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VIA ELECTRONIC COURT FILING

The Honorable Jesse M. Furman
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In Re General Motors LLC Ignition Switch Litigation*
Case No. 14-MD-2543 (JMF)

Dear Judge Furman:

In accordance with Section II of Order No. 90 (ECF 1948), Plaintiffs submit their opposition to New GM's request to stay Plaintiffs' narrow appeal of one aspect of the Bankruptcy Court's December 4, 2015 Judgment ("Judgment") (Bankr. ECF 13563). The sole issue Plaintiffs will raise in the appeal will *not* be resolved in the parties' cross-appeals in the Second Circuit of the Bankruptcy Court's June 1, 2015 Judgment. There is no reason not to go forward now as to the appeal of this independent claim in accordance with a reasonable and aggressive schedule and to avoid unnecessary delay.

Plaintiffs are appealing a narrow but important aspect of the Judgment: the determination by the Bankruptcy Court that "[c]laims that allege that New GM is liable in connection with vehicle owners' failure to file proofs of claim in the Old GM bankruptcy case are barred and enjoined by the Sale Order, April Decision and June Judgment, and shall not be asserted against New GM." Judgment at ¶ 24.

In fact, contrary to the Bankruptcy Court's determination that this is effectively a successor liability claim, Plaintiffs' claim focuses exclusively on New GM's own conduct in the first four months of its existence (between July 2009 and the bankruptcy claims Bar Date on November 30, 2009), a time when New GM could and should have, but did not, disclose the Ignition Switch Defect. Due to New GM's fraudulent concealment of the Ignition Switch Defect during this key time, consumers were prevented (among other things) from filing proofs of claims in the Bankruptcy Court, and correspondingly – and consequently – New GM was immunized from considerable financial obligations under the Sale Order's Accordion Feature. *See generally* Second

The Honorable Jesse M. Furman
December 23, 2015
Page 2

Amended Consolidated Complaint, state-court counts for “Fraud by Concealment of the Right to File a Claim Against Old GM in Bankruptcy.”¹

While all the reasons Plaintiffs believe the Bankruptcy Court’s ruling was in error are beyond the scope of this letter brief, the above discussion underscores that the work needed to see if this claim is an independent claim (as Plaintiffs contend) will need to be done at some point, and now is the time. New GM will likely argue that this claim is intimately intertwined with the Second Circuit appeal, but that argument presupposes New GM’s mistaken position that this is a successor liability claim against Old GM. It is not. It focuses solely on New GM’s conduct; that damages happen to be measured by the losses that consumers (potential claimants) suffered by having missed the bar date – as measured by the value of the proof of claim in Old GM’s bankruptcy case – does not change the fact that the liability-causing conduct sounds only in New GM’s independent common-law obligations. In addition, even if the Second Circuit allows successor claims,² that ruling would in no way resolve *this* issue because Plaintiffs’ position is that this is an independent claim, and does not rise or fall on Plaintiffs’ ultimate ability to show under non-bankruptcy law that New GM is the successor to Old GM.

Delay is thus not helpful in saving overall work for the Court or the parties, and in fact is harmful to Plaintiffs. If Plaintiffs prevail on the appeal to this Court of the barring of the Fraud by Concealment of the Right to File a Claim Against Old GM in Bankruptcy claim, this claim logically should be litigated along with the other claims against New GM, and not phased separately and treated differently from other independent claims (motion practice as to which will be going forward early next year). The delay could slow down class certification or other important motion practice, which is especially problematic because this claim is particularly well-suited to class treatment given, among other reasons, the common context of the non-disclosures, the common remedy, and the extant common evidence of the class’ reaction to the eventual disclosure. If Plaintiffs lose, the issues are narrowed. Either way, Plaintiffs respectfully submit that the goal should be to streamline the work needed to be done in the time following the Second Circuit’s ruling, and this discrete and narrow appeal should go forward now.

¹ While the Court’s Order did not expressly direct the Post-Sale Accident Plaintiffs to address the question of whether their appeal should also be stayed, the Court should be aware that there will be an appeal by certain Pre-Closing Ignition Switch Accident Plaintiffs from the aspect of the Judgment and the underlying Decision that purports to bar independent claims for damages against New GM, including the claims asserted by the Plaintiffs in the *Adams* Complaint (14-MD-2543) (JMF). This issue is substantially similar to the issue being appealed by the Ignition Switch Plaintiffs, as described above. This appeal also will focus exclusively on the question of whether those Plaintiffs should be permitted to file independent claims against New GM based on New GM’s fraudulent concealment of the existence of the Ignition Switch Defect and/or New GM’s non-disclosure of the existence of the Ignition Switch Defect by reason of New GM’s breach of any duty to warn/repair/retrofit with respect to vehicles with the Ignition Switch Defect and the impact of such actions or inactions by New GM during the period between the date of the closing of the Sale (July 10, 2009) and the expiration of the time period to file proofs of claim in Old GM’s bankruptcy case (November 30, 2009) on the ability of those Plaintiffs to file a timely proof of claim in Old GM’s bankruptcy case.

² Specifically, the Second Circuit may determine that Plaintiffs were prejudiced by the denial of due process (or that they need not show prejudice), and that the bar on successor claims is lifted, or at minimum determine that the Bankruptcy Court was in error in holding otherwise.

The Honorable Jesse M. Furman
December 23, 2015
Page 3

Respectfully submitted,

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