines "person" as "any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof."
- 11. Defendant was at all times relative hereto, engaged in trade or commerce in the State of New Jersey to wit: manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

#### BACKGROUND AND STATEMENT OF FACTS

- 12. GM manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of New Jersey. GM came into existence following the June 1, 2009 bankruptcy filing of General Motors Corporation. Prior to this date, General Motors Corporation manufactured and sold the motor vehicles at issue herein. Pursuant to the court-approved bankruptcy sale of substantially all of General Motors Corporation's assets and related transfer of personnel, GM became the entity manufacturing and selling motor vehicles under the General Motors brand. As a successor entity to General Motors Corporation, GM has the same knowledge of the defect as General Motors Corporation.
- 13. GM, like General Motors Corporation before it, consistently represented in advertising and public statements that its vehicles are safe and reliable transportation.

- 14. Prior to early 2014, GM was fully aware of widespread reports of unintended key rotation-related and/or ignition-switch-related issues in several models and model years of GM vehicles.
- 15. Between February 2014 and September 2014, GM issued seven vehicle recalls in response to unintended key rotation-related and/or ignition-switch-related issues. Those recalls have affected over 12 million vehicles in the United States: including but not limited to: Model Year 2003-2007 Saturn Ion, Model Year 2005-2010 Chevrolet Cobalt, Model Year 2006-2010 Pontiac Solstice, Model Year 2007-2010 Pontiac G5, Model Year 2007-2010 Saturn Sky, Model Year 2006-2011 Chevrolet HHR, Model Year 2010-2014 Chevrolet Camaro, Model Year 2005-2009 Buick Lacrosse, Model Year 2006-2011 Buick Lucerne, Model Year 2000-2005 Cadillac Deville, Model Year 2006-2011 Cadillac DTS, Model Year 2006-2014 Chevrolet Impala, Model Year 2006-2007 Chevrolet Monte Carlo, Model Year 2003-2014 Cadillac CTS, Model Year 2004-2006 Cadillac SRX, Model Year 2000-2005 Chevrolet Impala, Model Year 1997-2003 Chevrolet Malibu, Model Year 2004-2005 Chevrolet Malibu Classic, Model Year 2000-2005 Chevrolet Monte Carlo, Model Year 1999-2004 Oldsmobile Alero, Model Year 1998-2002 Oldsmobile Intrigue, Model Year 1999-2005 Pontiac Grand Am, Model Year 2004-2008 Pontiac Grand Prix, Model Year 2002-2004 Saturn VUE, Model Year 2008-2009 Pontiac G8.
- 16. NHTSA campaign numbers for the seven recalls were: 14V-047000 ("ignition switch may turn off"), 14V-346000 ("knee contact may turn ignition switch off"), 14V-35500 ("ignition switch may turn off"), 14V-394000 ("ignition switch may turn off"), 14V-400000 ("ignition switch may turn off"), 14V-490000 ("ignition key can be removed when in on position"), and 14V-540000 ("knee contact may turn ignition switch off").

### LOW TORQUE IGNITION SWITCH

- 17. In the early 2000s, General Motors Corporation launched a line of motor vehicles that were marketed to the public as affordable, safe, and fuel-efficient. Two of these vehicles, the Saturn Ion and the Chevrolet Cobalt, were equipped with the same Pre-2008 Delta Switch (hereinafter, the "Ignition Switch"). The Ignition Switch is the ignition switch that may have been installed in the 2005, 2006, and 2007 Chevrolet Cobalt; the 2007 Pontiac G5; 2003, 2004, 2005, 2006, and 2007 Saturn Ion; the 2006 and 2007 Chevrolet HHR; the 2007 Saturn Sky; and the 2006 and 2007 Pontiac Soltice.
- 18. This Ignition Switch was defective. The Ignition Switch defect involves a low-torque ignition switch, which, under certain conditions, may move out of the "Run" position to the "Accessory" or "Off" position. If this occurs, the driver experiences a loss of electrical systems, including power steering, power brakes, and a loss of power to the sensing diagnostic module, which controls safety airbag deployment. If a collision occurs while the Ignition Switch is in the "Accessory" or "Off" position, the motor vehicle's safety airbags may fail to deploy, increasing the risk of serious injury or death in certain types of crashes in which the airbag was otherwise designed to deploy.
- 19. Prior to the Ignition Switch going into production in 2002, certain General Motors Corporation engineers knew that it was prone to movement out of the "Run" position; testing of a prototype showed that the torque return between the Run and Accessory positions fell below General Motors Corporation's own internal specifications. But the engineer in charge of the Ignition Switch nonetheless approved its production.
- 20. Customers immediately began to report problems with motor vehicles equipped with the Ignition Switch. General Motors Corporation employees also reported stalls while driving

such vehicles, which some employees attributed the easy rotation of the key within the Ignition Swtich;

- 21. In 2004 and 2005, other General Motors Corporation employees and General Motors Corporation customers began to experience sudden stalls and engine shutoffs caused by the Ignition Switch.
- 22. General Motors Corporation considered fixing the problem, but ultimately rejected a simple improvement to the key head that would have significantly reduced unexpected shutoffs. Instead, General Motors Corporation chose to leave the switch as it was, while promulgating an advisory to dealerships with tips on how to minimize the risk of unexpected movement out of the "Run" position.
- 23. General Motors Corporation decided, incorrectly, that the Ignition Switch problem was not a safety concern.
- 24. In November 2004, General Motors Corporation opened the first of six engineering inquiries that would be initiated in the next five years to consider engineering changes for new motor vehicles being produced with the Ignition Switch. The first inquiry was closed "with no action." Proposed fixes, such as improving torque performance of the Ignition Switch and changing the head of the key to reduce the likelihood of inadvertent movement from the "Run" to "Accessory" positon, were rejected.
- 25. Because General Motors Corporation had determined that the Ignition Switch did not pose a safety concern, General Motors Corporation determined that each proposed solution would cost too much, take too long to implement, or would not fully fix the problem.
- 26. In 2005 through 2009, General Motors Corporation issued various publications to their dealers to assist them in dealing with the Ignition Switch problem. General Motors

Corporation also opened addition inquiries to consider fixes for the Ignition Switch problem. However, General Motors Corporation continued to state publicly that the Ignition Switch problem was not a safety issue.

- 27. During this time, General Motors Corporation replaced the Ignition Switch with a different one that had significantly greater torque; however, this part change to the Ignition Switch did not include a corresponding part number change, despite the fact that changing the part number was General Motors Corporations' practice.
- 28. From 2004 to 2011, both prior to and following General Motors Corporations' bankruptcy, numerous vehicles equipped with the defective Ignition Switch were involved in crashes in which the safety airbags did not deploy.
- 29. General Motors Corporation employees responsible for dealing with the Ignition Switch and who had knowledge of the true nature of the problem, had transferred to GM as part of the bankruptcy sale. Thus by early 2011, if not earlier, GM knew or should have known that these non-deployment cases involved an "anomaly" with the Ignition Switch.
- 30. From about the spring of 2012, certain GM employees knew the Ignition Switch posed a safety defect because it could cause airbag non-deployment.

## FAILURE TO INITIATE A SAFETY RECALL

- 31. Despite this knowledge, GM personnel responsible for GM's internal safety recall process delayed making any recalls, and instead, took affirmative steps to keep the Ignition Switch problem outside the normal GM recall process.
- 32. From the spring of 2012 through the spring of 2013, GM sold no new motor vehicles that were equipped with the Ignition Switch. However, GM dealers continued to sell pre-owned Chevrolet, Pontiac, and Saturn brand motor vehicles that would later become the subject of the

February 2014 recalls. These sales included certifications from GM, stating that the certification process involved testing of over a hundred components, including, specifically, the ignition system.

- 33. GM first notified NHTSA and the public of the known connection between the Ignition Switch and fatal airbag non-deployment on February 7, 2014. GM acknowledged 15 deaths occurring in crashes in which the Ignition Switch may have caused or contributed to airbag non-deployment. In fact, General Motors Corporation was aware of some of these deaths as early as 2004, yet continued to market the reliability and safety of its motor vehicles which were equipped with the Ignition Switch.
- 34. Between February 2014 and September 2014, GM issued seven vehicle recalls in response to the unintended key rotation-related and/or ignition-switch-related issues. Those recalls have affected approximately 12 million vehicles in the United States.

### **VIOLATIONS OF LAW**

## **COUNT I**

## VIOLATONS OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES MISREPRESENTATIONS AND KNOWING OMISSIONS)

- 35. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-34.
- 36. By engaging in the aforesaid acts, practices, representations and omissions, the Defendant made deceptive or misleading statements to government agencies and to consumers. Specifically, Defendant:

- a. Failed to warn of a known danger: Defendant failed to disclose to consumers
  and regulators known safety risks associated with operation of GM motor vehicles
  and motor vehicle equipment;
- b. **Misrepresented safety and reliability**: Defendant misrepresented, directly or by implication, GM motor vehicles and motor vehicle equipment as safe and reliable;
- c. Sold unsafe Motor Vehicles: Defendant sold unsafe motor vehicles and unsafe motor vehicle components, in violation of 49 U.S.C. Section 30120(i).
- d. Failed to perform consistent with contract obligations imposed by express and implied warranties: Defendant failed to timely diagnose and repair motor vehicles and motor vehicle equipment that were the subject of consumer complaints related to the defective ignition switch as required pursuant to express and implied warranty representations and terms and as required by state warranty and Lemon Laws; and
- e. Failed to communicate critical safety related information and decision making: Defendant withheld safety related decision making authority and critical safety data, information, engineering/design changes and safety repairs from appropriate members of GM management.
- 37. Each and every unfair or deceptive act or practice engaged in by Defendant, as recited above constitutes a separate violation of the CFA as provided by N.J.S.A. 56:8-2.

#### REMEDIES

38. N.J.S.A. 56:8-8, provides, in relevant part:

Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this act he may seek and obtain in a summary action in the Superior Court an injunction prohibiting such person from continuing such practices or

engaging therein or doing any acts in furtherance thereof or an order appointing a receiver, or both. [...] The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice herein declared to be unlawful.

## 39. N.J.S.A. 56:8-13 provides, in pertinent part:

Any person who violates any of the provisions of the act to which this act is a supplement shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense.

- 40. N.J.S.A. 56:8-11 provides that "[i]n any action or proceeding brought under the provisions of this act, the Attorney General shall be entitled to recover costs for the use of the State."
- 41. <u>N.J.S.A.</u> 56:8-19 further provides that "[i]n all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit."

#### PRAYER FOR RELIEF

WHEREFORE, the People of the State of New Jersey respectfully request that this honorable Court enter an order:

- A. Issuing a permanent injunction prohibiting Defendant, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair, unconscionable, deceptive, or misleading conduct;
- B. Ordering Defendant to pay civil penalties of up to \$10,000 for each violation of the CFA as provided by N.J.S.A. 56:8-13;

- C. Ordering Defendant to pay all costs for the prosecution and investigation of this action, as provided by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;
  - D. Granting such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

CHRISTOPHER S. PORRINO ATTORNEY GENERAL OF NEW JERSEY Attorney for Plaintiffs

By:

Jeffrey Koziar

Deputy Attorney General

Consumer Fraud Prosecution Section

Dated: October 19, 2017

Newark, New Jersey

**RULE 4:5-1 CERTIFICATION** 

I certify, to the best of my information and belief, that the matter in this action involving

the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., is not the subject of any other

action pending in any other court of this State. I further certify that the matter in controversy in

this action is not the subject of a pending arbitration proceeding in this State, nor is any other

action or arbitration proceeding contemplated. I certify that there is no other party who should

be joined in this action at this time.

CHRISTOPHER S. PORRINO

ATTORNEY GENERAL OF NEW JERSEY

Attorney for Plaintiffs

Deputy Attorney General

Consumer Fraud Prosecution Section

Dated: October 19, 2017

Newark, New Jersey

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## RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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Jeffrey Koziar

Deputy Attorney General

Consumer Fraud Prosecution Section

Dated: October 19, 2017

Newark, New Jersey

# **DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Jeffrey Koziar is hereby designated as trial counsel for the Plaintiffs in this action.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Bv:

Jeffrey Koziar

Deputy Attorney General

Consumer Fraud Prosecution Section

Dated: October 19, 2017

Newark, New Jersey