

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

CHARLES SILVAS and GRACE SILVAS,  
Plaintiffs

v.

GENERAL MOTORS, LLC,  
Defendant

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Case No.: 2:14-cv-00089

**REPLY IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION FOR A  
MANDATORY INJUNCTION AND RELIEF UNDER 28 U.S.C. § 1651(a) TO COMPEL  
DEFENDANT TO ISSUE A “PARK IT NOW” ALERT IN THE INTEREST OF PUBLIC  
WELFARE AND SAFETY, AND OBJECTIONS TO DEFENDANT’S RESPONSIVE  
EVIDENCE**

TO THE HONORABLE JUDGE GONZALES RAMOS:

COME NOW Charles Silvas and Grace Silvas (together, “Plaintiffs”) before the Honorable Judge of this Court and file this Reply in Support of Their Emergency Motion for a Mandatory Injunction and Relief Under 28 U.S.C.A. § 1651(a) to Compel Defendant to Issue a “Park it Now” Alert in the Interest of Public Welfare and Safety and Brief in Support. In support thereof, Plaintiffs would show the Court as follows:

**REPLY**

**A. GM’S DEFECTIVE VEHICLES ARE NOT SAFE TO OPERATE PENDING THE COMPLETION OF THE RECALL.**

The simple truth is that GM’s belated, temporary proposed “fix” to the defective ignition switch—namely, that defective vehicles can be safely driven if drivers remove the key ring and key fob—is itself defective.

GM’s own C.E.O., Mary Barra swore to United States Senator Richard Blumenthal, D-CT, under oath, during the April 1, 2014 Congressional Hearings that if GM had any evidence that the vehicles were not safe to operate despite removing the key ring and key fob, she would order that the vehicles be immediately parked:

**“Senator, if I had any data, any incidents where with just the key or the key and the ring there was any risk, . . . I would ground . . . these vehicles across the country.”**

See Video Excerpt of Mary Barra during the April 1, 2014 Congressional Hearings, attached as Exhibit A; *see also* Exhibit B.

Here is that evidence:

Laura Valle owns a 2007 Chevrolet Cobalt. In March 2014, Ms. Valle received a recall notice for her vehicle. See Affidavit of Laura Valle, attached as Exhibit G. “It [the recall notice] said to remove all of the keys off [her] key ring, just to leave the ignition key, just to carry the ignition key, so that’s what [she] did.” *Id.* Even after Ms. Valle complied with GM’s recall notice, her ignition switch failed: **“As I was going to pull into Wal-Mart . . . it [the vehicle] just died on me . . . I had to put it into park because it was on drive. I proceeded to make the right turn into the parking area. I believe the steering wheel locked on me. I remember the key was not in the on position. It just happened so fast”.** *Id.* (emphasis added). Thankfully, no one was injured as a result of the ignition switch failure. *See id.*

Devora Kelley owns a 2007 Chevrolet Cobalt, which has “shut off while driving three times.” See *Kelley, et al, v. General Motors Company, et al.*, Case No. 8:14-cv-465-JVS (ANx), Dkt No. 21-4, Ex. X (C.D. Cal.), Declaration of Devora Kelley, in Case No. 8:14-cv-00465-JVS(ANX), at ¶¶ 2, 3, attached hereto as Exhibit C. After GM announced its first recall in February, Ms. Kelley received a recall notice saying that her car had a defective ignition switch and could shut off while driving. *Id.* ¶ 5. Ms. Kelley read the entire notice, “which said that [she] should take everything off of [her] key ring except for [her] car key.” *Id.* Ms. Kelley followed the instructions and removed all extra items from her key ring. *Id.* The recall notice “did not tell [her] to stop driving [her] car until it was repaired and did not tell [her] that [she] could get a free rental car until the repair could be performed.” *Id.* Ms. Kelley continued to drive her 2007 Chevy Cobalt

because she “needed a car for family errands and to get to and from work. *Id.* **“At least 5 times since receiving the recall notice, and even with no extra weight on the key ring, the ignition switch in [her] Cobalt moved from the ‘run’ position toward ‘accessory’ while [she] was driving.”** *Id.*

Frederick Whittington owns a 2007 Chevrolet HHR. Last month, Mr. Whittington “received notice that GM was recalling [his] vehicle due to a defective ignition switch that could cause [his] vehicle to shut off while driving.” *See Kelley, et al, v. General Motors Company, et al.*, Case No. 8:14-cv-465-JVS (ANx), Dkt No. 21-4, Ex. Y (C.D. Cal.), Declaration of Frederick Whittington, in Case No. 8:14-cv-00465-JVS(ANX), at ¶¶ 2, 4, attached hereto as Exhibit D. Mr. Whittington expressly averred that he “followed GM’s instructions and removed all extra weight from [his] key ring.” *Id.* ¶ 4. However, even after following GM’s instructions to remove all extra weight from his key ring, Mr. Whittington ***still experienced ignition switch failure.*** *Id.* ¶ 5 (“A few days later, I experienced a frightening event while driving. I was driving on College Avenue in Santa Maria, when my car suddenly shut off.”). Fortunately for Mr. Whittington, he was “able to coast to the side of the road.” When he “pulled over, [he] saw that the ignition switch had moved by itself out of the ‘run’ position.” *Id.*

Incredibly, Mr. Whittington took the vehicle to the dealership where he bought the HHR to see what could be done—the dealership offered little assistance. “They said that the best they could [do would be to] add [his] name to a list of vehicles needing repair, and get in touch with [him] when they could fix [his] car.” *Id.* ¶ 6. The dealership “volunteered that a rental car might be available while [his] car was being repaired, but said nothing about being able to get a free rental car between now and then.” *Id.*

The aforementioned evidence—the precise data that Ms. Barra said she would use to immediately order that the defective vehicles be parked—is sufficient to establish that GM’s defective vehicles are NOT safe to drive even if extra weight is removed from the key. Moreover, it directly contravenes GM’s purported “evidence” that there is no risk.

See Affidavit of Antonio Antonucci, attached as an exhibit to GM's Response [Doc. No. 35] ("As a matter of basic physics, when only the production ignition key is inserted in the lock cylinder, sufficient torque (twisting force) will not be generated to turn the ignition key from the 'run' to 'accessory' position due to road inputs."). There *is* in fact evidence that sufficient torque can be generated to turn the ignition key from the "run" to "accessory" position due to road inputs as it has happened *numerous times*, to *at least three different* individuals who continued to drive defective vehicles after complying with GM's proposed, temporary "fix" of removing the key ring and key fob. See Exhibit A; Exhibit B.

In addition, GM's purported "evidence" in support of the fact that there is no risk is inadmissible. Specifically, GM attaches the Affidavit of Antonio Antonucci to support the proposition that "GM has done extensive testing in connection with the recall that demonstrates that if drivers follow the instructions in the recall notice, the conditions necessary to move the ignition switch from 'run' to 'accessory' will not occur." See Affidavit of Antonio Antonucci, attached as an exhibit GM's Response [Doc. No. 35]. Plaintiffs object to Mr. Antonucci's affidavit because it is riddled with hearsay, improper opinion testimony, conjecture, speculation, and is self-serving and conclusory. Mr. Antonucci is an interested witness; an engineer who essentially assists with litigation and discovery. *Id.* Nowhere in Mr. Antonucci's affidavit does he state that he has any personal experience with the ignition switch in the cars at issue.

Further, though Mr. Antonucci refers, in a general sense, to GM's "extensive testing" he makes conclusory statements about the results. *See id.* In that respect, Mr. Antonucci's affidavit is violative of the Best Evidence Rule and the Rule of Optional Completeness. *See id.*; *see also* Fed. R. Evid. 1002; *see also* Fed. R. Evid. 106. Mr. Antonucci indicates that he reviewed "hundreds of tests," but he neglects to provide the Court or the Plaintiffs with a complete set of data from *any* one of those tests. Affidavit of Antonio Antonucci, attached as an exhibit GM's Response [Doc. No. 35]. *See id.* He

includes a self-prepared table supposedly summarizing the results from twenty-three of those “hundreds of tests.” *See id.* But, where is the data and evidence regarding the other “hundreds of tests”? It is only reasonable to conclude that GM selectively cherry-picked favorable test results—though Plaintiffs and the Court have no way of verifying that data because it was not furnished by the Defendant.

Based on the limited, insufficient and inadmissible “results” summarized by Mr. Antonucci, it further appears that the testing itself was fatally flawed in light of GM’s own admission that ignition switches are prone to failure when a vehicle “experiences rough road conditions or other jarring or impact related events.” Feb. 14, 2014 GM Safety Recall Notice, attached as Exhibit F; *see also* Mar. 11, 2014 GM Safety Recall Notice, attached as Exhibit K. In particular, Mr. Antonucci notes that GM only tested “potholes”—an unquestionably rough or jarring road condition that is frequently encountered by individuals—at speeds of 25 miles-per-hour. Affidavit of Antonio Antonucci, attached as an exhibit GM’s Response [Doc. No. 35], at 3. There is absolutely zero indication that GM tested vehicles encountering “pot holes” that were traveling in excess of 25 miles-per-hour or at ordinary highway speeds. Certainly, if GM had tested vehicles traveling in excess of 25 miles-per-hour or at ordinary highway speeds encountering “pot holes,” and the results had been favorable to GM, that evidence would have been provided to the Court.

Defendant’s error is compounded by the fact that Mr. Antonucci indicates some of the testing was conducted with exemplar recall vehicles, while some of the testing was conducted with “fixed” vehicles that meet the new ignition switch design specifications. *See id.* However, Mr. Antonucci does not distinguish between these two categories of vehicles when he cites the test results. Simply put, neither Plaintiffs nor the Court have any way of knowing or verifying, based upon Mr. Antonucci’s affidavit, if the “fixed” vehicles failed testing. Ironically, GM has twice used ignition switches in the past that the company knew did not meet its internal torque specifications, including the ignition

switches used in 2007 that GM claimed “fixed” the problems with pre-2007 ignition switches. *See* Memorandum Re: hearing on “The GM Ignition Switch Recall: Why Did It Take So Long?” from the Committee on Energy and Commerce to the Members of the Subcommittee on Oversight and Investigations, Mar. 30, 2014, attached as Exhibit E, at 5 (“February 2002: Delphi, GM’s ignition switch supplier for the recalled vehicles, submitted a Production Part Approval Process (PPAP) document for the switch. During a briefing, Delphi officials told Committee staff that **GM approved the PPAP even though sample testing of the ignition switch torque was below the original specifications set by GM.**”) (citations omitted) (emphasis added); *see also id.* at 7 (“April 26, 2006: A GM design engineer responsible for the ignition switch in the recalled vehicles signed a form entitled ‘General Motors Commodity Validation Sign-Off’ authorizing Delphi to implement changes in the ignition switch. The form explained that a ‘new detent plunger . . . was implemented to increase torque performance in the switch.’ **According to Delphi officials, sample testing prior to this approval suggested a significant increase in torque performance but the values were still below GM’s original specifications.** The modified ignitions began to appear in 2007 model year vehicles for all models affected by the recall. In its chronology submitted to NHTSA on February 24, 2014, GM acknowledged that the new ignition switch, however, was not reflected in a corresponding change in part number.”) (citations omitted) (emphasis added). It is undisputed that making such a critical change without making a corresponding change in part number has contributed to, in the words of United States Senator Claire McCaskill, D-MO, “GM’s culture of coverup.” Given GM’s flouting of critical, long-accepted engineering processes and its historical technical safety failures and cover-ups, the Court should be reticent to accept GM’s assurances that the company’s internal processes and engineering judgments ensure vehicle safety—GM has wrongly assured consumers that their vehicles were safe in the past, and they are wrongly assuring the Court that their vehicles are safe now. Reduced to its most basic form, the

question is this: “If prior replacement parts designed to “fix” safety defects in the past did not meet GM specifications, but were nonetheless approved by GM anyway, why should we believe that simply taking the weight off of the key ring is good enough now?” The answer is just as basic: We should not. Of course, GM is tacitly admitting that adjusting the key ring is not a sufficient “fix” by requiring customers to bring their vehicles in so that GM can replace the defective part.

**B. PLAINTIFFS’ REQUESTED INJUNCTIVE RELIEF IS LEGALLY SUPPORTABLE.**

**1. Plaintiffs’ Have Standing to Obtain Injunctive Relief That Benefits Others.**

Contrary to GM’s suggestions, Plaintiffs have standing to pursue the requested injunctive relief. The presence of these vehicles on the road poses a danger to everyone on the road, including Plaintiffs and other members of the public. *Shaw v. Toshiba America Information Systems, Inc.*, 91 F. Supp. 2d 926, 937-38 (E.D. Tex. 1999) (finding that plaintiffs had standing to seek an injunction ordering Toshiba to advise a class of potential purchasers of Toshiba computers that the computers could corrupt and destroy data without warning because widespread data corruption on Toshiba computers posed a threat to public health and safety). The Center for Auto Safety reports that there have potentially been over 300 deaths related to the defect and millions of these cars on the road, posing a danger to Plaintiffs and anyone else that shares the road. If there are additional accidents and fatalities, the value of Plaintiffs’ car will continue to decrease, creating prospective harm sufficient to confer standing. Given the prevalence of serious accidents and the public safety issues at stake, the harm is not “speculative” as GM suggests.

In *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, 754 F. Supp. 2d 1145, 1199-1200 (C.D. Cal. 2010), a case analogous to the one at bar, the Court held that the plaintiffs had standing to sue Toyota even when they did not actually experience the alleged defect because they suffered an economic loss. There, the plaintiffs sued Toyota for diminution of value under several theories based on an

alleged defect in the Electronic Throttle Control System (“ETCS”). 754 F. Supp. 2d at 1199-1200. One of the arguments that the plaintiffs made concerning the defect was that the ETCS did not contain a manual fail-safe mechanism. *Id.* In addition to the numerous causes of action, the plaintiffs requested an injunction ordering Toyota to implement an effective fail-safe mechanism on all vehicles with ETCS.

The *Toyota* Court implicitly accepted that the plaintiffs had standing to seek injunctive relief when the court proceeded to determine if the requested relief was preempted by NHTSA. *Id.* Notably, in its analysis, the *Toyota* court emphasized that under the Safety Act, actions for injunctive relief should not be treated differently from actions for damages. In essence, one cannot “split remedies.” *Id.* This same reasoning applies with respect to standing as well. “Indeed, if an injunction requiring a particular repair would ‘interfere’ with the federal regulatory scheme—so too would a damages award based on the failure to make such a repair. Therefore, the [*Toyota* Court] declin[ed] to treat Plaintiffs’ request for injunctive relief differently from its request for damages in determining whether or not there is an actual conflict.” *Id.* at 1197 (*citing Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1217 (N.D. Cal. 2002)). The Court here should likewise decline to parse Plaintiffs’ request for injunctive relief from the rest of their Complaint. *See id.*

Furthermore, Plaintiffs may pursue injunctive relief that benefits others under the Texas Deceptive Trade Practices Act. Section 17.50(b)(2) of the DTPA provides that “[i]n a suit filed under this section, each consumer who prevails may obtain ... an order enjoining such acts or failure to act.” Tex. Bus. & Com. Code § 17.50. Under the DTPA, a plaintiff may obtain an injunction if consumers other than the plaintiff are being injured by the unlawful acts. *See Rivers v. Charlie Thomas Ford, Ltd.*, 289 S.W.3d 353, 362 (Tex. Ct. App. 2009); *David McDavid Pontiac, Inc. v. Nix*, 681 S.W.2d 831, 839 (Tex. Ct. App. 1984).

The Texas Deceptive Trade Practices Act, like many other consumer protection statutes, is remedial in nature. *See First Nat. Bank of Kerrville v. Hackworth*, 673 S.W.2d 218, 227 (Tx. Ct. App. 1984). Because of the remedial nature of state consumer protection laws, plaintiffs

have standing to pursue injunctive relief even when they are aware of the problem and the requested relief would not provide them with previously unknown information. *See Ackerman v. Coca-Cola Co.*, No. 09 CV 395, 2013 WL 7044866, at \*15 n.23 (E.D.N.Y. 2013) (finding that plaintiffs had standing to enjoin defendants from continuing to falsely advertise their products, although “Defendants...contend[ed] that plaintiffs lack standing to pursue injunctive relief, since ‘the named plaintiffs [we]re now aware of Vitaminwater’s sugar content and ha[d] stopped drinking it.’”) To prevent a plaintiff from seeking injunctive relief because he is no longer “realistically threatened by a repetition of the violation” (in this case GM’s failure to provide a “Park It Now Alert”) would “eviscerate the intent” of the legislature “in creating consumer protection statutes because it would effectively bar any consumer who avoids the offending product from seeking injunctive relief.” *Larsen v. Trader Joe’s Co.*, No. C 11-05188 SI, 2012 WL 5458396, at \*3-4 (N.D. Cal. Dec. 10, 2013). This applies with particular force here where Plaintiffs seek injunctive relief that would promote consumer safety and prevent serious accidents, injuries, and potentially, deaths.

As the Fifth Circuit has explained on multiple occasions, plaintiffs have standing to seek relief that benefits non-litigants. *Bunch v. Bullard*, 795 F.2d 384, 390 (5th Cir. 1986) (“Even though the injunctive relief benefits parties other than [the plaintiffs], it can still be proper when sought by the individual plaintiff.”). This is true regardless of whether the case was brought as a class action. *Professional Association of College Educators, TSTA/NEA v. El Paso County Community College District*, 730 F.2d 258, 273-74 (5th Cir. 1984) (“An injunction ... is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in . . . [a] lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled.”). The cases cited by Defendants – and the selective quotations from those cases – do not support its position to the contrary. For example, in *Shafer v. Army & Air Force Exchange Serv.*, 376 F.3d 386 (5th Cir. 2004) the plaintiff sought an injunction requiring an outside audit of personnel policies even though she had retired and nothing in her pleadings suggested that she was pursuing relief for a broad

group. In *Robertson v. Millican*, Case No. 3:11-CV-01219-M-BK, 2011 WL 6976587 (N.D. Tex. Dec. 15, 2011), the plaintiff alleged that he was maliciously prosecuted, and there was no evidence that this issue affected anyone else, thus making non-litigant relief inappropriate. Here, however, Plaintiffs' motion clearly shows a desire to obtain broad relief for a well-defined group of individuals of which Plaintiffs are a part.

**2. Plaintiffs' Claims Are Not Barred by the Doctrine of Mootness.**

**a. Mootness generally**

The Supreme Court has long held that "federal courts are without power to decide a question that cannot affect the rights of litigants in the case before them." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). If a case is found to be moot, it is assumed that the rights of the litigants can no longer be affected by a judicial decision.

To a certain extent, the theoretical foundation of the concept of mootness stems from constitutional precepts. The federal judiciary's inability to review moot cases has been said to derive from the case-or-controversy requirement of Article III of the Constitution. *See Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3 (1964). If a case is moot, the plaintiff can no longer have a "personal stake" in the outcome. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990) (parties must continue to have "a personal stake in the outcome" of the case). The mootness doctrine thus reflects the assumptions of the "private rights" model of adjudication, under which the courts' function is confined to the resolution of concrete private controversies and their lawmaking authority is only incidental to the performance of the adjudicatory function. Under this model, legal pronouncements by the judiciary that are untied to the resolution of a live controversy constitute an invasion of the legislative lawmaking power and thus a violation of separation of powers.

Not all commentators concur that the mootness doctrine can properly be grounded in the case-or-controversy requirement of Article III. Chief Justice Rehnquist, for instance, has suggested that while an unwillingness to decide moot cases may be connected to the case or

controversy requirement of Article III, it is an attenuated connection that may be overridden if there are strong reasons to override it. *Honig v. Doe*, 484 U.S. 305, 329-333 (1988) (Rehnquist, C.J., concurring). He pointed to the “capable of repetition, yet evading review” exception to the mootness requirement. Some courts thus refer to two kinds of mootness: constitutional mootness and prudential mootness. *See, e.g., Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1121 (10th Cir. 2010) (“Courts recognize two kinds of mootness: constitutional mootness and prudential mootness.”); *Fletcher v. United States*, 116 F.3d 1315, 1321 (10th Cir. 1997) (review of constitutional de novo; review of prudential for abuse of discretion).

With respect to constitutional mootness, an actual controversy must be extant at all stages of review to satisfy the case and controversy requirement of Article III. But even if a case is not “constitutionally moot,” it may be dismissed under the “prudential-mootness doctrine,” also sometimes referred to as “remedial mootness.” *Id.* Whether to decline to address an issue on the ground of prudential mootness is within the court’s discretion. Prudential mootness is generally applied only to requests for injunctive or declaratory relief. *Id.*

**b. *Winzler v. Toyota Motor Sales USA, Inc.*, 681 F.3d 1208 (10th Cir. 2012) is Not Dispositive.**

GM erroneously contends that Plaintiffs’ claims are moot by relying on *Winzler v. Toyota Motor Sales USA, Inc.*, 681 F.3d 1208 (10th Cir. 2012).

In *Winzler*, Arrienne Mae Winzler, a Toyota car owner, brought a putative class action under state law on behalf of a nationwide class of certain Toyota car owners and lessees, alleging that the cars had defective “Engine Control Modules” (ECMs). She sought “an order requiring Toyota to notify all relevant owners of the defect and then to create and coordinate an equitable fund to pay for repairs.” *Id.* The district court dismissed Winzler’s complaint for failure to state a claim. After she filed her appeal, Toyota announced its nationwide recall of the defective cars and, pursuant to the National Traffic and Motor Vehicle Safety Act, notified owners that it would fix or replace the defective ECMs at no cost. Toyota was required by federal law to carry out this promise and give Ms. Winzler the *exact* relief she requested. Accordingly, Toyota argued

on appeal that her case should be dismissed as moot.

The Tenth Circuit agreed and vacated and remanded the case to the district court with instructions. The Tenth Circuit acknowledged that “claims for equitable relief, like the injunction Ms. Winzler seeks in this lawsuit, appeal to the ‘remedial discretion’ of the courts.” *Id.* The Tenth Circuit continued, “if events so overtake a lawsuit that the anticipated benefits of a remedial decree no longer justify the trouble of deciding the case on the merits, equity may not demand decision by dismissal. When it does, we will hold the case ‘prudentially moot.’” *Id.* Prudential mootness can exist even where a case has a “flicker of life” in it and meets the constitutional requirement under Article III of a “case or controversy.” *Id.*

Our case is fundamentally different from the *Winzler* case because the relief that the Plaintiffs are requesting is not the same as the relief provided by the NHTSA recall. Pursuant to the recall, GM has only asked drivers of certain models of GM vehicles to bring the vehicles to the dealerships for a replacement ignition switch. GM has not informed these customers that they should not drive the vehicles. To the contrary, GM has suggested that the Plaintiffs remove heavy key rings and the key fob from their keys as they continue to operate the vehicle. *See* March 11, 2014 Letter from GM to Ms. Nancy Lewis re: NHTSA Recall No. 14V-047, at 1 (“Until the recall repairs have been performed, it is very important that customers remove all items from their key rings, leaving only the vehicle key.”). This advice is nonsensical—and harmful—in light of the problems that even GM acknowledges, as “rough road conditions or other jarring impact related events” could cause the vehicle to experience full loss of power, steering, braking and air bag deployment. *See* GM Safety Recall Notice (“Th[e] risk increases if your key ring is carrying added weight (such as more keys or the key fob) or your vehicle experiences rough road conditions or other jarring or impact related events.”).

The fact that the relief is not embodied by the present recall is vital, especially considering the full scope of the Court’s order in *Winzler*. Specifically, the *Winzler* Court noted that “[t]hings might be different if we thought Ms. Winzler would be left without complete relief. *Winzler v. Toyota Motor Sales USA, Inc.*, 681 F.3d at 1211-12. “While we generally hold a case

moot when a coordinate branch steps in to resolve the problem, we don't do so without first accounting for the possibility of failure. If the party seeking relief can show that 'there exists some cognizable danger of recurrent violation,' some cognizable danger that the coordinate branch will fail and she will be left without a complete remedy, we will continue with the case even in the face of a simultaneous remedial commitment from another branch." *Id.* "After all," the *Winzler* Court noted, "while equity may not require us to duplicate efforts of the other branches it hardly insists we run the risk of leaving a plaintiff without a remedy she's entitled to. In seeking to avoid one set of wrongs (needless duplication and inter-branch disputes) we cannot ignore the possibility of inviting what may be even a greater one (leaving the plaintiff without a remedy in a meritorious case)." *Id.* at 1212. That's precisely the risk that is posed in the instant case.

c. ***United States v. Ford Motor Company, 574 F.3d 534 (D.C. Cir. 1978) Does Not Support GM's Position.***

GM cites *United States v. Ford Motor Company, 574 F.3d 534 (D.C. Cir. 1978)*, to support its argument that Plaintiffs' requested injunctive relief is now moot. GM's reliance on *Ford* is misplaced. First, in *Ford* the relief sought—the issuance of a recall notice—was the very conduct voluntarily undertaken by the manufacturer. To the contrary, here, the relief sought by the Plaintiffs—the issuance of a "Park It Now" Alert—is wholly distinct from the recall plan GM currently has in place. In fact, Plaintiffs argue that the recall alone is insufficient to protect drivers and that it will therefore not "result in the elimination of the dangerous condition that [is] the subject of [this] proceeding[]." *Id.* at 539.

**3. Plaintiffs' Claims are Not Preempted**

a. **GM has not satisfied its burdens in asserting preemption.**

There are only three types of federal preemption that courts have recognized: (1) express preemption, which may be found where Congress has explicitly stated in the statute that state law claims are preempted; (2) implied preemption: where in the absence of express language indicating an intent to preempt state law claims, implied preemption may be found where

“federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it; (3) conflict preemption: which may be found where state law “actually conflicts” with federal law. GM apparently does not—and cannot—argue for express preemption or field preemption. The Safety Act does not expressly preempt Plaintiffs’ request for injunctive relief. The Safety Act’s express preemption provision is limited to state legislation and regulations that prescribe standards that differ from Federal Motor Vehicle Safety Standards (“FMVSS”) promulgated under the Act. *See Geir v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 867-68 (2000) (construing the Safety Act’s preemption and savings clauses, which have since been recodified as subsections (b) and (e) of 49 U.S.C. § 30103).

Nor is there field preemption. “Congress in the Safety Act plainly did not intend to occupy the field of motor vehicle safety . . . .” *Harris v. Great Dane Trailers, Inc.*, 234 F.3d 398, 400 (8th Cir. 2000); *accord In re Bridgestone/Firestone, Inc.*, 256 F. Supp. 2d 884, 899 (S.D. 2003). Further, motor vehicle safety is an area of traditional State police power. The Court in *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1217 (N.D. Cal. 2002) held that a Court is to start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. No such clear and manifest congressional purpose exists here.

Conflict preemption exists “where state law conflicts with federal law, either because it’s impossible to comply with both laws or because state law stands as an obstacle to accomplishing the purposes of federal law.” *Natl. Meat Ass’n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010). “Conflict preemption is a demanding standard, as courts won’t seek out conflicts between state and federal regulation where none clearly exists.” *Id.* 1099 (internal quotations omitted).

**As the party claiming preemption, GM bears the burden of showing that this demanding standard is met.** *Barnes ex rel. Barnes v. Koppers, Inc.*, 534 F.3d 357, 362 (5th Cir. 2008); *Village of DePue, Il. V. Exxon Mobil Corp.*, 537 F.3d 775, 786 (7th Cir. 2008). **GM makes absolutely no effort, at all, to identify the source of conflict between applicable state**

**law and federal law!** *See Williams v. Nat'l Football League*, 582 F.3d 863, 880 (8th Cir. 2009) (“[T]his is not our riddle to solve, as it is the NFL’s burden to establish preemption of the Players’ CPA claim.”). **The Court need not sift through the Safety Act, its history and interpretive case law simply because GM suggests the mere possibility or prospect of a conflict between the Act and state-law relief when GM has made no attempt to actually and concretely identify the conflict it erroneously contends exists.** *See also In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, 754 F. Supp. 2d 1145, 1199-1200 (C.D. Cal. 2010) (“There must be clear evidence of such a conflict . . . . Speculative or hypothetical conflict is not sufficient: only State law that actually conflicts with federal law is preempted.”) (citations omitted).

GM’s burden is especially heavy in this case because it must overcome a presumption against preemption. The presumption arises where, as in this case, Congress has legislated “in a field which the States have traditionally occupied.” *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 & n. 3 (2009) (confirming that the presumption applies to claims of conflict preemption). Safety—in particular, highway and street safety—is an area of “preexisting and traditional state police power.” *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 429 (2002); *see also Irving v. Mazda Motor Corp.*, 136 F.3d 764, 767 (11th Cir. 1998) (applying the presumption to the Safety Act).<sup>1</sup> GM cannot carry that heavy burden.

Four on-point cases reject GM’s position that Plaintiffs’ claims are preempted: *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, 754 F. Supp. 2d 1145, 1199-1200 (C.D. Cal. 2010); Judge Wilken’s thoroughly written decision in *Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 953 (N.D. Cal. 2004); *Marsikian v. Mercedes Benz USA, LLC*, 2009 U.S. Dist. LEXIS 117012 (C.D. Cal. May 4, 2009); and *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208 (N.D. Cal. 2002).

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<sup>1</sup> Cf. *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443 (1978) (“[T]he Court has been most reluctant to invalidate under the Commerce Clause state legislative in the field of safety where the propriety of local regulation has long been recognized. In no field has this deference to state regulation has been greater than that of highway safety regulation.”).

**b. Congress did not intend to preempt state-law injunctive relief.**

There is nothing in the “language in the [Safety Act] or its legislative history demonstrating that exclusive federal agency administration of injunctive remedies in the field of motor vehicle safety was the considered policy choice of Congress.” *Chamberlan*, 314 F. Supp. 2d at 963. Far from it, the Safety Act plainly expresses Congress’s intent to leave the full panoply of state-law remedies intact, notwithstanding NHTSA’s recall authority. Specifically, 49 U.S.C. § 30018 empowers NHTSA to order motor vehicle manufacturers to recall motor vehicles that contain a safety defect or fail to comply with an applicable FMVSS. Section 30162 provides that interested persons may petition NHTSA to initiate an administrative proceeding to decide whether to order a recall. In § 30103(d), Congress expressly provided that remedies under §§ 30118 and 30162 are “in addition to other rights and remedies under other laws of the United States or a State.” (emphasis added). As Judge Wilken recognized in *Chamberlan*, § 30103(d) makes “clear that Congress intended to leave open to consumers State remedies in addition to the administrative petition process.” *Chamberlan*, 314 F. Supp. 2d at 960.

In *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, the Court emphatically agreed with Judge Wilken’s decision in *Chamberlan*. 754 F. Supp. 2d at 1197-98 (“The Court agrees with the *Chamberlan* court that the proper area of law to consider in determining whether Plaintiffs’ requested relief falls within an area of law traditionally occupied by the States or one where there has been a significant federal presence is that of motor vehicle safety.”); *see also In re Bridgestone/Firestone, Inc.*, 256 F. Supp. 2d 884, 899 (S.D. 2003) (“For certain, vehicle safety is not an area in which Congress has legislated . . . from the earliest days of the Republic.”) (citations omitted). “In fact, “[i]n no field has . . . deference to state regulation been greater than that of highway safety regulation.”” *Chamberlan*, 314 F. Supp. 2d at 958 (quoting *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443 (1978)). The *Toyota* Court made clear: “a recall is a remedy rather than a substantive field of regulation.” 754 F. Supp. 2d at 1197-98 (citations omitted). Therefore, recalls are not the relevant area of law. *See id.* Because motor vehicle safety, not recalls, is the area of law

applicable to the presumption inquiry, the presumption against preemption should apply in this case. *See id.*

**c. GM's authorities are not persuasive.**

GM relies on three federal decisions and one unpublished decision by a district court: *In re Bridgestone/Firestone Inc., ATX, ATX II & Wilderness Tires Prods. Liab. Litig.*, 153 F. Supp. 2d 935 (S.D. Ind. 2001); *Lilly v. Ford Motor Co.*, No. 00C7372, 2002 WL 84603 (N.D. Ill. Jan. 22, 2002); *Namovicz v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 583-84 (D. Md. 2001); and *Cox House Moving, Inc. v. Ford Motor Co.*, No. 7:06-1218-HMH, 2006 WL 2303182 (D.S.C. Aug. 8, 2006). None of those decisions are persuasive.

First, GM's authorities failed to apply the presumption against preemption. *Bridgestone/Firestone* turned largely on the court's conclusion that the presumption against preemption does not apply to injunctive relief that resembles a recall. The court relied on *United States v. Locke*, 529 U.S. 89, 120 S. Ct. 1135, 146 L. Ed. 2d 69 (2000), which stated that the presumption against preemption "is not triggered when the State regulates in an area where there has been a history of significant federal presence." *Id.* at 108. Since the *Bridgestone/Firestone* decision, the Ninth Circuit has made clear that *Locke* was a field preemption case and did not displace the presumption for purposes of conflict preemption. *See UFO Chuting of Haw., Inc. v. Smith*, 508 F.3d 1189, 1194-95 (9th Cir. 2007); *see also Marsikian*, 2009 U.S. Dist. LEXIS 117012, at \*23 (rejecting defendants' argument that the presumption of preemption does not apply).<sup>2</sup>

Second, these authorities relied on Supreme Court decisions that are wholly distinguishable from this case. The conflict preemption rationale of both *Bridgestone/Firestone* and *Lilly* is based on the "comprehensiveness" of NHTSA's authority to order recalls. In that

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<sup>2</sup> The *Bridgestone/Firestone* court further apparently proceeded on the incorrect assumption that the Supreme Court abandoned the presumption against preemption. *See* 153 F. Supp. 2d at 941 n. 7. More recent Supreme Court decisions make clear that the presumption remains firmly entrenched in the Supreme Court's jurisprudence. *See, e.g., Wyeth*, 129 S. Ct. at 1194-95 & n. 3.

respect, the court relied on two Supreme Court decisions: *International Paper Co. v. Ouellette*, 479 U.S. 481, 107 S. Ct. 805, 93 L. Ed. 2d 883 (1987), and *Chicago & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 101 S. Ct. 1124, 67 L. Ed. 2d 258 (1981). Those decisions addressed federal statutes that differ from the Safety Act in critical respects for purposes of preemption analysis. *International Paper* construed the Clean Water Act (“CWA”). Unlike the Safety Act, Congress intended for the CWA to “establish an all-encompassing program of water pollution regulation.” *International Paper*, 479 U.S. at 492. Toward that end, the CWA created a specific scheme for coordinate regulation by the federal and state governments and prescribed specific limits on the States’ regulatory role. *Id.* at 489-90. In particular, the CWA made “clear that affected States” [States other than the State from which a discharge emitted] occupy a subordinate position to source States [States from which a discharge emitted] in the federal regulatory program.” *Id.* at 491. The Court held that the CWA preempts a claim for damages under the law of an affected State because such a claim would frustrate the CWA’s carefully constructed regulatory partnership among the federal and state governments. *Id.* at 494-97. (Notably, the Court also held that the CWA does not preempt claims for damages governed by the law of source States. *Id.* at 497-500.)

Unlike the CWA, the Safety Act did not establish a specific scheme for state regulation of motor vehicle safety. On the contrary, as discussed above, Congress expressly left the door wide open for regulation by States (except that States may not enact, by legislation or regulation, a standard that differs from an FMVSS). 49 U.S.C. § 30103. Accordingly, the rationale of *International Paper* does not apply, and *Bridgestone/Firestone* and *Lilly* are unpersuasive to the extent they relied on that rationale.

The other decision that *Bridgestone/Firestone* and *Lilly* relied on – *Kalo Brick*—is also readily distinguishable. *Kalo Brick* addressed preemption under the Interstate Commerce Act (“ICA”), which is “among the most pervasive and comprehensive of federal regulatory schemes.” 450 U.S. at 318. In the ICA, Congress gave the Interstate Commerce Commission “broad,” “plenary,” and “exclusive” authority to regulate interstate rail carriers. *Id.* at 318-19.

Even before *Kalo Brick*, the Court had found preemption in a long line of ICA cases, reasoning that “there can be no divided authority over interstate commerce, and the acts of Congress on that subject are supreme and exclusive.” *Id.* (alterations and internal quotation marks omitted). In *Kalo Brick*, the Court reaffirmed that “[t]he exclusive and plenary nature of the Commission’s authority to rule on carriers’ decisions to abandon lines is critical to the congressional scheme....” *Id.* at 321. Accordingly, the Court held that the ICA preempted a state-law claim arising from a carrier’s abandonment of a rail line.

Unlike the ICA, the Safety Act does not vest a federal agency with plenary and exclusive authority to regulate the subject matter in question (motor vehicle safety), and its structure does not suggest that Congress intended for remedies to be exclusive. On the contrary, “the Supreme Court has suggested that the [Safety Act] was not ‘intended to centralize all authority over the regulated area in one decision maker: the Federal Government.’” *Littel v. Bridgestone/Firestone, Inc.*, 259 F. Supp. 2d 1016, 1024 n.11 (C.D. Cal. 2003) (quoting *Freightliner Corp. v. Myrick*, 514 U.S. 280, 286, 115 S. Ct. 1483, 131 L. Ed. 2d 385 (1995) (holding that the Safety Act did not preclude state-law claims alleging that tractor trailers were defective because they did not include anti-lock brakes)).

Third, if GM relies on the aforementioned authorities, we must note that the authorities engage in the impermissible “splitting” of remedies for purposes of preemption analysis. *See supra* at 7. When deciding whether federal law conflict-preempts state law, the Court must focus on the “the nature of the activities which the States have sought to regulate,” not “the method of regulation adopted.” *Kalo Brick*, 450 U.S. at 317-18 (quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 243, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959)). Moreover, “unless there is evidence that Congress meant to ‘split’ a particular remedy for pre-emption purposes, it is assumed that the full cause of action under state law” is either available or preempted. *International Paper*, 479 U.S. at 498 n.19 (relying on *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255, 104 S. Ct. 615, 78 L. Ed. 2d 443 (1984)). These authorities overlooked those principles. Instead, they singled out injunctive relief for purposes of

preemption analysis even though there is “no indication in the language of the Safety Act that Congress intended that actions for injunctive relief should be treated differently from actions for damages.” *Kent*, 200 F. Supp. 2d at 1217.

**d. The Court should follow the more recent, better-reasoned decisions in *Toyota, Chamberlan and Kent*.**

GM cannot attempt to dismiss the reasoning in *Toyota, Chamberlan* and *Kent* on the ground that those courts concluded that the relief sought was something short of a court-ordered recall. That distinction makes no difference, because the precise nature of the injunctive relief sought did not influence the decisions in *Toyota, Chamberlan* and *Kent*. Rather, those decisions were based on the considerations presented above: Congress’s clearly expressed intent not to foreclose relief under state law except in very limited circumstances, the complete absence of evidence that Congress intended for injunctive remedies to be treated differently from monetary remedies, and GM’s failure to point to an actual, specific conflict. Those considerations apply with equal force to all forms of injunctive relief under state law, regardless of whether such injunctive relief can be characterized as a recall.

The *Chamberlan* and *Toyota* Courts held that neither Section 30118(b) nor 30162 of the Safety Act contain mandatory language to the effect that a petition to the Secretary is a consumer's **only** means to seek remedies for defective equipment, nor does Defendant point to any such language elsewhere in the Safety Act, and the plain language of the Safety Act actually indicates the opposite. Those courts further stated Section 30118(b) authorizes the Secretary of Transportation to decide, after any interested persons have had the opportunity to present information and express their views, whether a defect exists, and if the Secretary decides there is a defect, he or she is authorized to order manufacturers to notify consumers and remedy it, **but neither of these** referenced sections contains mandatory language to the effect that a petition to the Secretary is a consumer's only means to seek remedies for defective equipment. The *Chamberlan* and *Toyota* courts also held that the *Bridgestone I* court applied too broadly the conflict preemption analysis in these cases.

One distinguishing point for the *Chamberlan* case was that the request for injunction was limited only to an injunction related to California owners of the subject vehicles, and did not seek to enforce a nationwide injunction or have the Court declare that a dangerous defect existed as to the tires, as opposed to the relief sought in *Bridgestone*. 314 F. Supp. 2d at 958. *Chamberlan* infers that because the NHTSA has the sole discretion in determining when a defect is dangerous enough to warrant recall notification or remedy, the relief sought in *Bridgestone* did in fact conflict with the Safety Act. *Id.* However, in *Chamberlan*, unlike *Bridgestone*, the threshold inquiry of whether a dangerous defect existed had already been determined, and a partial recall had already been instituted. *Id.* Therefore, analogous to the present case, the *Chamberlan* Court allowed for an injunction expanding an already initiated recall of a defective vehicle, which the plaintiff alleged was not broad enough. *Chamberlan*—and *Toyota* which drew upon its well-reasoned decision—is an analogous and compelling case to our present issue of preemption in that (1) a recall was already instituted as opposed to other cases wherein an injunction was denied on the basis of conflict preemption and (2) the Court greatly emphasizes that the provisions of the Safety Act are NOT the exclusive avenue for recall or equivalent remedy under the purview of the Safety Act’s savings clause. *Id.*

The Plaintiffs here are, at most, simply seeking to *enhance* the already established recall. As such, the requested relief will not interfere with or frustrate actions taken pursuant to the Safety Act.

**4. This Court Should Not Defer to NHTSA Based on the Doctrine of Primary Jurisdiction.**

**a. The primary jurisdiction doctrine generally.**

The primary jurisdiction doctrine allows courts to defer issues to the decision-making power of administrative tribunals that have special knowledge of the subject matter. *See U.S. v. W. Pacific R.R. Co.*, 352 U.S. 59, 70 (1956). It is a flexible prudential doctrine that is applied at the discretion of the court. *Wagner & Brown v. ANR Pipeline Co.*, 837 F.2d 199, 201 (5th Cir. 1988). Courts typically stay cases while the agency decides the issues that are within its special

expertise. *Id.* at 206 (“[U]nder the doctrine, a court may refer discrete issues to an administrative agency while reserving to itself the power to take final action on the litigant’s claims.”); *see also Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 60 (2d Cir. 1994) (“A federal court, of course, retains final authority to rule on a federal statute, but should avail itself of the agency’s aid in gathering facts and marshaling them into a meaningful pattern.”). When the case resumes, the court must defer to the agency’s factual determinations. *Western Pacific*, 352 U.S. at 64.

There is “[n]o fixed formula” for applying the doctrine because “[i]n every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation.” *Id.* The purposes of the doctrine are to promote regulatory uniformity by allowing an agency to initially review certain administrative questions and to make proper use of the special knowledge and expertise of the agency. *Id.* With respect to regulatory uniformity, courts consider the possibility that various courts addressing the same regulatory issue will reach disparate results and the degree that disparate results will undermine the regulatory scheme. *See, e.g., Wagner & Brown*, 837 F.2d at 202. With respect to agency expertise, courts consider whether the issue involves “voluminous and conflicting evidence,” intricate facts, or words used with a “peculiar meaning.” *Great N. Ry. Co. v. Merchants Elevator Co.*, 292, U.S. 285, 291 (1922)). Another consideration is whether the adjudication of the issue by the agency will materially aid the court. *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 302 (1973).

The Fifth Circuit has said that the doctrine applies where “(1) the court has original jurisdiction over the claim before it; (2) the adjudication of that claim requires the resolution of predicate issues or the making of preliminary findings; and (3) the legislature has established a regulatory scheme whereby it has committed the resolution of those issues or the making of those findings to an administrative body.” *Northwinds Abatement, Inc. v. Employers Ins. of Wausau*, 69 F.3d 1304, 1311 (5th Cir. 1995). The Fifth Circuit also requires courts to “weigh the benefits of obtaining the agency’s aid against the need to resolve the litigation expeditiously” and

courts “may defer only if the benefits of agency review exceed the costs imposed on the parties.” *Wagner & Brown*, 837 F.2d at 201. “The district court may consider many factors in striking this balance, including: how agency action will aid the litigation; whether the litigation involves conduct requiring continuing supervision by the agency; whether the issues to be litigated are unique to regulated industries; and whether proceedings already are pending before the agency.” *Gulf States Utilities Co. v. Alabama Power Co.*, 824 F.2d 1465, 1473 (5th Cir. 1987).

**b. Federal courts have generally refused to defer to NHTSA under the primary jurisdiction doctrine.**

Federal courts have almost uniformly declined to defer to NHTSA under the doctrine of primary jurisdiction. The following bulleted list sets forth a wide array of federal court decisions addressing the issue, and declining to defer to NHTSA under the doctrine:

- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, 754 F. Supp. 2d 1145, 1199-1200 (C.D. Cal. 2010) (denying Toyota’s motion to strike the plaintiffs’ request for injunctive relief in the form of a recall under the doctrine of primary jurisdiction because Toyota failed to show that a court-ordered recall would conflict with the NHTSA’s ongoing investigation and the plaintiffs’ claims were “within the conventional competence of the courts”).
- *Marsikian v. Mercedes Benz USA, LLC*, No. CV 08-04876 AHM (JTLx), 2009 WL 8379784, at \*9 (C.D. Cal. May 4, 2009) (denying Mercedes Benz’s request to refer the issue of whether a safety defect existed to the NHTSA under the doctrine of primary jurisdiction because the case “presents no claims arising under any statutes that the NHTSA enforces, only claims that primarily rest on contract and tort principles” and because “[o]ther than its questionable assertion that this case involves a request for a recall, Defendant does not specify any particular issues within the NHTSA’s special competence that must be resolved in this action”).
- *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1218-19 (N.D. Cal. 2002) (rejecting DaimlerChrysler’s motion to dismiss on primary jurisdiction grounds because the plaintiffs’ claims for damages and injunctive relief in the form of a recall of Jeeps with an alleged defect that caused them to self-shift from park to reverse did not conflict with an ongoing investigation by the NHTSA into the alleged defect or raise “issues of fact not within the conventional experience of judges”).
- *O’Keefe v. Mercedes-Benz USA, LLC*, No. 01CV2902, 2002 WL 377122, at \*6 (E.D. Pa. Jan. 31, 2002) (denying the defendant’s motion to dismiss the portions

of the complaint that asked for a recall or recall notice because “the facts at trial could possibly show that court-ordered repairs or recall notices are an appropriate relief for the fraud and breach of warranty claims asserted in this case”).

- *In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litig.*, No. MDL 961, 1993 WL 204116, at \*3-7 (E.D. Pa. June 10, 1993) (denying GM’s motion to stay because the plaintiffs were not challenging the NHTSA regulations or other practices of the NHTSA and because the plaintiffs’ state law claims “are ordinarily ones which the court decides”).
- *See also In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 811 n.30 (3d Cir. 1995) (“[T]he district court could clearly have awarded relief that would require GM to set up a fund to finance retrofits initiated by the owners individually. The district court therefore did not lack the power to order a remedy that would have been more responsive to the class’s concern about leaving the trucks on the road.” (internal citation omitted)).

The foregoing decisions recognize that application of the doctrine of primary jurisdiction is unwarranted for several reasons.

*First*, because Plaintiffs do “not challenge a safety standard or any NHTSA regulation,” the need for uniformity and consistency in the regulation of business is not implicated. *Kent*, 200 F. Supp. 2d at 1218 (internal quotation marks omitted).

*Second*, and as discussed in connection with preemption, GM has not identified any specific conflict between these actions and the ongoing NHTSA investigation of the same problem. Under those circumstances, there is no basis for deferring to NHTSA. *Kent*, 200 F. Supp. 2d at 1218; *see also GM Truck Fuel Tanks*, 1993 WL 204116, at \*4 (“Courts will not apply the doctrine of primary jurisdiction where no fundamental conflict exists between the common law remedies and the statutory scheme since little danger remains for non-uniform enforcement.”).

*Third*, because state-law claims arising from vehicle defects are within the conventional competence of courts, there is no reason to defer to NHTSA’s supposed specialized expertise. *Kent*, 200 F. Supp. 2d at 1218-19; *GM Truck Fuel Tanks*, 1993 WL 204116, at \*6.

*Finally*, and as GM completely overlooks, in deciding whether to defer to NHTSA under the doctrine of primary jurisdiction, the Court should consider whether NHTSA “has the power

to immunize certain regulated conduct from liability and thus alleviate the need for judicial intervention.” *GM Truck Fuel Tanks*, 1993 WL 204116, at \*3 (citing *Carnation Co. v. Pac. Westbound Conf.*, 383 U.S. 213, 86 S. Ct. 781, 15 L. Ed. 2d 709 (1966)). Because compliance with NHTSA regulations does not insulate GM from liability in this case, there is no reason to defer to NHTSA. *Id.* at \*6.

c. **Plaintiffs’ requested injunctive relief does not require the resolution of predicate issues or the making of preliminary findings by NHTSA.**

Plaintiffs’ Motion asking the Court to compel GM to issue a “Park It Now” Alert does not require “the resolution of predicate issues or the making of preliminary findings” by the NHTSA, one of the required elements for applying the doctrine of primary jurisdiction in the Fifth Circuit. *See Northwinds Abatement, Inc. v. Employers Ins. of Wausau*, 69 F.3d 1304, 1311 (5th Cir. 1995). Indeed, GM has already admitted that there is a defect, so there is no need for the NHTSA to make any findings as to whether or not a defect exists. *See Ex. A* at 1 (“General Motors has decided that a defect which relates to motor vehicle safety exists ...”). GM has also admitted that the defect has caused crashes, including fatal crashes, so there is no need for the NHTSA to make any findings about the risks caused by the defect. *See Ex. A, Attachment B* at 6-7 (identifying 11 crashes in which the defective ignition switch “may have caused or contributed” to the non-deployment of airbags, resulting in four fatalities and nine injuries). Because the underlying facts are not in dispute, there is no reason to defer to the NHTSA. *See TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 74 (2d Cir. 2002) (“Although we acknowledge that an agency’s role in ‘marshaling [the facts] into a meaningful pattern,’ does cover some cases where the underlying facts are not in dispute, we also believe that where the facts are undisputed, it will rarely be appropriate to dismiss on the basis of primary jurisdiction.” (internal citation omitted)).

d. **Plaintiffs’ requested injunctive relief does not conflict with NHTSA procedures or mandates.**

Additionally, Plaintiffs’ requested injunctive relief does not conflict with the current

NHTSA recall or future NHTSA actions. While the Safety Act does set forth procedures for notifying owners of defects and recalls, those procedures do not expressly contemplate a “Park It Now” Alert. *See* 49 U.S.C. § 30119; 49 C.F.R. § 577.1 et seq. There is thus no conflict with NHTSA procedures if the Court orders GM to notify owners that they should not drive their cars until the ignition switch is replaced.

While, as a general proposition, “[c]ourts will not apply the doctrine of primary jurisdiction where no fundamental conflict exists between the common law remedies and the statutory scheme since little danger remains for non-uniform enforcement,” there is no evidence that the NHTSA is considering ordering GM to send a “Park It Now” Alert. *In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litig.*, No. MDL 961, 1993 WL 204116, at \*4 (E.D. Pa. June 10, 1993).<sup>3</sup> The Safety Act requires a recall notice to include “[a]n evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance.” 49 C.F.R. § 577.5(f). But when the defect could cause a crash, the notice only has to include either “[a] statement that the defect or noncompliance can cause vehicle crash without prior warning,” or “[a] description of whatever prior warning may occur, and a statement that if this warning is not heeded, vehicle crash can occur.” 49 C.F.R. § 577.5(f)(1).

Likewise, following an investigation (which has been commenced but not completed in this case), the NHTSA can order manufacturers to provide notice that includes, among other

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<sup>3</sup> *See also Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 532 F.2d 412, 419 (5th Cir. 1976) (“The nature of the relief sought ... is also a relevant consideration in deciding whether to refer to the agency. The court in instituting injunctive relief may be able to provide adequate flexibility to coordinate its decision with subsequent regulatory action.”); *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, 754 F. Supp. 2d 1145, 1199-1200 (C.D. Cal. 2010) (denying Toyota’s motion to strike the plaintiffs’ request for injunctive relief in the form of a recall under the doctrine of primary jurisdiction in part because Toyota failed to show that a court-ordered recall would conflict with the NHTSA’s ongoing investigation); *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1218-19 (N.D. Cal. 2002) (rejecting DaimlerChrysler’s motion to dismiss on primary jurisdiction grounds because the plaintiffs’ claims for damages and injunctive relief in the form of a recall of Jeeps with an alleged defect that caused them to self-shift from park to reverse did not conflict with an ongoing investigation by the NHTSA into the alleged defect); *In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litigation*, No. MDL 961, 1993 WL 204116, at \*5-6 (E.D. Pa. June 10, 1993) (denying GM’s motion to stay until the NHTSA issued a final determination as to whether the fuel tank design of its full size pickups were defective in part because “the plaintiffs are not challenging the NHTSA regulations or other practice of the NHTSA, [and] this court action will not lead to an inconsistent result with any decision reached by the NHTSA in its investigation of GM’s pickup trucks”).

things, “[a]ny measures that the Administrator has stated in his order should be taken by the owner to avoid an unreasonable hazard resulting from the defect or noncompliance.” 49 C.F.R. § 577.6(b)(7). However, there has been no explicit reference to a “Park It Now”-type alert and thus Plaintiffs’ requested relief will not conflict with NHTSA’s recall.

e. **The goals of the primary jurisdiction doctrine will not be furthered if the Court refers the matter to NHTSA.**

The purposes of the primary jurisdiction doctrine will not be served if the court refers the issue of the requested injunction to the NHTSA. There is no risk to regulatory uniformity if the court orders the notice since the regulations do not contemplate a “Park It Now” Alert and there is no evidence that the NHTSA is considering whether it would be appropriate to issue one in this case. *See, e.g., In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litig.*, No. MDL 961, 1993 WL 204116, at \*4 (E.D. Pa. June 10, 1993) (declining to apply the primary jurisdiction doctrine because the absence of conflict between the common law remedies and the Safety Act meant there was no risk of non-uniform enforcement of the Safety Act). There is also no issue requiring the special knowledge and expertise of the NHTSA since GM has admitted that there is a defect and the defect has caused injury and deaths. *See TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 74 (2d Cir. 2002) (“Although we acknowledge that an agency’s role in ‘marshaling [the facts] into a meaningful pattern,’ does cover some cases where the underlying facts are not in dispute, we also believe that where the facts are undisputed, it will rarely be appropriate to dismiss on the basis of primary jurisdiction.” (internal citation omitted)). Therefore, there is no issue that NHTSA could address that would materially aid the court in determining whether it should grant plaintiffs’ motion for injunctive relief.

Instead, referring the issue to the NHTSA will cause delay, and delay could result in more injuries or deaths. The Fifth Circuit requires courts to “weigh the benefits of obtaining the agency’s aid against the need to resolve the litigation expeditiously” and courts “may defer only if the benefits of agency review exceed the costs imposed on the parties.” *Wagner & Brown v. ANR Pipeline Co.*, 837 F.2d 199, 201 (5th Cir. 1988) (directing the district court to stay

proceedings for only 180 days to ensure the plaintiff's rights were not "unreasonably delayed or lost" by the agency's inaction). This is an issue that must be resolved expeditiously, and there is little to nothing to be gained from agency review. See *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 532 F.2d 412, 419 (5th Cir. 1976) ("The courts should be reluctant to invoke the doctrine of primary jurisdiction, which often, but not always, results in added expense and delay to the litigants where the nature of the action deems the application of the doctrine inappropriate."); *Local Union No. 189, Amalgamated Meat Cutters, and Butcher Workmen of North America, AFL-CIO v. Jewel Tea Co.*, 381 U.S. 676, 686 (1965) ("primary jurisdiction is not a doctrine of futility; it does not require resort to an expensive and merely delaying administrative proceeding when the case must eventually be decided on a controlling legal issue wholly unrelated to [agency] determinations...."); *In re General Motors Corp. Pickup Truck Fuel Tank Products Liability Litigation*, No. MDL 961, 1993 WL 204116, at \*3 (E.D. Pa. June 10, 1993) (noting that the NHTSA proceedings "could take several years" and "the potential arises that staying the present action pending the completion of NHTSA proceedings could lead to many years of inactivity in the court system and deprive plaintiffs of a prompt resolution of this matter").

Nevertheless, if the district court believes that it needs specific information from NHTSA to decide plaintiffs' motion, it can ask the NHTSA to file an amicus brief. See *TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 74 (2d Cir. 2002) ("Amicus briefs from an agency can serve much of the interest in consistency and uniformity of law that underlies the doctrine of primary jurisdiction, while avoiding some of the delay that sometimes results from dismissing on the ground of primary jurisdiction."); *Ryan v. Chemlawn Corp.*, 935 F.2d 129, 132 (7th Cir. 1991) ("If the district court believed that it needed specific information from the EPA to decide this case, it could have asked the EPA to file an amicus brief.").

For the foregoing reasons, the Court should not defer to NHTSA under the doctrine of primary jurisdiction.

**C. PLAINTIFFS HAVE MET THEIR BURDEN TO JUSTIFY A PRELIMINARY INJUNCTION.**

As explained in detail above, there is sufficient evidence to support Plaintiffs' request for mandatory injunction. *See supra* Part A; *see also* Exhibits A-G. Defendant itself promised, through the official testimony of Mary Barra, that it would “ground these vehicles” (the *very* relief that Plaintiffs request here) if there was evidence that vehicles could still suffer from ignition defects even if consumers removed their key rings or key fobs. Plaintiffs accepted Defendant's invitation for evidence that the defect was not ameliorated by the removal of key rings or key fobs, and provided *exactly* what GM wanted. *See id.* Now, GM should fulfill its promise to Congress, the Silvas, and the general public that it would “ground these vehicles” because there *is* evidence that the vehicles still suffer from ignition defects even when consumers remove their key rings or key fobs. If GM refuses to honor its obligations (as it has done so many times in the past) this Court can—and should—compel GM to fulfill its potentially life-saving promise.

**D. PLAINTIFFS HAVE SUFFERED AN INJURY IN FACT AND WILL SUFFER IRREPARABLE HARM.**

GM argues that the Silvas have not suffered an injury in fact unless they have experienced the alleged defect. This is simply not so. Plaintiffs have demonstrated that without mandatory injunctive relief, they will suffer irreparable harm. *See Faiveley Transp. Malmo. AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009); *see also Pharaoh Oil & Gas*, 343 S.W.3d at 383.

In *Cole v. GMC*, the Fifth Circuit held that plaintiffs had Article III standing to assert economic loss claims arising from defective air bags after GMC recalled Cadillac DeVilles with side air bags that could deploy unexpectedly. 484 F.3d 717, 718 (5th Cir. 2007). GMC argued that the plaintiffs lacked standing because their air bags had not deployed, but the Fifth Circuit explained that the plaintiffs “seek recovery for their actual economic harm (*e.g.*, overpayment, loss in value, or loss of usefulness) emanating from the loss of their benefit of the bargain” and had alleged they had suffered economic injury at the moment they had purchased a DeVille

because each DeVille was defective. *Id.* at 723. Other courts have also found that plaintiffs have demonstrated an injury in fact when they allege that they suffered economic loss resulting from a defect that has not materialized. See *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, 754 F. Supp. 2d 1145, 1161 (C.D. Cal. 2010) (holding that the plaintiffs did not need to experience the alleged defect to have standing to sue Toyota because they alleged economic loss injuries); *Kearney v. Hyundai Motor Co.*, No. SACV 09-1298 DOC (MLGx), 2010 WL 9093204, at \*5 (C.D. Cal. June 4, 2010) (finding that the plaintiffs established standing by alleging diminution in value of their cars as a result of alleged defects in the air bag system because of their “receipt of a vehicle whose alleged defects reduced the car’s value and deprived the consumer of the benefit of the bargain, *even when the alleged defects did not later materialize—i.e., the loss was suffered ‘at the moment’ of purchase*”); *Bristow v. Lycoming Engines*, No. CIV. S-06-1947, 2007 WL 1106098, at \*6 (E.D. Cal. Apr. 10, 2007) (holding that the plaintiffs had Article III standing to assert economic loss claims against the manufacturer of a faulty airplane crankshaft that failed to disclose the defect because “the injury caused by that omissions occurred at the moment of the purchasing or leasing decision (and likely accrued upon discovery of the omission)”).

The injury-in-fact requirement is also satisfied because there is a credible threat of future harm. See *Pisciotta v. Old Nat’l Bancorp*, 499 F.3d 629, 634 (7th Cir. 2007) (“the injury-in-fact requirement can be satisfied by a threat of future harm or by an act which harms the plaintiff only by increasing the risk of future harm that the plaintiff would otherwise have faced, absent the defendant’s actions”); *Baur v. Veneman*, 352 F.3d 625, 633 (2d Cir. 2003) (“courts of appeal have generally recognized that threatened harm in the form of an increased risk of future injury may serve as injury-in-fact for Article III standing purposes”); *Baker v. Castle & Cooke Homes Hawaii, Inc.*, Civil No. 11-00616 SOM-RLP, 2012 WL 1454967, at \*4 (D. Haw. Apr. 25, 2012) (finding that plaintiffs had established a credible threat of injury from brass fittings installed in their homes that they alleged would fail and expose them to dangerous toxins). Plaintiffs face a credible threat of future harm because the ignition switch in any one of the other 2.2 million

affected vehicles may fail and cause a crash that impacts the Plaintiffs.

In the surrounding Corpus Christi Area alone, at least nine individuals owning a defective vehicle have come forward seeking legal representation from the undersigned counsel. *See* Affidavit of Bob Hilliard, attached as Exhibit H. These nine individuals demonstrate only an infinitesimally small percentage of the potential harms posed to the Plaintiffs by the more than 2.2 million affected vehicles engaging in interstate commerce each and every day. Absent GM's fraudulent concealment of the known defect in the vehicles subject to recall, Plaintiffs would not be subject to this increased risk of harm.

Here, mandatory injunctive relief is necessary because monetary damages are not sufficient to address the harm,<sup>4</sup> and Plaintiffs can establish that there is a continuing harm for which Plaintiffs cannot be fully compensated by final relief on the merits.<sup>5</sup> This Court has the power to prevent another lost life because of GM's fraudulent and deceptive conduct. The potential injury to Plaintiffs' lives and well being, especially at the level implicated by this defect, is patently irreparable. Based on the 303 deaths likely sustained due to the defective vehicles subject to GM's recall, Plaintiff has provided sufficient evidence that there is a high probability of irreparable harm.

It is also well settled that an injury is not too remote or speculative to confer standing when it poses a **threat to public safety**. *See Shaw v. Toshiba America Information Systems, Inc.*, 91 F. Supp. 2d 926, 937-38 (E.D. Tex. 1999) (finding that plaintiffs had standing to seek an injunction ordering Toshiba to advise a class of potential purchasers of Toshiba computers that the computers could corrupt and destroy data without warning because widespread data corruption on Toshiba computers posed a threat to public health and safety) (emphasis added).

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<sup>4</sup>*Pamlab, L.L.C. v. Macoven Pharm., L.L.C.*, 881 F. Supp. 2d 470, 473 (S.D.N.Y. 2012); *Alliance Bond Fund*, 143 F.3d at 697. Discussing an injury is not considered irreparable if it is capable of being remedied with money damages.

<sup>5</sup>*Rex Med. L.P.C. Angiotech. Pharms. (S), Inc.*, 754 F. Supp. 2d. 616, 621 (S.D.N.Y.2010). (internal quotations and citation omitted).

In addition, while GM claims only 12 people have died as a result of the faulty ignitions, the Center for Auto Safety has concluded the number could be as high as 303 people, a number high enough to demonstrate that public safety is at risk. *See* March 13, 2014 Letter from Center for Auto Safety to the Honorable David J. Friedman, attached as Exhibit I (“On March 7, the Center for Auto Safety (CAS) wrote you about NHTSA’s failure to utilize its Special Crash Investigations (SCI) of 2005 Cobalts and 2004 Ions and Early Warning Reports (EWR) of death claims filed by GM to open a defect investigation and order a recall. Examination of NHTSA’s Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in the recalled 2005-07 Cobalts and 2003-07 Ions where the airbag failed to deploy in non-rear impact crashes.”).

Moreover, courts have recognized that construing Article III standing to prevent a plaintiff from seeking injunctive relief because he is no longer “realistically threatened by a repetition of the violation” would “eviscerate the intent” of the legislature “in creating consumer protection statutes because it would effectively bar any consumer who avoids the offending product from seeking injunctive relief.” *Larsen v. Trader Joe’s Co.*, No. C 11-05188 SI, 2012 WL 5458396, at \*3-4 (N.D. Cal. Dec. 10, 2013); *see also Ackerman v. Coca-Cola Co.*, No. 09 CV 395, 2013 WL 7044866, at \*15 n.23 (E.D.N.Y. 2013) (finding that plaintiffs had standing to enjoin defendants from continuing to falsely advertise their products, although “Defendants...contend[ed] that plaintiffs lack standing to pursue injunctive relief, since ‘the named plaintiffs [we]re now aware of Vitamin Water’s sugar content and ha[d] stopped drinking it.’”); *Koehler v. Litehouse Inc.*, No. CV 12-0455, 2012 WL 6217635, at \*6 (N.D. Cal. Dec. 13, 2012) (holding that if the court found the plaintiff lacked standing to pursue injunctive relief because he stopped using the defendant’s salad dressing after learning that its claim to boost immunity was false, “would eviscerate the intent of the California legislature in creating consumer protection statutes because it would effectively bar any consumer who avoids the offending product from seeking injunctive relief”); *Cabral v. Supple, LLC*, No. CV 12-00085, 2012 WL 4343867, at \*2-3 (C.D. Cal. Sept. 19, 2012) (finding that plaintiffs had Article III

standing to pursue injunctive relief even though she stopped drinking the defendant's beverages); *Henderson v. Gruma Corp.*, No. CV 10-04173, 2011 WL 1362188, at \*8 (C.D. Cal. Apr. 11, 2011) ("If the Court were to construe Article III standing...as narrowly as the Defendant advocates, federal courts would be precluded from enjoining false advertising under California consumer protection laws because a plaintiff who had been injured would always be deemed to avoid the cause of the injury thereafter ('once bitten, twice shy') and would never have Article III standing. . . . This court is reluctant to embrace a rule of standing that would allow an alleged wrongdoer to evade the court's jurisdiction so long as he does not injure the same person twice.")<sup>6</sup>.

Plaintiffs have established their injury in fact, as there is a credible threat of future harm. Plaintiffs have further established injury in fact sustained due to Plaintiffs' loss in use and value of their defective vehicle, which cannot be determined at this time, as every moment that GM fails to act is a dollar lost in value of their vehicle. However, in the unlikely event that this Honorable Court determines that Plaintiffs have not established harm in fact on their own behalf, the Fifth Circuit has held that individual plaintiffs may seek and obtain injunctive relief that benefits others even without suing on behalf of a class.

**E. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.**

15. There is a substantial likelihood of Plaintiffs' success on the merits of their claims. Plaintiffs are likely to prevail on the facts, evidence and law regarding their claims under common law and the Deceptive Trade Practices-Consumer Protection Act against GM. GM has consistently put profit over the safety of its customers and the public at large. GM owed Plaintiffs a duty, once it discovered safety defects, such as the ignition switch defect, to provide thorough notice of the defect, including a warning that the defective vehicles should not be driven until an appropriate repair procedure is developed and performed. GM further owed

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<sup>6</sup> While these are class cases, the reasoning should apply to individual plaintiffs who assert consumer protection claims as well.

Plaintiffs a duty, once it discovered the ignition switch defect, to ensure that an appropriate repair procedure was developed and made available to drivers, and there is extensive evidence that GM has repeatedly ignored numerous complaints as well as its own research and engineers. Letter from Senator Blumenthal, attached as Exhibit J; *see also* Exhibit F. Between July 6, 2009, and January 2014, GM breached its duties to Plaintiffs by failing to provide appropriate notice of and repair procedures for the ignition switch defect in Plaintiffs' vehicle. In doing so, GM departed from the reasonable standard of care required of it. *See id.*

Moreover, it is undisputed that GM knowingly allowed more than 2.2 million defective vehicles to enter the stream of commerce, and that for the past thirteen years GM has consciously disregarded the lives and safety of its customers and those on the public roadways. Until this life-threatening problem was made known to the public, GM had attempted to hide the severity of this issue with temporary and small adjustments that failed to properly fix the problem, which was outright admitted by GM's CEO, Mary Barra.<sup>7</sup> One thing is clear in the present case: without the mandatory injunction and immediate proactive action by GM, the Plaintiffs have and will continue to suffer from the growing lack of public confidence in their vehicles.

Plaintiffs are also likely to prevail on their DTPA and Intentional Infliction of Emotional Distress Claims. As set forth herein, and in Plaintiffs' Second Amended Complaint, GM caused damages to Plaintiffs:

- a. Through the use or employment of a false, misleading, or deceptive act or practice: Namely, GM intentionally failed to disclose information concerning goods or services which was known at the time of the transaction, inducing Plaintiffs' detrimental reliance;
- b. Through the breach of GM's express warranty; and

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<sup>7</sup> "General Motors Ignition Switch Recall Senate Hearing," *See* <http://www.c-span.org/video/?318610-1/gm-ignition-switch-recall>; *see also* <http://www.c-span.org/video/?318608-1/gm-ignition-switch-recall>; *see also* Exhibit E.

- c. Through the unconscionable actions and course of action set forth.

GM's false, misleading, deceptive, and unconscionable conduct, includes:

- a. Between July 6, 2009, and January 2014, GM knew about the ignition switch defect and the dangers it posed.
- b. GM also knew that many drivers, such as the Plaintiffs, would be returning to dealerships periodically for repairs, and that GM profits from the sale of replacement parts.
- c. Rather than warning Plaintiffs and other drivers of the existence of the defect and the fact that no reliable repair procedure existed, GM failed to disclose that information, thus causing Plaintiffs and others to continue to spend money on maintenance and repairs that would not safeguard them from the dangers inherent in the defect.
- d. Plaintiffs relied on GM's failure to disclose the ignition switch defect and continued to spend money that they would not otherwise have spent.
- e. By failing to disclose the full extent of its knowledge, GM has caused and continues to cause drivers of the defective vehicles to risk their lives and safety by driving vehicles that cannot presently be made reasonably safe to drive.

GM's intentional and/or reckless conduct, outlined above, was both extreme and outrageous, causing Plaintiffs to suffer severe emotional distress. Specifically, GM's conduct, as described above, was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, and the emotional distress suffered by Plaintiffs was so severe that no reasonable person could be expected to endure it.

**F. THE RISK OF INJURY OR DEATH TO PLAINTIFF FAR OUTWEIGHS THE ECONOMIC LOSS OR HARM IN REPUTATION TO GM.**

GM continues to prioritize profits over people—placing the lives and well being of their customers and the general public at risk. *See* Exhibit F (“Engineers believed that low key cylinder torque effort was an issue and considered a number of potential solutions. **After consideration of the lead time required, cost, and effectiveness of each of these solutions, the PRST was closed with no action.**”) (emphasis added).

Defendant cites to *Apple Barrel Products v. Beard* as authority for the proposition that an injunction should not be issued if a defendant is to suffer injury of “at least the same magnitude” as plaintiff. 730 F.2d 384, 389 (5th Cir. 1984). However, GM fails to comprehend the seriousness of the harm to Plaintiffs as the injunction sought in *Apple Barrel Products v. Beard* requested that the defendants be enjoined from infringing on plaintiffs’ copyrighted use of the name “Kids ‘n Country” for a children’s country music show. *Id.* at 386. The financial harm of using copyrighted phrases such as “Kids ‘n Country” pales in comparison to the continuing risk of injury and death to Plaintiffs.

GM asserts they will suffer actual, immediate, and irreparable harm of “at least the same magnitude” or more harm in the form of financial loss and harm to their reputation if Plaintiff’s injunction were to be issued. *Id.* Defendant disappointingly tries to compare the harm to its reputation and profits to the immeasurable loss to Plaintiffs to which they cannot be adequately compensated through money damages.

Plaintiffs will clearly be able to demonstrate that a mandatory injunction is necessary as the threat of injury to Plaintiffs and the public clearly outweighs the threatened injury to GM. Without such relief, over 2.2 million dangerous and defective GM vehicles are still out on public roadways. While GM now admits the safety problem, and has publicly admitted the need to resolve safety issues more quickly through appointment of a head of global safety,<sup>8</sup> it still has yet to take the aggressive action necessary to adequately address the safety problem with its vehicles and remove the dangerous care from public roadways. GM is currently unwilling to do what it takes to protect the lives of Plaintiffs and the public. It has taken only meager action, and only extremely begrudgingly. Although GM has recently issued a recall (that purposefully downplays the severity of the problem) and outlined measures that drivers should take (such as taking defective vehicles to dealerships who will replace defective parts), such steps are insufficient.

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<sup>8</sup> See Tom Krisher, “GM CEO apologized for death Ties to Recalled Cars,” available at: [bostonglobe.com/business/2014/03/18/chief-executive-barra-apogizes-for-deaths-ties-recalled-cars/H7UxDKeioBwOUYpM^XEDJK/story.html](http://bostonglobe.com/business/2014/03/18/chief-executive-barra-apogizes-for-deaths-ties-recalled-cars/H7UxDKeioBwOUYpM^XEDJK/story.html)

There have already been numerous complaints where dealerships have notified the customer that replacement parts are not available and/or have otherwise not lent their customers a loaner car. *See also* Exhibit C.

**G. THE INJUNCTION SOUGHT IS IN THE BEST INTERESTS OF CONSUMERS.**

A “Park it Now”<sup>9</sup> Alert is in the best interest of consumers because it simultaneously protects consumers, including the Silvas, from suffering potentially life-taking injuries from vehicular collisions in *their* defective motors vehicles and from injuries that could result from collisions involving *other* dangerous recalled vehicles on the road. It is frankly appalling that GM thinks the “Park It Now” Alert is a novel idea. As set forth herein, the injunction sought does not conflict with NHTSA’s regulatory requirements. There is nothing in the “language in the [Safety Act] or its legislative history demonstrating that exclusive federal agency administration of injunctive remedies in the field of motor vehicle safety was the considered policy choice of Congress.” *Chamberlan*, 314 F. Supp. 2d at 963. Far from it, the Safety Act plainly expresses Congress’s intent to leave the full panoply of state-law remedies intact, notwithstanding NHTSA’s recall authority. *See Supra* Part B; *see also Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d 953, 960 (N.D. Cal. 2004).

Further, courts have issued mandatory injunctions in a broad range of circumstances. For instance, mandatory injunctions have been issued in school desegregation cases,<sup>10</sup> and in contractual disputes for specific performance.<sup>11</sup> There is no question but that mandatory

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<sup>9</sup> A proposed “Park it Now” Alert is attached as Exhibit L.

<sup>10</sup> *Altman v. Bedford Cent. School Dist.*, 245 F.3d 49 (2d Cir. 2001) (Mandatory injunction requiring the school district to adopt and publish guidelines to ensure compliance with the Supreme Court’s standards, so as to avoid coercing any student to participate in religion or its exercise or to violate any religious precept held by a child or his or her parents, and to further avoid sponsoring or disparaging religious beliefs held by students and/or their parents).

<sup>11</sup> In fact, “there has been an increasing...willing[ness] to order performance in a wide variety of cases. . . .” *Restatement Second of Contracts*, Topic 3, Introductory Note at p. 162 (1981). For instance, certain cases involving unique goods typically require mandatory injunctions. *See, e.g., Reuters Ltd. v. United Press Int’l. Inc.*, 903 F.2d 904, 907-08 (2d Cir. 1990); *Ortho Pharmaceutical Corp. v. Amgen, Inc.*, 709 F. Supp. 504 (D. Del.), *aff’d in part and remanded in part*, 882 F.2d 806 (3rd Cir. 1989); *Roso-Lino Beverage Dist., Inc. v. Coca-Cola Bottling Co.*, 749 F.2d 124 (2d Cir. 1984); *Interphoto Corp. v. Minolta Corp.*, 417 F.2d 621 (2d Cir. 1969). Thus, “when plaintiff’s claim is sufficiently compelling, mandatory injunctions seem to be granted readily.” Wright & Miller, *Federal*

injunctions are to be sparingly issued and upon a strong showing of necessity and equitable grounds, which are clearly apparent. But where the necessity exists and the grounds are shown, courts will not hesitate in granting the remedy.<sup>12</sup> The following are all instances where courts have found the moving party established the four required factors in order to grant a mandatory injunction.

In *Seals v. Mississippi*, Plaintiff's sought "a mandatory [injunction] compelling the University to operate by a syllabus or some class instructive [sic] given to the student at the beginning of the course" and, as specific performance, "that [Seals] be granted the true and correct grades as set forth above."<sup>13</sup> Although the Court found that Seals lacks standing to require Jones to institute a requirement regarding syllabi, the Court allows him to proceed with his request for specific performance under *Ex parte Young*.<sup>14</sup> As to Plaintiff's claim for an injunction compelling the University to institute a syllabus requirement, Seals failed to establish Article III standing.<sup>15</sup> In order to maintain standing for purposes of Article III jurisdiction, a plaintiff must show: (1) he has suffered, or imminently will suffer, a concrete and particularized injury-in-fact; (2) the injury is fairly traceable to the defendant's conduct; and (3) a favorable judgment is likely to redress the injury.<sup>16</sup> Here, Seals had already graduated with a degree and was no longer enrolled as a student at the University. Although he is able to meet the first two requirements for Article III standing, he failed to show how an injunction granting prospective relief would redress any injury he may have suffered, and therefore cannot maintain that claim.<sup>17</sup>

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*Practice and Procedure: Civil* § 2948 at p. 447 (1973).

<sup>12</sup> *Fox v. City of W. Palm Beach*, 383 F.2d 189, 194 (5th Cir. 1967) citing *United States v. Oregon State Medical Society*, 343 U.S. 326. *Porter v. Lee*, 328 U.S. 246; *State of Alabama v. United States*, 5th Cir. 1962, 304 F.2d 583, aff. 371 U.S. 37, 83.

<sup>13</sup> *Seals v. Mississippi*, 3:13-CV-74-SA-JMV, 2014 WL 670232 (N.D. Miss. Feb. 20, 2014)

<sup>14</sup> *Id.*

<sup>16</sup> *Id.* citing *Houston Chronicle Pub. Co. v. City of League City*, 488 F.3d 613, 617 (5th Cir.2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

<sup>17</sup> *Id.*

In *CJ Products LLC v. Snuggly Plushez LLC*, the Court granted an injunction to stop Defendant Company from continuing to sell a product due to copyright infringement. The Court found that plaintiffs satisfied their burden of irreparable harm in the event that defendants continue to sell the products. In balancing the hardship against the public interest, the court found that an injunction was necessary to stop the infringement. The Court further ordered the defendants were profiting unjustly from the use of the designs of another, the defendants business would not be severely damaged as they had and sold other non-infringing products, and the strong policy in favor of defending copyrights. In sum, the Court granted the injunction as plaintiffs established a likelihood of success on the merits.<sup>18</sup>

In *Texas Guaranteed Student Loan Corp. v. Cmty. Check Cashing*, the Court granted a permanent mandatory injunction finding that the movant had established four distinct elements. In this case, a guaranty agency sought a mandatory injunction requiring Defendant to withhold and remit a portion of Borrower's disposable pay until Borrower's student loan indebtedness is paid in full or until Borrower ended any employment with Defendant. The Court found that while injunctive relief generally is not appropriate to secure post-judgment legal relief in the form of money damages,<sup>19</sup> an "injury is irreparable and there is no adequate remedy at law [if] a multiplicity of suits would be required to gain relief."<sup>20</sup> The Court found that in order to recover all the money it is owed, the guaranty agency would have to file a new suit for each additional withholding payment that Defendant failed to remit. Thus presenting the possibility of dozens of additional suits if Defendant fails to remit each month. Therefore, because Plaintiff has suffered an irreparable injury, and because there is no adequate remedy at law due to the need for a multiplicity of suits, the Court found Plaintiff satisfied the first two elements of obtaining permanent injunctive relief.<sup>21</sup> The same result should occur here.

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<sup>18</sup> *CJ Products LLC v. Snuggly Plushez LLC*, 809 F. Supp. 2d 127, 140 (E.D.N.Y. 2011).

<sup>19</sup> *Texas Guaranteed Student Loan Corp. v. Cmty. Check Cashing, LLC*, SA-13-CV-00390-DAE, 2013 WL 4400885 (W.D. Tex. Aug. 14, 2013) citing *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 560 (5th Cir.1987)).

<sup>20</sup> *Tex. Guaranteed Student Loan Corp.*, 2009 WL 1919553 at \*3 (citing *Dixon*, 835 F.2d at 560).

<sup>21</sup> *Texas Guaranteed Student Loan Corp.*, SA-13-CV-00390-DAE, 2013 WL 4400885 (W.D. Tex. Aug. 14, 2013).

**H. NO SECURITY REQUIREMENT IS REQUIRED UNDER RULE 65.**

Again, a security bond is not necessary in this instance, and a district court has the discretion to dispense with the security requirement of Rule 65(c) under limited circumstances. For instance, courts will often dispense with the requirement that a party post a security bond if a party lacks the financial resources to post a bond, or if the bond requirement might discourage the initiation of a suit to enforce important federal rights or "public interests." *See* Reina Calderon, "Bond Requirements Under Federal Rule of Civil Procedure 65(c): An Emerging Equitable Exemption for Public Interest Litigants," 13 B.C. Envtl. Aff. L. Rev. 125 (1985); *see also* *Crowley v. Local No. 82*, 679 F.2d 978, 1000-1001 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984) (district court acted within its discretion in not requiring bond when plaintiffs were not able to afford security and bond requirement would adversely affect enforcement of Title VII (42 U.S.C. §§ 2000e-2000e-17) rights).

In making its decision, the court may balance the potential hardships to the parties. *See, e.g., Pharmaceutical Soc'y v. N.Y. State Dep't of Soc. Servs.*, 50 F.3d 1168, 1174-1175 (2d Cir. 1995) (upheld waiver of bond requirement based on lack of financial resources and fact that litigation was ultimately in public interest); *Temple Univ. v. White*, 941 F.2d 201, 219-220 (3d Cir. 1991) (court of appeals authorized waiver of bond for injunction requiring state department of public welfare to make interim Medicaid payments while program establishing appropriate rates was brought into conformity with regulations, reasoning that equities of potential hardships to parties weighed in favor of waiving bond requirements).

The Second Circuit has held that a district court has wide discretion to set the amount for a bond and even dispense with the bond requirement where the injunctive order was issued to aid and preserve the court's jurisdiction over the subject matter. *Doctor's Associates, Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir. 1997) (injunctions issued to stay prosecution of parallel state suits in order to effectuate order compelling arbitration). The Second Circuit has also held that a district

court may dispense with the bond requirement if the injunctive order is issued to aid and preserve the court's jurisdiction over the subject matter involved. *Id.* Security may also be waived when granting injunctive relief carries no risk of monetary loss to the party enjoined or restrained. *Id.*

In the instant case, the Plaintiffs lack the financial resources to post a bond and there is no risk of monetary loss to the party enjoined or restrained. If the Court is inclined to require a bond, Plaintiffs request that the bond be minimal.

**I. ADDITIONAL OBJECTIONS TO DEFENDANT’S “EVIDENCE.”**

Plaintiffs object to Ms. McLean’s affidavit because it is riddled with hearsay, improper opinion testimony, conjecture, speculation, and is self-serving and conclusory. *See* Affidavit of Nancy McLean, attached as an exhibit GM’s Response [Doc. No. 34]. Specifically, paragraph 7 of Ms. McLean’s affidavit is impermissible self-serving, conclusory, and is simply just the unsupported testimony of an interested witness. There is no evidence to support Ms. McLean’s contention that GM has taken “several other steps to try to make sure rental vehicles are available for customers, including paying additional rental charges for underage drivers, paying for additional insurance when required by the rental agency, and waiving the requirement for current model or one year old model vehicles.” *Id.* Plaintiffs further object because neither GM nor Ms. McLean has presented any evidence that GM removed the requirement that all rentals be GM brand and GM’s service bulletin does not reflect such an amendment to GM’s policy.

Paragraph 8 of Ms. McLean’s affidavit is also inadmissible. Ms. McLean contends that “[p]ursuant to GM’s policies, as of April 1st GM dealers across the country have provided customers, at GM’s expense, with over 13,000 courtesy rental vehicles and with towing services for Recall Vehicles upon request from customers. I also am aware that GM’s willingness to assist its customers in this way has been widely reported in the press.” Again, Ms. McLean’s testimony is utterly baseless, without support, and is simply self-serving, conclusory testimony by an interested witness.

**CONCLUSION**

For the foregoing reasons, this Court should grant Plaintiffs' Emergency Motion for a Mandatory Injunction and Relief Under 28 U.S.C. § 1651(a) to Compel Defendants to Issue a "Park it Now" Alert in the Interest of Public Welfare and Safety and Brief in Support.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I certify that on April 4, 2014 a true and correct copy of the foregoing was served upon counsel of record electronically and by facsimile, as follows:

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\_\_\_\_\_  
Robert C. Hilliard

# EXHIBIT

## “B”

Transcript of Mary Barra - April 1, 2014 Congressional Hearings

Mary Barra: Senator, if I had any data any incidents where with just the key or the key and the ring there was any risks I would not have I would ground these vehicles across the country

# EXHIBIT

## “C”

1 Daniel C. Girard (State Bar No. 114826)  
 2 Eric H. Gibbs (State Bar No. 178658)  
 3 David K. Stein (State Bar No. 257465)  
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13 *Attorneys for Plaintiffs*

14  
 15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 DEVORA KELLEY AND  
 18 FREDERICK WHITTINGTON, on  
 19 behalf of themselves and all others  
 20 similarly situated,

21 Plaintiffs,

22 v.

23 GENERAL MOTORS COMPANY  
 24 and GENERAL MOTORS LLC,

25 Defendants.

Case No. 8:14-cv-00465-JVS(ANx)

CLASS ACTION

**DECLARATION OF DEVORA  
 KELLEY**

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 28 **DECLARATION OF DEVORA KELLEY**  
**CASE NO. 8:14-cv-00465-JVS(ANx)**

**Exhibit X-366**

1 I, Devora Kelley, declare as follows:

2 1. I am a named plaintiff in the above-captioned litigation. I have personal  
3 knowledge of the facts set forth below.

4 2. I purchased a 2007 Chevrolet Cobalt on August 6, 2009, in Redding,  
5 California. I bought the vehicle to use as a family car and often use it to drive my three  
6 children around town and to commute to and from work. My children's safety is my  
7 highest priority, so it is extremely important that my car is safe and reliable.

8 3. In the past year or so, my car has shut off while driving three times.  
9 Although I have been able to pull my car over and restart it each time, these incidents  
10 have been scary, and I feel lucky that my children and I have not been injured.

11 4. Earlier this month I received a recall notice from General Motors that said  
12 that my car has a defective ignition switch and could shut off while driving. A copy of  
13 the notice I got in the mail is attached as Exhibit A.

14 5. Until General Motors announced the recall, I had no idea that my 2007  
15 Cobalt had a defective ignition switch or that General Motors knew about the defect and  
16 knew that it could cause crashes, injuries, and deaths. I had expected that if General  
17 Motors knew that my car had a dangerous defect, it would have immediately informed  
18 me and other drivers. I would not have purchased my 2007 Cobalt had I known about  
19 the defective ignition switch and the risks it poses.

20 6. I read the entire notice, which said that I should take everything off of my  
21 key ring except for my car key. I followed the instructions and removed all extra items  
22 from my key ring. The recall notice did not tell me to stop driving my car until it was  
23 repaired and did not tell me I could get a free rental car until the repair could be  
24 performed.

25 7. I continued to drive my 2007 Chevy Cobalt because I needed a car for  
26 family errands and to get to and from work. Fearing that my car could turn off at any  
27 moment, I constantly checked my ignition and key while driving. At least 5 times since  
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DECLARATION OF DEVORA KELLEY  
CASE NO. 8:14-cv-00465-JVS(ANx)

Exhibit X-367

1 receiving the recall notice, and even with no extra weight on the key ring, the ignition  
2 switch in my Cobalt moved from the "run" position toward "accessory" while I was  
3 driving.

4 8. After I received the recall notice, I called the 1-800 number listed on the  
5 recall notice to find out when replacement parts would be available and how soon my  
6 car could get fixed. I did not get a direct answer, but was told that General Motors  
7 expected parts to be available in the middle of April. On this call I was not told that  
8 General Motors was willing to provide me with a rental car until my Cobalt is fixed.

9 9. I also went on to General Motors' website to learn more about the recall. I  
10 did not see anything that said General Motors was offering free rental cars.

11 10. After receiving no help from General Motors, I contacted the law firm  
12 Girard Gibbs LLP and retained them as my counsel. I learned from my attorneys that  
13 General Motors is willing to provide free rental cars to owners of recalled vehicles until  
14 their cars are repaired.

15 11. On March 27, after I filed this lawsuit, I called the Lithia Chevrolet  
16 dealership, and specifically asked for a rental car. I spoke with a gentleman in the  
17 service department who told me that General Motors would be willing to provide me a  
18 rental car at no cost, and I now drive the free rental car.

19 12. After receiving the recall notice I began to have difficulty sleeping. Some  
20 nights I awoke with nightmares of my children being killed in a car accident, or me  
21 being killed in the crash and unable to help my injured kids. Other nights I had trouble  
22 sleeping because I could not stop worrying about what might happen if my car got into  
23 an accident. I feel much safer now that I'm driving a rental car and am able to sleep  
24 much easier.

25 13. Although I now have a rental car to drive, I am worried about the many  
26 vehicle owners out there who may not be aware of this option and are continuing to  
27 drive their vehicles as a result. If General Motors has extended its warranty and is  
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DECLARATION OF DEVORA KELLEY  
CASE NO. 8:14-cv-00465-JVS(ANx)

Exhibit X-368

1 willing to provide free rental cars, it should notify all drivers that rental cars are  
2 available and not keep that a secret.

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I declare under penalty of perjury that the foregoing is true and correct. Executed  
on April 1, 2014 at Little Valley, California.

  
Devora Kelley



# Exhibit A

**IMPORTANT SAFETY RECALL**

March 2014

Devora C. Kelley  
[REDACTED]

Dear Devora C. Kelley:

This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.

General Motors has decided that a defect which relates to motor vehicle safety exists in 2005-2007 model year (MY) Chevrolet Cobalt, 2006-2007 MY Chevrolet HHR, 2005-2006 MY Pontiac Pursuit, 2006-2007 MY Pontiac Solstice, 2007 MY Pontiac G5, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles. As a result, GM is conducting a recall. We apologize for this inconvenience. However, we are concerned about your safety and continued satisfaction with our products.

**IMPORTANT**

- This notice applies to your 2007 model year Chevrolet Cobalt, VIN [REDACTED]. It is involved in safety recall 13454.
- **Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**
- When parts become available, GM will notify you to schedule an appointment with your Chevrolet dealer.
- The recall repairs will be performed for you at **no charge**.

**Why is your vehicle being recalled?**

There is a risk, under certain conditions, that your ignition switch may move out of the "run" position, resulting in a partial loss of electrical power and turning off the engine. This risk increases if your key ring is carrying added weight (such as more keys or the key fob) or your vehicle experiences rough road conditions or other jarring or impact related events. If the ignition switch is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality.

**Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**

**What will we do?**

PARTS ARE NOT CURRENTLY AVAILABLE, but when parts are available, your Chevrolet dealer will replace the ignition switch on your vehicle. This service will be performed for you at **no charge**. Because of scheduling

[REDACTED] **GM** [REDACTED]

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requirements, it is likely that your dealer will need your vehicle longer than the actual service correction time of approximately 40 minutes.

We are working as quickly as possible to obtain parts, and expect to have parts beginning in April of this year. We will contact you as soon as parts are available so that you can schedule an appointment with your dealer to have your vehicle repaired.

**What should you do?**

When GM notifies you that parts are available, you should contact your Chevrolet dealer to arrange a service appointment. In the meantime, remove all items other than the vehicle key from your key ring.

**Did you already pay for this repair?**

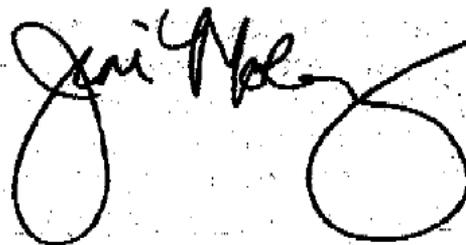
When GM notifies you that parts are available, GM will also provide instructions for you to request reimbursement if you paid for repairs for the recall condition previously.

**Do you have questions?**

If you have questions or concerns that your dealer is unable to resolve, please contact the Chevrolet Customer Assistance Center at 1.800.222.1020 (TTY 1.800.833.2438).

If after contacting your dealer and the Customer Assistance Center, you are still not satisfied we have done our best to remedy this condition without charge and within a reasonable time, you may wish to write the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or call the toll-free Vehicle Safety Hotline at 1.888.327.4236 (TTY 1.800.424.9153), or go to <http://www.safercar.gov>. The National Highway Traffic Safety Administration Campaign ID Number for this recall is 14V-047.

Federal regulation requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.



Jim Moloney  
General Director – Customer & Relationship Services

GM Recall #13454

# EXHIBIT

## “D”

1 Daniel C. Girard (State Bar No. 114826)  
2 Eric H. Gibbs (State Bar No. 178658)  
3 David K. Stein (State Bar No. 257465)  
4 Jennifer L. McIntosh (State Bar No. 264903)  
5 Scott M. Grzenczyk (State Bar No. 279309)  
6 Rachel A. Naor (State Bar No. 284966)

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18 *Attorneys for Plaintiffs*

19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 DEVORA KELLEY AND  
22 FREDERICK WHITTINGTON, on  
23 behalf of themselves and all others  
24 similarly situated,

25 Plaintiffs,

26 v.

27 GENERAL MOTORS COMPANY  
28 and GENERAL MOTORS LLC,

Defendants.

Case No. 8:14-cv-00465- JVS(ANx)

CLASS ACTION

**DECLARATION OF FREDERICK  
WHITTINGTON**

DECLARATION OF FREDERICK WHITTINGTON  
CASE NO. 8:14-cv-00465-JVS(ANx)

1 I, Frederick Whittington, declare as follows:

2 1. I have personal knowledge of the facts set forth below.

3 2. I purchased a new 2007 Chevrolet HHR in June 2007 from Fairway  
4 Chevrolet in Las Vegas, Nevada. I bought the vehicle because I wanted a large, reliable  
5 vehicle for driving friends and family around, and commuting to and from work.

6 3. I had no idea that the vehicle had a defective ignition switch, let alone that  
7 GM knew about the defect and knew that it could cause crashes, injuries, and deaths.  
8 I did not believe that GM would sell me a vehicle that contained a dangerous safety  
9 defect, and I would not have purchased this vehicle had I known about the ignition  
10 switch issue.

11 4. I live in Santa Maria, California, which is where I received notice that GM  
12 was recalling my vehicle due to a defective ignition switch that could cause my vehicle  
13 to shut off while driving. I followed GM's instructions and removed all extra weight  
14 from my key ring.

15 5. A few days later, I experienced a frightening event while driving. I was  
16 driving on College Avenue in Santa Maria, when my car suddenly shut off.  
17 Fortunately, I was able to coast to the side of the road. When I pulled over, I saw that  
18 the ignition switch had moved by itself out of the "run" position.

19 6. I contacted the dealership where I bought my HHR to see what could be  
20 done. The dealership was not of much help to me. They said that at best they could add  
21 my name to a list of vehicles needing repair, and get in touch with me when they could  
22 fix my car. They volunteered that a rental car might be available while my car was  
23 being repaired, but said nothing about being able to get a free rental car between now  
24 and then. I was not satisfied with this answer.

25 7. I am employed in client services in a position that is paid on an hourly  
26 basis. On March 27, 2014, I was scheduled to work a nine hour shift. I was unable to  
27 make the shift because I did not want to drive my car until it was repaired, did not know  
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DECLARATION OF FREDERICK WHITTINGTON  
CASE NO. 8:14-cv-00465-JVS(ANx)

1 about the free rental car option, and had no other way of getting to work. Since I was  
2 unable to get to work that day, I used nine hours of my accrued personal, paid time off.

3 8. If GM has extended its warranty to allow people like me free rental cars,  
4 that should not be a secret, and drivers should be notified.

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6 I declare under penalty of perjury that the foregoing is true and correct. Executed  
7 on April 21, 2014 at Hollywood, California.

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Frederick Whittington

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DECLARATION OF FREDERICK WHITTINGTON  
CASE NO. 8:14-cv-00465-JVS(ANx)

# EXHIBIT

## “E”



# THE COMMITTEE ON ENERGY AND COMMERCE

## MEMORANDUM

March 30, 2014

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing on “The GM Ignition Switch Recall: Why Did It Take So Long?”

On Tuesday, April 1, 2014, at 2:00 p.m. in 2123 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled “The GM Ignition Switch Recall: Why Did It Take So Long?” The hearing will review the recent recall by the General Motors Company (GM) of over 2 million cars in the United States for problems related to the ignition switch. In particular, the Subcommittee will examine how GM and the National Highway Traffic Safety Administration (NHTSA) responded to complaints from customers about the ignition switch and non-deployment of airbags.

### I. WITNESSES

Ms. Mary T. Barra  
Chief Executive Officer  
The General Motors Company

The Honorable David Friedman  
Acting Administrator  
National Highway Transportation Safety Administration

### II. BACKGROUND: THE GM RECALL

#### A. The GM Recall

On February 7, 2014, GM informed NHTSA that it had determined a defect existed in the 2005-2007 model year (MY) Chevrolet Cobalt and the 2007 Pontiac G5 vehicles.<sup>1</sup> GM stated that the “ignition switch torque performance” may not meet GM’s specifications. If the torque performance is not to specification, and the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event, the ignition switch may inadvertently be moved out of

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<sup>1</sup> Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors LLC, to Nancy Lewis, Associate Administrator for Enforcement, NHTSA (Feb. 7, 2014) available at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450012/RCDNN-14V047-1347P.pdf> (hereinafter “GM February 7, 2014, Letter to NHTSA”).

the run position.<sup>2</sup> GM explained that depending on the time the ignition moved out of the “run” position the airbags of the affected vehicles would not deploy. The recall was announced on February 10, 2014, and applied to 619,122 vehicles. Two weeks later, GM expanded the recall on February 25, 2014, to include an additional 748,024 vehicles: the 2006-2007 MY Chevrolet HHR, the 2006-2007 MY Pontiac Solstice, the 2003-2007 MY Saturn Ion, and the 2007 MY Saturn Sky Vehicles.<sup>3</sup> In its recall notices, GM stated that it is “very important that customers remove all items from their key rings, leaving only the vehicle key. The key fob . . . should also be removed from the key ring.”<sup>4</sup> In a March 17, 2014, notice to GM dealers, GM stated that they expected the initial supply of new ignition switch parts would be available on April 7, 2014.<sup>5</sup>

Last Friday, March 28, 2014, GM again expanded the ignition switch recall to cover all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Ion and Sky in the United States. GM states that its reason for expanding the recall was that faulty switches may have been used in these later models. GM stated that it is “unaware of any reports of fatalities with this group of vehicles where a frontal impact occurred, the front air bags did not deploy and the ignition is in the ‘accessory’ or ‘off’ position.”<sup>6</sup> This second expansion of the ignition switch recall covers an additional 824,000 vehicles in the U.S., bringing the number of recalled vehicles to 2,191,146.

## B. The TREAD Act

In the wake of the Firestone tire recalls involving Ford Explorer vehicles, Congress in 2000 enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.<sup>7</sup>

The TREAD Act amended Title 49 of the United States Code to require Early Warning Reporting (EWR) by manufacturers.<sup>8</sup> EWR reports are filed quarterly.<sup>9</sup> Manufacturers must file a report on each incident involving one or more deaths or injuries that is identified in a claim against the manufacturer and which alleges that the injury or death was caused by a possible defect.<sup>10</sup> In

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<sup>2</sup> *Id.*

<sup>3</sup> Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors LLC, to Nancy Lewis, Associate Administrator for Enforcement, NHTSA (Feb. 25, 2014) available at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM450732/RCDNN-14V047-7510.pdf> (hereinafter “GM February 24, 2014, Letter to NHTSA”).

<sup>4</sup> *See, e.g.*, GM February 7, 2014, Letter to NHTSA; GM February 24, 2014, Letter to NHTSA; and Letter from M. Carmen Benavides, Director, Product Investigations and Safety Regulations, General Motors LLC, to Nancy Lewis, Associate Administrator for Enforcement, NHTSA (Mar. 11, 2014) available at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM451430/RCDNN-14V047-9346P.pdf> (hereinafter “GM March 11, 2014, Letter to NHTSA”).

<sup>5</sup> Memorandum from GM Customer Care and Aftersales to All General Motors Dealers (Mar. 17, 2014) available at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM452894/RCMN-14V047-3409.pdf>.

<sup>6</sup> Press Release, General Motors, GM Moves to Secure Recalled Ignition Switches (Mar. 28, 2014) available at <http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/mar/0328-ignition-service.html>.

<sup>7</sup> Pub. L. 106-414 (2000).

<sup>8</sup> *See* 49 U.S.C. § 30116 (l) and (m); 49 C.F.R. § 579.21.

<sup>9</sup> *See* 49 C.F.R. § 570.4 (c).

<sup>10</sup> *See* 49 U.S.C. § 30166(m)(3)(A)(i).

addition, for the incidents involving death or injury, the manufacturer must report certain information about the vehicles involved, including the make, model, and Vehicle Identification Number (VIN), and identify each system or component that allegedly contributed to the incident.<sup>11</sup> EWR also includes aggregate data on the number of property damage claims, consumer complaints, warranty claims, and field reports for certain vehicle systems.<sup>12</sup> Copies of field reports must be provided each quarter.<sup>13</sup>

In addition to the quarterly reports, TREAD requires that manufacturers notify NHTSA about recalls and safety campaigns in foreign countries within five working days if the vehicle is “identical or substantially similar” to a vehicle in the United States.<sup>14</sup> Manufacturers must submit within five working days of the end of the month in which they were issued certain communications with dealers or customers, including bulletins, notices, consumer advisories, and warranty communications.<sup>15</sup>

TREAD also established certain safety standards for tires, tire pressure monitoring systems, and rollover stability. Further, upon enactment, the law set civil penalties of up to \$5,000 per motor vehicle per day with a maximum penalty of \$15 million for all violations or refusals to comply with a NHTSA regulation. NHTSA adjusted those penalties in late 2012 to \$7,000 for each violation or a total of \$17.35 million for all violations.<sup>16</sup> Those maximum penalties were increased again when President Obama signed into law the “Moving Ahead for Progress in the 21<sup>st</sup> Century Act” which increased the maximum civil penalty for all violations of motor vehicle safety rules to \$35 million.<sup>17</sup> The law contained factors the Secretary of Transportation must consider when determining a penalty amount, as well as a directed rulemaking interpreting such penalty factors.

### C. NHTSA’s Role

An agency within the Department of Transportation (DOT), NHTSA was established in 1970 by the Highway Safety Act of 1970. According to its website, NHTSA is responsible for “reducing deaths, injuries and economic losses resulting from motor vehicle crashes.”

Within NHTSA, the Office of Defects Investigation (ODI) is responsible for reviewing customer complaint data as well as EWR from manufacturers to determine if an investigation of a possible safety defect should be conducted. Customer complaints may be submitted to NHTSA by letter, phone, or to a database located at [www.safercar.gov](http://www.safercar.gov). In a briefing with Committee staff on March 10, 2014, NHTSA officials estimated that the agency receives 45,000 to 55,000 complaints a year to its database, although not all complaints submitted to the database refer to or implicate

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<sup>11</sup> See 49 C.F.R. § 579.21 (b)(2). The systems or components specified in the regulation include steering system, suspension system, service brake system, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire, and rollover. The manufacturer can also indicate that the component or system identified in the claim is not covered by the statute or that no component or system was specified in the claim.

<sup>12</sup> See 49 C.F.R. § 579.21 (c). Those systems are listed in footnote 5.

<sup>13</sup> See 49 U.S.C. 30166(l); 49 C.F.R. § 579.21(d).

<sup>14</sup> 49 C.F.R. § 579.11 and §479.12.

<sup>15</sup> See 49 C.F.R. § 579.5

<sup>16</sup> See 49 C.F.R. § 578.6 (a) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-27/pdf/2012-28694.pdf> .

<sup>17</sup> See Pub. L. 122-141 (2012) available at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf> .

safety.<sup>18</sup> NHTSA states that each complaint in its database is read by an ODI reviewer. This is referred to as a “Level I” review. Certain complaints then receive a “Level II review” or are sent to an investigator where additional follow-up is conducted to determine the facts of a complaint.

To determine whether a potential safety-related defect exists, NHTSA opens an Initial Evaluation (IE). A referral to a NHTSA investigative decision to open a defect investigation requires the approval of the ODI director. An ODI defect investigation has two phases. The first is a Preliminary Evaluation (PE). During this phase, the agency may request information from the manufacturer in order to determine whether more analysis is need. The second is an Engineering Analysis (EA). The EA is a more extensive investigation, and may involve additional requests to the manufacturer, other manufacturers, and testing and inspection of vehicles.

In addition to reviewing customer complaints and EWR, NHTSA also conducts Special Crash Investigations. NHTSA currently contracts with three different firms to perform these investigations. NHTSA may either assign a specific crash or the contractor can propose a case to NHTSA for investigation; in most instances, the investigations are assigned by NHTSA. In a briefing with Committee staff, NHTSA Special Crash Investigations (SCI) Program officials estimated that the office performs 100-125 investigations a year, depending on the complexity of the cases.<sup>19</sup>

The purpose of NHTSA’s SCI Program is not to identify a defect or determine the cause of a crash. Instead, the purpose of these investigations is to document the condition of the vehicle as it was found after the crash and tie the injuries suffered by its occupants to the vehicle’s safety systems and components so that vehicle performance is improved.<sup>20</sup> NHTSA officials explained during a briefing with Committee staff that the SCI Program often focuses its investigations on new and emerging automobile technologies. For example, NHTSA SCI Program officials explained that the office has been closely involved in investigations of airbag systems, in particular, the adoption of advanced systems in vehicles beginning in 2004 in order to meet the requirements of Federal Motor Vehicle Safety Standard 208.<sup>21</sup> The SCI Program has performed over 1,200 airbag investigations.

Contractors for the SCI Program performed three investigations of crashes in the Chevrolet Cobalt where the air bags did not deploy. These crashes occurred in July 2005, October 2006, and April 2009. Additional investigation about these investigations is provided in Part III, below.

### **III. THE COMMITTEE’S INVESTIGATION**

On March 10, 2014, the Committee announced that it would conduct a bipartisan investigation of the GM ignition switch recall. On March 11, 2014, Committee members sent letters to GM and NHTSA requesting certain documents and information about the GM recall.

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<sup>18</sup> NHTSA Office of Defects Investigation, Briefing to Committee Staff (Mar. 24, 2014) (hereinafter “NHTSA ODI Briefing”).

<sup>19</sup> NHTSA Special Crash Investigations Program, Briefing to Committee Staff (March 24, 2014) (hereinafter “NHTSA SCI Briefing”).

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

Since sending these requests, the Committee has received and reviewed over 200,000 pages of documents from GM and approximately 6,000 pages from NHTSA. Committee staff received a briefing from GM officials on March 18, 2014. Committee staff has received three briefings from various offices within NHTSA, including a briefing from NHTSA ODI officials on March 10, from SCI Program staff on March 24, and a demonstration of NHTSA ODI software on March 24. In addition, Committee staff was briefed by two GM suppliers, Delphi (the ignition switch supplier for the recalled vehicles) and Continental Corporation (the supplier of the airbag Sensing Diagnostic Module, or SDM, for the recalled GM vehicles). Finally, Committee staff conducted briefings with employees of the two NHTSA contractors that performed the SCI of Chevrolet Cobalts for non-deployment of airbags, Calspan Corporation and Indiana University Transportation Research Center.

Set forth below is a timeline of key facts and events leading up to the GM ignition switch recall. It is important to note that the Committee's investigation is ongoing, and the Committee expects to receive additional documents from both GM and NHTSA and to conduct additional interviews. While Committee staff now has a better understanding of the chronology leading up to the recall, until additional documents have been received, the information in the timeline is preliminary and incomplete. This information is presented to inform Committee members and serve as a basis for additional inquiry during the April 1, 2014, hearing before the Subcommittee.

- Late 1990s/Early 2000s: GM and supplier Eaton Mechatronics finalized the specifications for the ignition switch for the Saturn Ion.<sup>22</sup> Eaton Corporation sold its Vehicle Switch/Electronic Division to Delphi Automotive Systems ("Delphi") on March 31, 2001.
- 2001: A pre-production report for the MY 2003 Saturn Ion identified issues with the ignition switch.<sup>23</sup> In a section entitled "Root Cause Summary," the report states that the "two causes of failure" were "[l]ow contact force and low detent plunger force."<sup>24</sup> The report stated that a design change resolved the problem.<sup>25</sup>
- February 2002: Delphi, GM's ignition switch supplier for the recalled vehicles, submitted a Production Part Approval Process (PPAP) document for the switch. During a briefing, Delphi officials told Committee staff that GM approved the PPAP even though sample testing of the ignition switch torque was below the original specifications set by GM.<sup>26</sup>
- November 2004: GM opened an engineering inquiry, Problem Resolution Tracking System N172404 ("2004 PRTS"), to examine the complaint "vehicle can be keyed off with knee while driving" in a 2005 Chevrolet Cobalt.<sup>27</sup>

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<sup>22</sup> Delphi, Briefing to Committee Staff (March 27, 2014) (hereinafter "Delphi Briefing").

<sup>23</sup> See Report/Complaint regarding "Electrical Concern" Opened July 31, 2001, GMHEC000001980-1990. GM referenced the report in the chronology attached to the GM March 11, 2014, Letter to NHTSA.

<sup>24</sup> *Id.* at GMHEC000001986.

<sup>25</sup> The chronology attached to the GM March 11, 2014, letter to NHTSA states that the 2001 Saturn Ion ignition switch report was uncovered in February 2014 when GM Was conducting "additional analyses" of the Saturn Ion, HHR, Solstice, and Sky vehicles.

<sup>26</sup> Delphi Briefing.

<sup>27</sup> See Problem Resolution Tracking System N172404, originated Nov. 19, 2004, GMHEC000001727-41 (hereinafter "2004 PRTS").

- February 2005: As part of the 2004 PRTS, GM engineers met to consider possible solutions to address low key torque. The PRTS document indicates that the engineers considered increasing or changing the ignition switch “torque effort,” but were advised by the ignition switch engineer that it is “close to impossible to modify the present ignition switch” as the switch is “very fragile and doing any further changes will lead to mechanical and/or electrical problems.”<sup>28</sup> The 2004 PRTS document indicates that potential solutions were developed for consideration. After internal evaluations, engineers were directed to look into a key slot change as a “containment,” including developing cost and timing estimates.<sup>29</sup>
- March 2005: The Cobalt Project Engineering Manager’s (PEM) “directive” was to close the 2004 PRTS “with no action.”<sup>30</sup> The main reasons cited for the decision were “lead-time for all solutions is too long,” “tooling cost and piece price are too high,” and “[n]one of the solutions seems to fully countermeasure the possibility of the key being turned (ignition turned off) during driving.”<sup>31</sup> The PRTS entry concluded that “none of the solutions represents an acceptable business case.”<sup>32</sup> The documents produced to the Committee to date do not explain the criteria for an “acceptable business case” and how the decision was made in this case.<sup>33</sup>
- May 2005: A new Problem Resolution Tracking System (PRTS N182276 or “2005 PRTS”) is opened to examine the 2005 Chevrolet Cobalt a customer complaint that the “vehicle ignition will turn off while driving.”<sup>34</sup> The 2005 PRTS document noted that the same issue was addressed in the 2004 PRTS (N172404) and closed, but “[d]ue to the level of buyback activity that is developing in the field , Brand Quality requests that the issue be reopened.”<sup>35</sup> One proposed solution was changing the key ring slot to a hole and using a smaller key ring.<sup>36</sup> In the chronology attached to the GM February 24, 2014, Letter to NHTSA, GM acknowledges that this proposal was approved but later cancelled.
- July 2005: A 2005 Chevrolet Cobalt crashes in Maryland, killing the driver. On August 15, 2005, NHTSA Special Crash Investigations Program assigned Calspan to conduct a SCI, which found that the frontal airbag system did not deploy. The SDM data indicated that the “vehicle power mode status” was in “Accessory.”<sup>37</sup>
- August 2005: NHTSA begins the Special Crash Investigation of the July 2005 accident. Documents produced to the Committee indicate that GM reported this crash in its Third

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<sup>28</sup> 2004 PRTS at GMHEC000001733.

<sup>29</sup> 2004 PRTS at GMHEC000001734.

<sup>30</sup> 2004 PRTS at GMHEC000001735.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See Problem Resolution Tracking System N182276, originated May 17, 2005, GMHEC000001742-54 (hereinafter “2005 PRTS”).

<sup>35</sup> *Id.* at GMHEC000001743.

<sup>36</sup> *Id.* at GMHEC000001750.

<sup>37</sup> Calspan Corporation Crash Data Research Center, Calspan On-site Air Bag Non-deployment Investigation Case No: CA05-049, Vehicle: 2005 Chevrolet Cobalt (July 2005) (hereinafter “2005 SCI Report”).

- Quarter 2005 EWR to NHTSA. NHTSA responded to the report on March 1, 2006, and requested certain information which GM provided.<sup>38</sup>
- December 2005: GM issued a Service Bulletin 05-02-35-007 with the subject “Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs” for the Chevrolet Cobalt and HHR, Saturn Ion, and Pontiac Solstice and Pursuit (Canada only).<sup>39</sup> In the GM February 24, 2014 chronology, GM states that the 2005 PRTS process led to this bulletin. The Service Bulletin informed the dealer of the identified issue with the ignition and recommended potential remedies including removing heavy items from key rings. According to February 24, 2014, chronology submitted to NHTSA, “GM concluded in December 2005 that the service bulletin and field service campaign were the appropriate response to the reported incidents, given that the car’s steering and braking systems remained operational even after a loss of engine power, and the car’s engine could be restarted by shifting the car into either neutral or park.”<sup>40</sup>
  - April 26, 2006: A GM design engineer responsible for the ignition switch in the recalled vehicles signed a form entitled “General Motors Commodity Validation Sign-Off” authorizing Delphi to implement changes in the ignition switch.<sup>41</sup> The form explained that a “new detent plunger . . . was implemented to increase torque performance in the switch.”<sup>42</sup> According to Delphi officials, sample testing prior to this approval suggested a significant increase in torque performance but the values were still below GM’s original specifications.<sup>43</sup> The modified ignitions began to appear in 2007 model year vehicles for all models affected by the recall. In its chronology submitted to NHTSA on February 24, 2014, GM acknowledged that the new ignition switch, however, was not reflected in a corresponding change in part number.<sup>44</sup>
  - October 2006: A 2005 Chevrolet Cobalt crashes in Wisconsin, killing the driver. NHTSA SCI Program assigned Indiana University Transportation Research Center to investigate the crash, and the contractor inspected the vehicle on November 6, 2006.<sup>45</sup> GM reported this crash in its Fourth Quarter 2006 EWR filing.<sup>46</sup> On May 7, 2007, NHTSA requested additional information from GM which it provided on June 7, 2007.<sup>47</sup>

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<sup>38</sup> See Letter from Christina Morgan, Chief, Early Warning Division, Office of Defects Investigation, to Gay P. Kent, Director, General Motors Corp. (Mar. 1, 2006) and Letter to Christina Morgan from Gay P. Kent, Director, Product Investigations (Apr. 6, 2006), GMHEC00198137-198210. See also GMHEC00197893.

<sup>39</sup> Service Bulletin 05-02-35-007, “Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs,” (October 2006) at GMHEC000000001.

<sup>40</sup> GM March 11, 2014, Letter to NHTSA, attached chronology.

<sup>41</sup> General Motors Commodity Validation Sign-Off (Apr. 26, 2006), GMHEC000003201.

<sup>42</sup> *Id.*

<sup>43</sup> Delphi Briefing (Mar. 27, 2014).

<sup>44</sup> GM February 24, 2014, Letter to NHTSA, attached chronology.

<sup>45</sup> Indiana University Transportation Research Center, On-site Air Bag Non-deployment Investigation Case No: IN06-033, Vehicle: 2005 Chevrolet Cobalt (Oct. 2006) (hereinafter “2006 SCI Report”).

<sup>46</sup> *Id.* at ii.

<sup>46</sup> See Letter from Christina Morgan, Chief, Early Warning Division, Office of Defects Investigation, to Gay P. Kent, Director, General Motors Corp. (May 7, 2007) and Letter to Christina Morgan from Gay P. Kent, Director, Product Investigations (June 7, 2007), GMHEC00198410-198414.

<sup>47</sup> See *id.* See also GMHEC00197898.

- October 2006: GM updated the December 2005 Service Bulletin (05-02-35-007) to include additional models and model years: the 2007 Saturn Ion and Sky, 2007 Chevrolet HHR, and 2007 Pontiac Solstice and G5. As a result of the Service Bulletins, GM provided key inserts to 474 customers who brought their vehicles to the dealer for service.<sup>48</sup>
- March 2007: NHTSA and GM met to discuss occupant restraint systems.<sup>49</sup> To date, the Committee has received limited documentation associated with this meeting. GM's February 24 chronology indicates that a NHTSA representative informed GM about a July 29, 2005 fatal crash. It appears this is the same crash that was the subject of the SCI. After the meeting, GM began tracking front impact crashes involving Cobalts where the air bags did not deploy in order to track similarities in the incidents. GM identified 10 incidents by the end of 2007. In four cases the ignition had moved into the "accessory" position. Comparable information was unavailable for the Saturn Ion because the SDM sensors installed in these vehicles did not record whether the engine was running.<sup>50</sup>
- April 25, 2007: Indiana University submitted its draft of the 2006 SCI to the NHTSA SCI Program. The SCI report stated that the "crash is of special interest because the vehicle was equipped with . . . dual state air bags that did not deploy."<sup>51</sup> The SCI report concluded that the airbags did not deploy "as a result of the impact with the clump of trees, possibly due to the yielding nature of the tree impact or power loss due to the movement of the ignition switch just prior to impact."<sup>52</sup> The event data recorder (EDR) for the vehicle indicated that the power node status was "accessory" at the time of impact.<sup>53</sup> The report also noted that the investigation revealed that contact with the ignition switch could result in "engine shut down and loss of power," and cited the service bulletin issued on October 25, 2006. The report stated that it was unclear what role "if any" the ignition switch issue played in the non-deployment of the airbags.<sup>54</sup>
- August 2007: GM met with its SDM supplier, Continental, to review SDM data from a crash of a 2005 Chevrolet Cobalt where the airbags failed to deploy.<sup>55</sup>
- September 2007: The Chief of the Defects Assessment Division (DAD) within ODI emailed other ODI officials and proposed an investigation of "frontal airbag non-deployment in the 2003-2006 Chevrolet Cobalt/Saturn Ion."<sup>56</sup> The Chief of the Defects Assessment Division went on to state that the "issue was promoted by a pattern of reported non-deployments in VOQ [Vehicle Owners' Questionnaire] complaints that was first observed in early 2005. Since that time, [the Defects Assessment Division] has followed up on the complaints, enlisted the support of NCSA's Special Crash Investigations (SCI) team, discussed the matter with GM, and received a related EWD

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<sup>48</sup> See Service Bulletin 05-02-35-007, "Information on Inadvertent Turning Off of Key Cylinder, Loss of Electrical System and No DTCs," (October 2006, revised) at GMHEC000000002.

<sup>49</sup> GM February 24, 2014, Letter to NHTSA, attached chronology.

<sup>50</sup> *Id.*

<sup>51</sup> 2006 SCI Report.

<sup>52</sup> *Id.* at ii.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> *Id.*

<sup>55</sup> See Continental Automotive Systems US, Inc., Field Event Analysis Report, GMHEC00003143-3153.

<sup>56</sup> Email from Chief of Defects Assessment Division, ODI, to NHTSA staff (Sept. 05, 2007, 4:54:16 PM), NHTSA Bates NHTSA-HEC-004491.

- Referral. Notwithstanding GM's indications that they see no specific problem pattern, DAD perceives a pattern of non-deployments in these vehicles that does not exist in their peers . . . .<sup>57</sup>
- November 15, 2007: ODI IE panel reviewed the proposal to open an investigation into non-deployment of airbags in 2003-2006 Cobalts and Ions. A PowerPoint presentation prepared by the DAD and dated November 17, 2007, states that its review was prompted by 29 Complaints, 4 fatal crashes, and 14 field reports.<sup>58</sup> During a briefing with Committee staff, ODI officials explained that the panel did not identify any discernable trend and decided not to pursue a more formal investigation.<sup>59</sup>
  - February 2009: GM opened another investigation into the ignition resulting in a redesign of the ignition key for model year 2010 Cobalt.<sup>60</sup>
  - April 2009: A 2005 Chevrolet Cobalt crashed in Pennsylvania, killing the Cobalt driver and front-seat passenger. NHTSA SCI Program assigned the Calspan Crash Data Research Center to investigate the crash, and the contractor inspected the vehicle on April 6 and 7, 2009.<sup>61</sup>
  - May 15, 2009: GM again met with its SDM supplier, Continental, and requested that Continental download SDM data from a 2006 Chevrolet Cobalt accident where the airbags failed to deploy.<sup>62</sup>
  - February 2010: Calspan Crash Data Research Center submitted its 2009 SCI Report, finding that the airbags did not deploy at the time of the crash and that the "cause of the air bag non-deployment in this severe crash could not be determined."<sup>63</sup> The data from the Cobalt's SDM indicated that the Vehicle Power Mode Status was in "Accessory."<sup>64</sup>
  - 2010: ODI again considered Cobalt trend information on non-deployment but determined the data did not show a trend.
  - August 2011: GM initiated a Field Performance Evaluation (FPE)<sup>65</sup> to examine a group of frontal impact crashes involving the 2005-2007 Chevrolet Cobalt and the 2007 Pontiac G5 and airbag non-deployment. The FPE included a review of information related to the Ion, HHR and Solstice.<sup>66</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> Defects Assessment Division, DAD Panel (Nov. 17, 2007) at NHTSA-HECC-004462-4483.

<sup>59</sup> NHTSA ODI Briefing.

<sup>60</sup> GM February 24, 2014, Letter to NHTSA, attached chronology at 2.

<sup>61</sup> Calspan Corporation Crash Data Research Center, Calspan On-site Air Bag Non-deployment Investigation SCI Case No: CA09022, Vehicle: 2005 Chevrolet Cobalt (April 2009) (hereinafter "2009 SCI Report").

<sup>62</sup> See Continental Automotive Systems US, Inc., Field Event Analysis Report, GMHEC00003129-3142.

<sup>63</sup> 2009 SCI Report at 9.

<sup>64</sup> *Id.* (SDM data report, attached to 2009 SCI Report).

<sup>65</sup> See GM March 11, 2014 Letter to NHTSA, attached chronology. The FPE involves several steps. An investigation is conducted by Field Performance Assessment Engineers (FPAE) to ascertain the technical issues. Their analysis and proposed solutions are presented to the Field Product Evaluation Recommendation Committee (FPERC). Based on their review, the FPERC's recommendations are presented to the Executive Field Action Decision Committee (EFADC). The EFADC is responsible for deciding on a course of action.

<sup>66</sup> According to GM, this examination included "...reviewing data relating to complaints of stalling in the Ion for all model years; reviewing data relating to crashes involving Ions from certain model years in which airbags had not deployed; testing the torque performance of ignition switches from salvage yard vehicles, including Ions, HHRs, Cobalts and G5s (but not Solstice or Sky vehicles); measuring the difference among a wide variety of GM vehicles in the distance between a driver's knee and the ignition; and studying vehicles' different steering columns and

- May 2012: GM engineers tested the torque performance of 44 vehicles across a range of make and model years. Results revealed that the majority of vehicles tested from model years 2003 to 2007 exhibited torque performance at or below 10 Ncm (Ncm), below the original specifications established by GM. The results also revealed a shift in torque performance beginning in MY2007 vehicles built late in 2006 and all subsequent model years. The torque performance for these vehicles ranged from just below 15 Ncm to 20Ncm. At the time, GM engineers could not explain the shift or discrepancies in torque performance.<sup>67</sup>
- September 2012: A GM Field Performance Assessment Engineer emailed a GM Red X Engineer to request assistance in examining the changes between the 2007 and 2008 Chevrolet Cobalt Models.<sup>68</sup> Based on a briefing with GM, Committee staff's understanding is that GM Red X engineers are assigned to find the root cause of engineering or technical problems.
- April 2013: GM learned there was a difference in the torque performance of a GM service part ignition switch purchased after 2010 compared to the original ignition switch installed in a 2005 Cobalt.<sup>69</sup> In response, GM hired an outside engineering firm to conduct a thorough ignition switch investigation. The external expert concluded that ignition switches installed in early model Cobalt and Ion vehicles did not meet GM's torque specification and that a change to the switch made several years later provided a likely explanation for the variance in torque performance.<sup>70</sup> Data within the external report also indicated that vehicles with the modified ignition switch exhibited torque performance consistent with GM's design specification.<sup>71</sup>
- October 2013: GM received documentation from Delphi demonstrating that a change to the ignition switch in the Cobalt and other vehicles was made in April 2006.<sup>72</sup>
- December 2013: The Field Performance Assessment Engineer presented the results of their analysis to the Field Product Evaluation Recommendation Committee (FPERC) and the Executive Field Action Decision Committee (EFADC).<sup>73</sup>
  - December 17, 2013: The EFADC met to review the findings. Questions were raised at the meeting that prompted additional analysis.
- January 31, 2014: A second EFADC meeting was convened and resulted in a decision to conduct a safety recall of model year 2005-2007 Chevrolet Cobalt and Pontiac G5 vehicles.<sup>74</sup> At the time, the EFDAC was only asked to consider a recall of these vehicles.<sup>75</sup>
- February 2014: Additional analysis was performed of data related to the Saturn Ion, Chevrolet HHR, and Pontiac Solstice and Sky vehicles. This analysis revealed earlier

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shrouds, including those of the Ion and the Cobalt." GM March 11, 2014, Letter to NHTSA, attached chronology at 3.

<sup>67</sup> *Id.* at 4. See also GMHEC000221427.

<sup>68</sup> Email from GM Field Performance Assessment Engineer to GM Red X Team Engineer (Sept. 6, 2012, 1:29:14 PM), GMHEC000136204.

<sup>69</sup> GM March 11, 2014, Letter to NHTSA, attached chronology at 4.

<sup>70</sup> *Id.*

<sup>71</sup> See GMHEC000003156-3180.

<sup>72</sup> *Id.* at 5.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

reports of concerns with the ignition switch in Ion vehicles (noted earlier in timeline).<sup>76</sup>

- February 13, 2014: GM announced a recall of 2005-2007 model year Chevrolet Cobalt and Pontiac G5 vehicles to address a fault with the ignition switch that may permit the key to inadvertently turn to the “off” or “accessory” position, resulting in a loss of power to the engine and many electrical components in the vehicle.
- February 24, 2014: GM submitted a detailed timeline to NHTSA pertaining to the Cobalt and Pontiac G5 recall.
- February 24, 2014: GM convened another EFADC meeting to review additional analysis related to the Saturn Ion and Sky, Chevrolet HHR, and Pontiac Solstice. The EFADC ordered a safety recall for certain model years of these vehicles.<sup>77</sup>
- February 25, 2014: GM expanded the recall to include additional 2003-2007 model year vehicles. These include the MY 2003-2007 Saturn Ion, MY 2006-2007 Chevrolet HHR and Pontiac Solstice, and MY 2007 Saturn Sky. As a result of this expansion, the total number of vehicles subject to the recall rose to approximately 1.6 million worldwide, including more than 1.3 million in the United States.
- March 4, 2014: NHTSA opened Timeliness Query TQ14-001 “to evaluate the timing of GM’s defect decisionmaking and reporting of the safety defect to NHTSA.”
- March 11, 2014: GM submitted a detailed timeline to NHTSA related to the subsequent recall of the Saturn Ion, Saturn Sky, Chevrolet HHR and Pontiac Solstice.
- March 21, 2014: Transportation Secretary Anthony Foxx asked the Department of Transportation Inspector General to conduct an audit to determine whether federal regulators responded quickly enough to evidence of potential defects in GM vehicles.
- March 28, 2014: GM again expanded the ignition switch recall to cover all model years of the Chevrolet Cobalt and HHR, the Pontiac G5 and Solstice, and the Saturn Ion and Sky in the United States. This second expansion of the ignition switch recall covers an additional 824,000 vehicles in the U.S., bringing the number of recalled vehicles to 2,191,146.

#### IV. ISSUES

The following issues may be examined at the hearing:

- Why did GM not identify a safety defect and order a recall in its Chevrolet Cobalt and HHR, Pontiac G5 and Solstice, and Saturn Ion and Sky until February 2014? What prevented GM from identifying this defect sooner?
- Does GM have appropriate processes in place to identify potential safety defects and take prompt action?
- Why did GM approve ignition switches that did not meet its specifications for torque performance? What was GM’s assessment of the implications for performance and safety?

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<sup>76</sup> *Id.*

<sup>77</sup> See GM March 11, 2014, Letter to NHTSA, attached chronology at 6.

- In 2007 and 2010, why did NHTSA determine there was not a safety defect trend for airbag non-deployment in Chevrolet Cobalts in 2007? What did NHTSA do to investigate whether a trend existed? What data did it consider?
- What prevented NHTSA from identifying a safety defect in GM recalls relating to airbag non-deployment?

**V. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact John Ohly or Karen Christian of the Committee staff at (202) 225-2927.

**EXHIBIT**  
**“F”**

**RECEIVED**

By Recall Management division at 9:39 am, Feb 25, 2014

February 24, 2014

Ms. Nancy Lewis  
Associate Administrator for Enforcement  
National Highway Traffic Safety Administration  
Recall Management Division (NVS-215)  
1200 New Jersey Avenue, SE – Room W45-306  
Washington, DC 20590

Re: NHTSA Notification Campaign No. 14V-047

Dear Ms. Lewis:

This letter supersedes General Motors' letter of February 7, 2014, and is submitted pursuant to the requirements of 49 CFR 573.6 as it applies to a determination by General Motors to conduct a safety-related recall for 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles. Specifically, the information submitted pursuant to 49 CFR 573.6(c)(5) and 573.6(c)(6) below supersedes information included in General Motors' letter of February 7, 2014.

573.6(c)(1): General Motors Company; Chevrolet and Pontiac Brands.

573.6(c)(2),(3),(4): This information is shown on Attachment A.

573.6(c)(5): General Motors has decided that a defect which relates to motor vehicle safety exists in 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles. The ignition switch torque performance may not meet General Motors' specification. If the torque performance is not to specification, the ignition switch may unintentionally move from the "run" position to the "accessory" or "off" position with a corresponding reduction or loss of power. This risk may be increased if the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event. The timing of the key movement out of the "run" position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes.

Until the recall repairs have been performed, it is very important that customers remove all items from their key rings, leaving only the vehicle key. The key fob (if applicable), should also be removed from the key ring.

573.6(c)(6): As permitted by the provisions of 49 C.F.R. 573.6(b), and pursuant to the requirements of 49 C.F.R. 573.6(c)(6), General Motors now submits the attached chronology of principal events that were the basis for the determination that the defect related to motor vehicle safety. See Attachment B. This chronology refers to numerous engineering



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inquiries, known within General Motors as Problem Resolution Tracking System ("PRTS") inquiries. As stated in the enclosed document, General Motors is prepared to share with NHTSA upon request the PRTS reports referenced therein, as well as other documentation related to this recall.

573.6(c)(8): Dealers are to replace the ignition switch.

GM will provide the dealer bulletin and owner letter mail dates when available.

Pursuant to 577.11(e), GM will provide reimbursement to owners for repairs completed on or before ten days after the owner mailing is completed, according to the plan submitted on May 23, 2013.

573.6(c)(10): GM will provide copies of the dealer bulletin and owner letter under separate cover.

573.6(c)(11): GM's assigned recall number is 13454.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Carmen Benavides". The signature is fluid and cursive, with the first name "M." and last name "Benavides" clearly distinguishable.

M. Carmen Benavides, Director  
Product Investigations and Safety Regulations

13454  
Attachments

Attachment A - 573.6(c)(2),(3),(4)

**VEHICLES POTENTIALLY AFFECTED BY MAKE, MODEL, AND MODEL YEAR  
PLUS INCLUSIVE DATES OF MANUFACTURE**

<u>MAKE</u>	<u>MODEL SERIES</u>	<u>MODEL YEAR</u>	<u>NUMBER INVOLVED</u>	<u>INCLUSIVE MANUFACTURING DATES (FROM) (TO)</u>		<u>DESCRIPTIVE INFO. TO PROPERLY IDENT. VEH.</u>	<u>EST. NO. W/CONDITION</u>
Chevrolet	A	2005	140,978	08/03/2004	06/17/2005	Cobalt	*
Chevrolet	A	2006	229,578	04/05/2005	06/09/2006	Cobalt	"
Chevrolet	A	2007	215,667	04/20/2006	08/16/2007	Cobalt	"
Pontiac	A	2007	32,899	04/20/2006	08/06/2007	G5	"
GM Total:			619,122				

\* All involved vehicles will be corrected as necessary.

573.6(c)(2)(iv): Delphi Packard Electrical/Electronic Architecture  
5725 Delphi Drive  
M/C 483.400.301  
Troy, Michigan 48098

Tel: [1] 248.813.2334  
Fax: [1] 248.813.2333

The involved parts are manufactured in Mexico.

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ATTACHMENT B - 573.6(c)(6)

**2004.** Around the time of the launch of the 2005 Chevrolet Cobalt, GM learned of at least one incident in which a Cobalt lost engine power because the key moved out of the “run” position when the driver inadvertently contacted the key or steering column. GM employees were able to replicate this phenomenon during test drives. An engineering inquiry, known within GM as a Problem Resolution Tracking System inquiry (hereinafter “PRTS”), was opened to investigate the issue.<sup>1</sup> Engineers believed that low key cylinder torque effort was an issue and considered a number of potential solutions. After consideration of the lead time required, cost, and effectiveness of each of these solutions, the PRTS was closed with no action.

**2005.** GM employees received new field reports of Cobalts losing engine power, including instances in which the key moved out of the “run” position when a driver inadvertently contacted the key or steering column. Further PRTS’s were opened to re-assess this issue. During the course of a PRTS opened in May 2005, an engineer proposed that GM redesign the key head from a “slotted” to a “hole” configuration. That proposal was initially approved, but later cancelled. The PRTS process led to GM’s issuing an Information Service Bulletin 05-02-35-007 in December 2005. This Service Bulletin provided “Information on Inadvertent Turning of Key Cylinder, Loss of Electrical System and No DTCs,” and applied to 2005-06 Chevrolet Cobalts, 2006 Chevrolet HHRs, 2005-06 Pontiac Pursuits (Canada only), 2006 Pontiac Solstices, and 2003-06 Saturn Ions. These vehicles were all equipped with the same ignition switch. The Service Bulletin informed dealers that: “there is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort”; “[t]he concern is more likely to occur if the driver is short and has a large and/or heavy key chain”; and “the customer should be advised of this potential and should take steps to prevent it—such as removing unessential items from their key chain.” In addition, the Service Bulletin advised that “Engineering has come up with an insert for the key ring so that it goes from a ‘slot’ design to a hole design. As a result, the key ring cannot move up and down in the slot any longer—it can only rotate on the hole.” The Service Bulletin further stated that, “[i]n addition, the previous key ring has been replaced with a smaller, 13 mm design. This will result in the keys not hanging as low as in the past.”

Certain of the reported incidents that pre-dated GM’s issuance of Service Bulletin 05-02-35-007 and GM’s public response to inquiries about those incidents were chronicled in newspaper articles that appeared in the *NEW YORK TIMES*, the *CLEVELAND PLAIN DEALER*, and *THE DAILY ITEM* (Sunbury, PA). GM concluded in December 2005 that the Service Bulletin and field service campaign was the appropriate response to the reported incidents, given that the car’s steering and braking systems remained operational even after a loss of engine power, and the car’s engine could be restarted by shifting the car into either neutral or park.

GM updated the Service Bulletin in October 2006 to include additional vehicles and model years—specifically, the 2007 Chevrolet Cobalt, the 2007 Chevrolet HHR, the 2007 Pontiac G5, the 2007

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<sup>1</sup> GM is prepared to share with NHTSA upon request the PRTS reports referenced in this document.

Pontiac Solstice, the 2007 Saturn Ion, and the 2007 Saturn Sky.<sup>2</sup> GM's warranty records indicate that GM dealers have provided key inserts to 474 customers who brought their vehicles into dealers for service.

**2006.** On April 26, 2006, the GM design engineer responsible for the Cobalt's ignition switch signed a document approving changes to the ignition switch proposed by the supplier, Delphi Mechatronics. The approved changes included, among other things, the use of a new detent plunger and spring that increased torque force in the ignition switch. This change to the ignition switch was not reflected in a corresponding change in the part number for the ignition switch. GM believes that the supplier began providing the re-designed ignition switch to GM at some point during the 2007 model year.

A PRTS was opened on August 1, 2006, after a customer complained of stalling after the car's ignition switch had been replaced. This PRTS indicated that the condition could not be duplicated after more than 100 miles of driving and the PRTS was canceled on October 2, 2006.

**2007.** On March 29, 2007, a group of GM employees met with NHTSA representatives in Washington, D.C. to discuss occupant restraint systems. During this meeting, a NHTSA representative informed the GM employees of a fatal crash that occurred on July 29, 2005, in which a 2005 Cobalt was involved in a frontal collision, the airbags did not deploy, and data retrieved from the car's sensing and diagnostic module ("SDM") indicated that the car's power mode status was "accessory" (hereinafter "the July 29, 2005 crash"). While GM Legal Staff opened a file relating to this crash in September 2005, the GM employees meeting with NHTSA on this occasion were not aware of the crash at the time of the meeting. After this meeting, a GM investigating engineer was tasked with tracking crashes in which Cobalts were involved in frontal impacts and the airbags did not deploy, in order to try to identify common characteristics of these crashes. By the end of 2007, GM had notice of ten such incidents. SDM data was available for nine of the ten crashes, and that data showed that the ignition was in the "run" position in five of the crashes and in the "accessory" position in four of the crashes.

**2009.** In February 2009, another PRTS was opened and resulted in the top of the key being changed from a "slot" design to a "hole" design. According to the PRTS, "[c]ustomers with substantially weighted key chains/additional keys hanging from ignition key have experienced accidental ignition shut-off. Changing from a slot to a hole will significantly reduce downward force and the likelihood of this occurrence." This key design change was implemented in model year 2010 Cobalts.

On or about May 15, 2009, several GM engineers met with representatives of Continental, the supplier of the SDMs used in the Cobalt. In the fourteen frontal-impact crashes for which SDM data was then available, the ignition was recorded in "run" for seven of the crashes and in the "accessory" position for the other seven. Prior to this meeting, GM had provided Continental with

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<sup>2</sup> GM's records contain references to a second update of the Service Bulletin in July 2011, which covered the same models and model years as the first update in October 2006. However, upon investigation, GM believes that the Service Bulletin was not updated in July 2011.

two SDMs from crashes involving a 2005 Cobalt and a 2006 Cobalt in which the airbags had not deployed and the SDM data indicated that the car's ignition switch was in the "run" position at the time of the crash. During this meeting, Continental representatives informed the GM engineers that, according to further stored data inaccessible to GM engineers but retrieved by Continental, the SDM's sensing algorithm had been disabled at the time of the crash, and discussed reasons why this may have happened. Although GM engineers had identified other crashes in which airbags had not deployed and the ignition switch was recorded in the "run" position at the time of the crash, GM engineers were not able to obtain the SDMs from the vehicles involved in these crashes for further interrogation by Continental.

**2010.** During the summer of 2010, GM discontinued production of the Cobalt at the end of the 2010 model year, as previously planned.

**2011.** In late July 2011, a meeting was held at GM involving Legal Staff, Field Performance Assessment ("FPA") and Product Investigations personnel who would be involved in the Field Performance Evaluation ("FPE") process. Soon thereafter, in August 2011, a Field Performance Assessment Engineer ("FPAE") was assigned to move forward with an FPE investigation of a group of crashes in which airbags in 2005-2007 model year Chevrolet Cobalts and a 2007 Pontiac G5 had not deployed during frontal impacts.

Then as now, GM's FPE process consisted of several steps, beginning with investigation of the issue, then presentation of potential solutions to decision makers, and culminating in a decision and implementation of that decision. At the outset of the process, investigating engineers work to develop technical understanding of the issue. They then present their findings and proposed solutions to the Field Product Evaluation Recommendation Committee ("FPERC"). The FPERC's recommendations are then presented to the Executive Field Action Decision Committee ("EFADC"), which decides on a course of action. The FPERC and EFADC may request further analysis before making recommendations or decisions as to what, if any, field action is warranted.

GM's initial investigation of these crashes had revealed that the SDM data available from the involved vehicles showed that some of the ignitions were recorded as having been in the "run" position, while others were recorded as having been in either the "accessory" or "off" positions, at the time of the crash. Because many of the crashes known to GM at the time involved violent off-road impacts occurring under widely varying circumstances and because many involved excessive speeds, different theories had been offered as to why the airbags had not deployed in the various incidents. The assigned FPAE was asked to assess whether common issues or concerns might explain some or all of the non-deployment crashes.

**2012.** Based on the information then available, the investigation sought, among other things, to determine whether there were known engineering reasons that would explain why these reported non-deployment crashes involved 2007 and earlier model year vehicles. In May 2012, the assigned FPAE studied a cross-section of steering columns and ignition switches from Chevrolet Cobalts, Chevrolet HHRs, Pontiac G5s, and Saturn Ions, in model years ranging from 2003 through 2010. The FPAE accessed, inspected, and tested these steering columns and ignition switches for torque performance at a salvage yard. Certain of these ignition switches exhibited torque performance below that specified by GM for the ignition switch. The most prevalent shortfalls in performance

were observed on ignition switches found in 2007 and earlier model year vehicles. The FPE investigation focused on determining the cause of these variations in torque performance by model year. A review of GM's records by those involved in the investigation did not identify design changes to the ignition switch that would explain the variations in torque performance for the 2007 and earlier model year vehicles and that of the 2008 and later model year vehicles. GM also considered other components that might potentially influence the torque performance of the ignition switches, including changes made to the car's theft system at the beginning of the 2008 model year. Again, no explanation was discovered. GM engineers conducted separate studies using the "Red X" and "Design for Six Sigma" problem-solving methodologies, in hopes of better understanding the differences in observed torque performance, but those, too, produced inconclusive results. These latter studies were concluded in November 2012 and January 2013, respectively.

**2013.** In late April 2013, the FPAE learned that the torque performance of a GM service part ignition switch purchased after 2010 differed substantially from that of an ignition switch that was original equipment installed on a 2005 Cobalt. He also learned that others had observed and documented that the detent plunger and spring used on the service part switch differed from those used on the original equipment switch installed on the 2005 Cobalt. Shortly thereafter, GM retained outside engineering resources to conduct a comprehensive ignition switch survey and assessment. That investigation included torque performance testing, ignition switch teardowns, and x-ray analyses of ignition switches used in production vehicles both before and after the 2007 model year. The data gathered by GM's outside technical expert showed that: the ignition switches that he tested that had been installed in early-model Cobalts did not meet GM's torque specification; changes had been made to the ignition switch's detent plunger and spring several years after the start of production; and those changes most likely explained the variation from GM's specifications for torque performance observed in the original switches installed in 2007 and earlier model year vehicles.

On October 29, 2013, after dialogue with the supplier, GM was provided with supplier records showing that changes had in fact been made to the detent plunger and spring late in the 2006 calendar year. Those changes increased the switch's torque performance. Testing and analysis further determined that whether a key moves from the "run" to "accessory" position and how that key movement affects airbag deployment depends on a number of factors, including: vehicle steering inputs and path of travel immediately before key movement; the weight and load on the key ring immediately before key movement; whether the installed ignition switch meets the torque specifications that GM provided to its supplier; and the timing of the movement of the key out of the "run" position relative to the activation of the airbag's sensing algorithm of the crash event.

Upon completion of this analysis, the issue was presented to the Field Performance Evaluation Review Committee ("FPERC") and the Executive Field Action Decision Committee ("EFADC"). These two committees reviewed the findings in early December, culminating in an EFADC meeting on December 17, 2013. Factual questions were raised at that meeting that required further analysis, the findings of which were presented at a second EFADC meeting on January 31, 2014, on which date the EFADC directed a safety recall.

The dealers are to replace the ignition switch. GM will provide the dealer bulletin and owner letter mail dates when available. Pursuant to 577.11(e), GM will provide reimbursement to owners for repairs completed on or before ten days after the owner mailing is completed.

Between 2005 and the date of this submission, GM is currently aware of 23 frontal-impact crashes involving 2005 to 2007 Chevrolet Cobalts and 2007 Pontiac G5s in which the recall condition may have caused or contributed to the airbags' non-deployment. During that same timeframe, of these crashes, GM is currently aware of six that resulted in eight fatalities of frontal occupants. GM employees became aware of many of these crashes within a month of the dates on which they occurred. As GM learned of these crashes, employees undertook to investigate the underlying facts and circumstances to determine, among other things, why the airbags had not deployed. With respect to 22 of the 23 frontal-impact crashes referenced above, the data retrieved from the vehicles' SDMs indicated that the ignition switches were in the "run" position in nine of the crashes, in the "accessory" position in twelve of the crashes, and in the "off" position in one of the crashes.<sup>3</sup> Throughout this period, GM was involved in claims and lawsuits in which allegations were made regarding the ignition switch issue that is the subject of the recall. These 23 crashes are out of a total U.S. population of 619,122 vehicles subject to the pending recall.

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<sup>3</sup> In one of the 23 crashes referenced above, SDM information could not be retrieved from the vehicle.

# EXHIBIT

## “G”

AFFIDAVIT OF LAURA VALLE

THE STATE OF TEXAS     §  
  §  
COUNTY OF NUECES     §

BEFORE ME, the undersigned authority, personally appeared, Laura Valle who upon her oath stated,

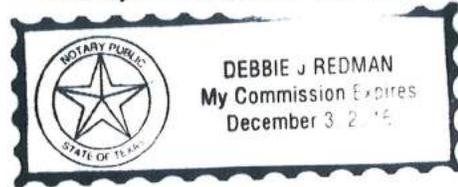
My name is Laura Valle and I own a 2007 Silver Chevrolet Cobalt, VIN No. 1G1AK55F177142828. In March 2014, I received a recall notice on my vehicle. It said to remove all of the keys off my key ring, just to leave the ignition key, just to carry the ignition key, so that's what I did. I set my other keys aside and just used my ignition key. The only thing I left on my key ring was the actual General Motors Key by itself. Within a week or so after I received the recall notice, I was going down Staples, going towards Wal-Mart. I was right past Sutherlands and I was going to make that right turn into Wal-Mart. I was going about 25 miles per hour. And the car just stopped on me, just died on me. I had Mary Alice Ybarra in the vehicle with me. I was taking her to run some errands. As I was going to pull into Wal-Mart there, it just died on me. Luckily there was no one behind me. It just died on me and I hurried up and turned it back on and put it back into drive. I had to put it into park because it was on drive. I proceeded to make the right turn into the parking area. I believe the steering wheel locked on me. I remember the key was not in the on position. It just happened so fast, you know. You just want to get out of people's way. You don't want to get hit from behind. That's what I was worried about. After I turned it back on, I turned into the parking lot and parked it in there. We went in and Ms. Ybarra bought what she had to buy into Wal-Mart. My car is now at Allen Samuels Chevy dealership, in a parking lot there. They're waiting for the parts to come in.

“Further, Affiant sayeth not.”

Laura Valle  
Laura Valle

SUBSCRIBED AND SWORN TO BEFORE ME, by the said Laura Valle,  
on the 3rd day of April, 2014 to certify which witness my hand and seal.

Debbie J Redman  
Notary Public, State of Texas



# EXHIBIT

## “H”

STATE OF TEXAS  
COUNTY OF NUECES

§  
§

**AFFIDAVIT**

Before me, the undersigned notary, on this day personally appeared Robert C. Hilliard the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

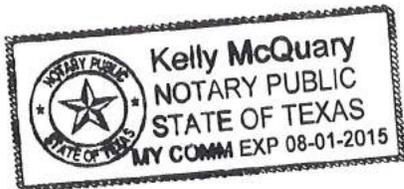
1. "My name is Robert C. Hilliard. I am over 18 years of age, and I am of sound mind and capable of making this affidavit. The information and facts stated herein are within my personal knowledge. The facts herein are true and correct.
2. Nine individuals in the Corpus Christi area, who own defective vehicles have come forward seeking legal representation from me.
3. I certify and declare under penalty of perjury under the laws of the State of Texas that the foregoing facts are true and correct."

FURTHER AFFIANT SAYETH NOT.



Robert C. Hilliard

SUBSCRIBED AND SWORN TO before me this 4 day of APRIL, 2014.




Notary Public in and for the State of TEXAS

KELLY MCQUARY  
Notary's Printed Name:

8/1/15  
My commission expires:

# EXHIBIT

“1”

# CENTER FOR AUTO SAFETY

1825 CONNECTICUT AVENUE NW SUITE 330 WASHINGTON DC 20009-5708  
 202-328-7700  www.autosafety.org

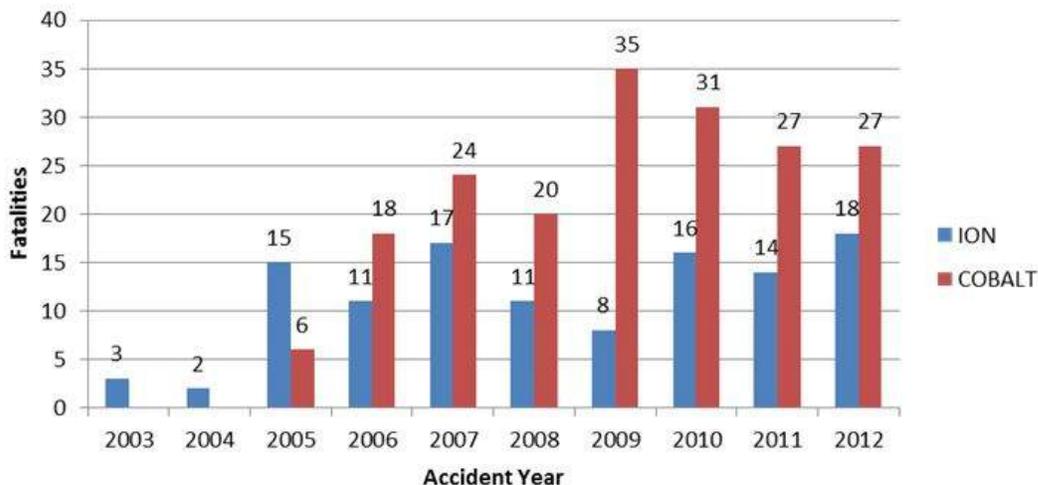
March 13, 2014

The Honorable David J. Friedman  
 Acting Administrator  
 National Highway Traffic Safety Administration (NHTSA)  
 1200 New Jersey Avenue SE, West Building  
 Washington, D.C. 20590

Dear Administrator Friedman:

On March 7, the Center for Auto Safety (CAS) wrote you about NHTSA’s failure to utilize its Special Crash Investigations (SCI) of 2005 Cobalts and 2004 Ions and Early Warning Reports (EWR) of death claims filed by GM to open a defect investigation and order a recall. (Attachment A.) Examination of NHTSA’s Fatal Analysis Reporting System (FARS) reveals 303 deaths of front seat occupants in the recalled 2005-07 Cobalts and 2003-07 Ions where the airbag failed to deploy in non-rear impact crashes. (See figure below.) The search did not include the other five models recalled or the number of deaths without airbag deployment would have been higher.

## DEATHS IN 2003-2007 SATURN IONS AND 2005-2007 CHEVROLET COBALTS WITH AIRBAG NON-DEPLOYMENT BY CALENDAR YEAR



2002-2012 Fatal Accident Reporting System for front seat occupants;  
 Excludes: cases coded with rear damage area and cases with unknown or not-reported airbag deployment  
 Total=303, 115 Ion and 188 Cobalt.

The Honorable David J. Friedman  
 March 13, 2014  
 Page Two

The FARS data clearly show front seat occupants were being killed in crashes where the airbags did not deploy as soon as the recalled vehicles hit the road, with three deaths in Saturn Ions during 2003 and 6 deaths in Chevrolet Cobalts in 2005. The number of front seat occupant deaths steadily climbed as more Cobalts and Ions were sold with 43 in 2009 and 47 in 2010 where the airbags did not deploy.

NHTSA could and should have initiated a defect investigation to determine why airbags were not deploying in Cobalts and Ions in increasing numbers. As the agency has done in past investigations, special investigation teams should have been sent out to acquire more information on the crashes found in FARS and determine in which ones the airbag did not deploy due to the ignition key defect.

CAS cross-referenced the FARS cases with the EWR death claims reported by GM to see which EWR case had a airbag non-deployment. (See following figure) CAS looked at the crucial time period of 2004 up to 2007 when NHTSA conducted three SCIs into two 2005 Cobalts and a 2004 Saturn Ion, and met with GM staff to discuss the Maryland SCI. In that time frame, CAS found 4 Ion EWR death claim reports from GM and 5 Cobalt reports where the airbag did not deploy. In addition, there were 2 Cobalt cases where airbag deployment was unknown.

**MY 2005-07 Chevrolet Cobalt Deaths in EWR Without Airbag Deployment  
 Coded Airbag, Steering, Electrical or Unknown, Calendar Years 2004-2007**

QUARTER	SEQ_ID	DI ID #	MODEL	MY	VIN	INCIDENT	DEATHS	INJURIES	STATE	FARS
2005 Q3	137	DI05-142	COBALT	2005	1G1AL12F857...	7/29/2005	1	0	MD	FARS ID 240274 Coded Airbag Deployed*
2006 Q4	88	DI07-044	COBALT	2005	1G1AK52F657...	10/24/2006	2	1	WI	FARS ID 550534 Coded Airbag Available: NO DEPLOYMENT
2007 Q2	87	DI07-087	COBALT	2006	1G1AK55F467...	4/7/2007	1	1	MD	FARS ID 240099 Coded Airbag Available: UNKNOWN IF DEPLOYED
2007 Q2	80	DI07-087	COBALT	2005	1G1AK12F457...	4/30/2007	1	1	PA	FARS ID 420297 Coded Airbag Available: NO DEPLOYMENT
2007 Q2	79	DI07-087	COBALT	2005	1G1AK52F857...	1/6/2007	1	0	WI	FARS ID 550011 Coded Airbag Available: UNKNOWN IF DEPLOYED
2007 Q4	111	No DI Sent	COBALT	2005	1G1AK52F157...	10/16/2007	1	0	OH	FARS ID 390970 Coded Airbag Available: NO DEPLOYMENT
2009 Q2	95	DI09-096	COBALT	2007	1G1AK55F577...	12/4/2007	1	0	PA	FARS ID 421320 Coded Airbag Available: NO DEPLOYMENT
<b>Total</b>							<b>8</b>	<b>3</b>		

**MY 2003-2007 Saturn Ion Deaths in EWR Without Airbag Deployment,  
 Coded Airbag, Steering, Electrical, or Unknown, Calendar Years 2004-07**

QUARTER	SEQ_ID	DI ID #	MODEL	MY	VIN	INCIDENT	DEATHS	INJURIES	STATE	FARS
2004 Q4	655	DI05-063	ION	2004	1G8AJ52F14Z...	11/15/2004	1	1	TX	FARS ID 482738 Coded Airbag Available:NO DEPLOYMENT
2005 Q2	640	DI05-082	ION	2004	1G8AG52F24Z...	3/24/2005	2	2	TX	FARS ID 480534 Coded Airbag Available:NO DEPLOYMENT
2006 Q2	522	DI06-038	ION	2004	1G8AF52F94Z...	7/4/2004	1	2	CA	FARS ID 62306 Coded Airbag Available:NO DEPLOYMENT
2006 Q3	518	DI07-015	ION	2007	1G8AJ55F07Z...	9/9/2006	1	0	WV	FARS ID 540299 Coded Airbag Available:NO DEPLOYMENT
<b>Total</b>							<b>5</b>	<b>5</b>		

\* Airbag did not deploy as confirmed by NHTSA SCI Case CA05-049

Combining EWR and FARS data as CAS did above should have raised a red flag to NHTSA. There were 11 deaths in 2004-07 in Cobalts and Ions reported in EWR and in which FARS reported the airbag did not deploy. Three of the Saturn Ion EWR death reports without airbag deployment occurred before the July 29, 2005 crash in Maryland in which Amber Marie Rose was killed, on which NHTSA did an SCI investigation, finding the ignition in accessory mode disabling the airbag.

The Honorable David J. Friedman  
March 13, 2014  
Page Three

NHTSA claims it did not do an investigation because it did not see a defect trend. Based on the FARS, EWR and SCI information, the only way NHTSA could not see a defect trend is if it closed its eyes. In some instances, single complaints can trigger a recall. NHTSA obtained the recall of 250,000 Ford vans for defective dashes that shattered and caused severe facial injuries after receiving a single complaint from a Rockville, Maryland consumer (NHTSA Recall 77V-102). A single complaint from North Carolina consumer that the steering wheel on her VW Fox came off in her hands led to the recall of 104,000 1987-89 Volkswagens. (NHTSA recall 88V-187.)

The question today for NHTSA is how so many EWR death reports without an airbag deployment and so many FARS deaths without an airbag deployment failed to trigger an investigation when NHTSA's Special Crash Investigation team had pinpointed the defect for which the vehicles were recalled? For the people who died or were seriously injured in crashes, the answer comes too late.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence Ditlow". The signature is fluid and cursive, written in a professional style.

Clarence Ditlow  
Executive Director

# CENTER FOR AUTO SAFETY

1825 CONNECTICUT AVENUE NW SUITE 330 WASHINGTON DC 20009-5708  
202-328-7700  www.autosafety.org

March 7, 2014

The Honorable David J. Friedman  
Acting Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue SE, West Building  
Washington, D.C. 20590

Dear Administrator Friedman:

General Motors' 9 year delayed recall of 2005-07 Chevrolet Cobalts, 2003-07 Saturn Ions and 5 other models [hereinafter the Cobalt recall] reveals a complete failure of the recall system that cost at least 13 people their lives. While GM bears complete responsibility for failing to recall these vehicles by 2005, when it knew what the defect was and how to fix it, NHTSA has responsibility for failing to order a recall by early 2007, when it knew what the defect was and how to fix it.

NHTSA learned about the ignition key defect turning off the airbag [hereinafter ignition airbag defect] through its Special Crash Investigation (SCI) program looking into performance of advanced airbags in the Cobalt vehicles in 2007. NHTSA also learned about the defect through its secret Death Inquiries (DI) into Early Warning Reports (EWR) of death claims filed by GM. Although NHTSA knew of and had documents on lawsuits filed against GM on the ignition airbag defect, NHTSA kept them secret and effectively helped GM cover up this defect.

## **NHTSA Special Crash Investigations:**

On August 15, 2005, NHTSA began its first SCI investigation into airbag non-deployment in a July 29, 2005 crash of a 2005 Chevrolet Cobalt that killed 16-year-old Amber Marie Rose in Maryland. On February 7, 2006, NHTSA issued its [SCI report](#) on the July 2005 Maryland Crash, finding that the airbags did not deploy and vehicle was in "Accessory" power mode at the time of the crash. On March 29, 2007, NHTSA representatives met with GM employees and discussed the Maryland crash. NHTSA told GM but not the public that the car's sensing and diagnostic module (SDM) reported the ignition was in "Accessory" mode and the airbag did not deploy.

On November 26, 2006, NHTSA began its second Cobalt SCI investigation into the October 2006 crash of a 2005 Chevrolet Cobalt that killed 15-year-old Amy Beskau of Wisconsin. On April 25, 2007, NHTSA issued its [second Cobalt SCI](#) report on airbag non-deployment in the October 2006 Wisconsin crash. The report finds that the vehicle was in "Accessory" power mode at the time of the crash. The report notes that General Motors had issued a service bulletin in October of 2006 indicating the potential for drivers to inadvertently turn off the ignition during operation. A copy of the service bulletin is attached to the investigation report. SCI investigators located six complaints in the NHTSA complaint database matching the described defect. The report also notes that an analysis of airbag non-deployment as related to the key position in "On" or "Accessory" is beyond the scope of the SCI investigation.

-2-

On March 15, 2004, NHTSA began an SCI investigation of a 2004 Saturn Ion crash that occurred in Pennsylvania in January of 2004. While no significant injuries or death occurred in the crash, neither the driver nor passenger airbags deployed. [The SCI Report](#) said: "Given the severity of the impact damage, the computer WINSMASH delta V [21.7 mph] and the non-belted status of the occupants, the frontal air bag system probably should have deployed in this crash." The SCI Report noted the EDR readings were unreliable because most of the readings were zero. However, the SCI Report pointed out "the Saturn may have experienced an intermittent power failure resulting in a write failure." This is fully consistent with the ignition airbag defect.

### **NHTSA Early Warning Reporting & Death Inquiries:**

From 2004 through 2012, NHTSA received from GM [at least 51 EWR reports](#) of death claims in the US involving an airbag, steering, electrical or unknown component in the 2005-07 Chevrolet Cobalt or 2003-07 Saturn Ion, that could indicate the ignition airbag defect. See [Attachment A](#). NHTSA sent DI request letters to GM for 29 of these 51 EWR reports. For the crucial period of 2004-07 when GM was investigating the ignition airbag defect, NHTSA sent GM 17 Death Inquiries on 19 EWR death claims that could have been due to the ignition airbag defect. None of the underlying documents received by NHTSA on these 17 death claims in Cobalts and Saturns have been made public by the agency.

By comparing information on crashes in Special Crash Investigations to the information on death claim crashes in Early Warning Reporting, at least 2 of the 9 2005-07 Cobalt death claims for which NHTSA sent GM Death Inquiries were on the ignition airbag defect:

- On March 1, 2006, NHTSA's Early Warning Division sent a request to GM for the underlying information on the Maryland crash from July 2005, [DI04-142](#). No record of when or if a response was made is available.
- On May 4, 2007, NHTSA's Early Warning Division sent a request to GM for the underlying information on the Wisconsin crash from October 2006, [DI07-044](#). GM responded on June 11, 2007.

After the crucial period of 2004-07 when both GM and NHTSA identified the ignition airbag defect, NHTSA Death Inquiries into EWR death claim reports on the Cobalt and Saturn dropped sharply. From 2008 thru 2012, GM submitted 32 reports of death claims on defects that could be linked to the ignition airbag defect, but NHTSA sent GM only 12 Death Inquiries, a rate of 37.5%. By comparison, NHTSA sent out Death Inquiries on 89.5% of the EWR death claims reports submitted from 2004-07.

The intense interest by NHTSA from 2004-07 in obtaining the underlying records on Cobalt and Ion death claims that could be linked to the ignition airbag defect is sharply contrasted by NHTSA's failure to send out Death Inquiries for EWR death claims on other well known defects. For example, out of 301 EWR summary reports that could be linked to Toyota SUA through 2009, NHTSA sent out inquiries for underlying records on only 16 of the 301 EWR reports. In 1993-04 Jeep Grand Cherokee fuel tank fires, NHTSA did not send out inquiries for any of the 30 EWR death and injury claims reported by Chrysler, as of the first quarter of 2010 when CAS filed its defect petition to investigate Grand Cherokee crash fires.

**Conclusion:**

NHTSA has rightly asked GM probing questions about why it did not do the Cobalt recall at least as early as 2004-05 when the company identified the ignition airbag defect and a remedy therefore. The Center for Auto Safety has probing questions for NHTSA about why it failed to order a recall.

- 1) Why did NHTSA fail to order the Cobalt recall, or even open an investigation into the ignition airbag defect, when the agency identified the defect in 2006-07 through its Special Crash Investigations and obtained information on the two fatal SCI crashes through its secret Death Inquiries to GM on EWR death claim reports?
- 2) Why did NHTSA send Death Inquiries on 90% (17 of 19) of the Saturn and Ion death claims reported by GM on defects linked to the ignition airbag defect in 2004-07 and what did it do with the death claim information provided by GM?
- 3) Were the MD and WI SCI investigators ever provided the underlying Death Inquiry information obtained by the agency for these crashes from GM?
- 4) Did any of the SCI investigators for the two Cobalt and one Saturn SCI investigations meet with or provide their information to the Office of Defects Investigation?
- 5) What NHTSA officials met with GM representatives on the MD SCI crash on March 29, 2007 and where are the records from that meeting?
- 6) Why did NHTSA sharply cut its Death Inquiries to GM on Saturn and Ion death claims on defects linked to the ignition airbag defect from 90% in 2004-07 to 38% (after 2007)?
- 7) Why did NHTSA not open an investigation and obtain a recall for the ignition airbag defect at least 7 years ago? People died and the agency shares responsibility for their deaths with GM.
- 8) As a beginning, we request you to order the release of all the EWR records obtained through Death Inquiries for vehicles involved in the Cobalt recall. Will you do that?
- 9) Will NHTSA ask the Inspector General do an independent investigation of the agency failure to investigate and obtain a recall in 2006-07 when the agency had sufficient information to do so? Just as GM President Mary Barra has commissioned an independent investigation to explore why GM did not do the recall and remedy the ignition airbag defect at least 9 years earlier, there should be a similar independent investigation of NHTSA's failure to act. People died and the agency shares responsibility for their deaths with GM.

While CAS has already filed FOIA requests for these records, it is a monumental waste of the Agency's resources to force the public to file FOIA request for what are admittedly documents releasable under FOIA. (See [Attachment B](#), correspondence with Attorney General William Holder on EWR records.)

-4-

To prevent another defect from being covered up by the agency's secrecy on EWR records, we request that NHTSA publish a list of all Death Inquiries on the agency website as is done for defect investigations. We also ask that NHTSA publish the records obtained through Death Inquiries just as it does for records obtained through Defect Investigations. Will you do that?

Your response to each of the above questions is requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence Ditlow". The signature is fluid and cursive, written in a professional style.

Clarence Ditlow  
Executive Director

Enclosures: 2

cc: Senator Edward Markey  
Senator Jay Rockefeller  
Senator John Thune  
Rep. Darrell Issa  
Rep. Elijah Cummings  
Rep. Fred Upton  
Rep. Henry Waxman

# EXHIBIT

## “J”



RICHARD BLUMENTHAL  
UNITED STATES SENATOR

March 24, 2014

The Honorable Eric J. Holder, Jr.  
United States Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

Dear Attorney General Holder,

I write to request your immediate intervention and assistance on behalf of victims of severe damage – financial harm, physical injury, and death – resulting from serious ignition switch defects in General Motors ("GM") cars. Without your active involvement, they may have no meaningful remedy. Given the crucial role the United States government played in creation of the current General Motors Corporation, I believe the federal government has a moral, if not legal, obligation to take all necessary steps to protect innocent consumers.

Like many Americans I was appalled and astonished by GM's recent admission that it knew of these disabling defects and their disastrous effects well before the 2009 reorganization. Their deliberate concealment caused continuing death and damage, and it constituted a fraud on the bankruptcy court that approved its reorganization. It also criminally deceived the United States government and the public.

As a consequence of this fraudulent and reprehensible concealment, the United States Bankruptcy Court unknowingly authorized a purchase of GM's assets by the "new GM," which seemingly shielded this new GM from legal responsibility for these product defects or other illegality occurring prior to 2009. This shield from legal responsibility was granted – with the federal government's support – despite vehement opposition from consumer advocates, and despite objections I raised as Attorney General of Connecticut. Indeed, I led a group of eight state attorneys general who warned that this blanket shield from all liability would prove unfair and unwise.

Tragically, these warnings have proved true – and consumer victims may now be barred from any just remedy. They have filed various state court actions, which GM has removed to federal court and asked to be transferred to the United States Bankruptcy Court, knowing that the GM reorganization there cannot be reopened under technical procedural rules and recourse will likely be blocked.

In seeking your assistance, I am greatly encouraged by your decision to initiate a federal criminal investigation into the flagrant illegality of GM's concealment. The recent Toyota settlement further reflects your resolve in protecting consumers.

A number of steps by you and the United States Department of Justice clearly would advance the public interest, the rule of law, and rights of victims of GM's wrongdoing.

First, I urge that DOJ require that GM establish a fund to fully compensate consumers who suffered injury, death, or damage as a result of these lethally defective vehicles. This civil remedy could be done as an interim step, even before completing your criminal investigation and prosecution.

Second, I recommend that you intervene in pending civil actions to oppose any action by GM to deny responsibility for consumer damages on grounds that those damages may have resulted from deceptive and fraudulent concealment and other misconduct by GM.

Third, either through DOJ or an appropriate federal consumer protection agency, ensure that consumers are adequately aware of the potential dangers of operating these vehicles prior to repair of the defective ignitions.

I know you share my strong feeling that innocent victims of these defective cars – whose life-changing injuries and deaths resulted from GM's pernicious and purposeful misconduct – should be fairly compensated, and that justice should be done through appropriate criminal enforcement. As always, I appreciate your thoughtful consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Blumenthal". The signature is fluid and cursive, with a prominent "R" and "B".

Richard Blumenthal  
United States Senator

# EXHIBIT

## “K”



14V-047  
(10 pages) Supplemental

March 11, 2014

Ms. Nancy Lewis  
Associate Administrator for Enforcement  
National Highway Traffic Safety Administration  
Recall Management Division (NVS-215)  
1200 New Jersey Avenue, SE – Room W45-306  
Washington, DC 20590

Re: NHTSA Recall No. 14V-047

Dear Ms. Lewis:

This letter supersedes General Motors' letter of February 25, 2014, and is submitted pursuant to the requirements of 49 CFR 573.6 as it applies to a determination by General Motors to conduct a safety-related recall for 2006-2007 model year (MY) Chevrolet HHR and Pontiac Solstice, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles.

573.6(c)(1): General Motors Company; Chevrolet, Pontiac and Saturn Brands.

573.6(c)(2),(3),(4): This information is shown on Attachment A.

573.6(c)(5): General Motors has decided that a defect which relates to motor vehicle safety exists in 2006-2007 MY Chevrolet HHR and Pontiac Solstice, 2003-2007 MY Saturn Ion, and 2007 MY Saturn Sky vehicles. The ignition switch torque performance may not meet General Motors' specification. If the torque performance is not to specification, the ignition switch may unintentionally move from the "run" position to the "accessory" or "off" position with a corresponding reduction or loss of power. This risk may be increased if the key ring is carrying added weight or the vehicle goes off road or experiences some other jarring event. The timing of the key movement out of the "run" position, relative to the activation of the sensing algorithm of the crash event, may result in the airbags not deploying, increasing the potential for occupant injury in certain kinds of crashes.

Until the recall repairs have been performed, it is very important that customers remove all items from their key rings, leaving only the vehicle key. The key fob (if applicable), should also be removed from the key ring.

573.6(c)(6): As permitted by the provisions of 49 C.F.R. 573.6(b), and pursuant to the requirements of 49 C.F.R. 573.6(c)(6), General Motors now submits the attached chronology of principal events that were the basis for the determination that the defect related to motor vehicle safety. See Attachment B. This chronology refers to numerous engineering inquiries, known within General Motors as Problem Resolution Tracking System ("PRTS") inquiries. As stated in the enclosed document, General Motors is prepared to share with



Letter to Ms. Nancy Lewis  
N140063 573 Letter  
March 11, 2014  
Page 2

NHTSA upon request the PRTS reports referenced therein, as well as other documentation related to this recall.

573.6(c)(8): Dealers are to replace the ignition switch.

GM provided dealers notification of the recall on February 26, 2014 and March 4, 2014. GM will be providing a recall service bulletin to dealers on or about April 7, 2014. In addition, GM mailed the owner letters on March 10 and 11, 2014.

Pursuant to 577.11(e), GM will provide reimbursement to owners for repairs completed on or before ten days after the owner mailing is completed, according to the plan submitted on May 23, 2013.

573.6(c)(10): GM will provide copies of the dealer bulletin under separate cover. GM has previously provided a copy of the owner letter.

573.6(c)(11): GM's assigned recall number is 14063.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Carmen Benavides". The signature is fluid and cursive, with the first name "M." and last name "Benavides" clearly distinguishable.

M. Carmen Benavides, Director  
Product Investigations and Safety Regulations

14063  
Attachment

Attachment A - 573.6(c)(2),(3),(4)

**VEHICLES POTENTIALLY AFFECTED BY MAKE, MODEL, AND MODEL YEAR  
PLUS INCLUSIVE DATES OF MANUFACTURE**

<u>MAKE</u>	<u>MODEL SERIES</u>	<u>MODEL YEAR</u>	<u>NUMBER INVOLVED</u>	<u>INCLUSIVE MANUFACTURING DATES (FROM) (TO)</u>		<u>DESCRIPTIVE INFO. TO PROPERLY IDENT. VEH.</u>	<u>EST. NO. W/CONDITION</u>
Chevrolet	A	2006	113,911	04/11/2005	06/22/2006	HHR	*
Chevrolet	A	2007	99,672	05/15/2006	06/23/2007	HHR	"
Pontiac	M	2006	18,750	03/16/2005	06/23/2006	Solstice	"
Pontiac	M	2007	21,310	06/05/2006	06/15/2007	Solstice	"
Saturn	A	2003	96,358	06/01/2002	07/24/2003	Ion	"
Saturn	A	2004	121,107	04/29/2003	08/07/2004	Ion	"
Saturn	A	2005	71,024	04/27/2004	06/06/2005	Ion	"
Saturn	A	2006	96,227	04/13/2005	05/05/2006	Ion	"
Saturn	A	2007	94,118	04/05/2006	03/28/2007	Ion	"
Saturn	M	2007	15,547	12/06/2005	06/14/2007	Sky	"
GM Total:			748,024				

\* All involved vehicles will be corrected as necessary.

573.6(c)(2)(iv): Delphi Packard Electrical/Electronic Architecture  
5725 Delphi Drive  
M/C 483.400.301  
Troy, Michigan 48098

Tel: [1] 248.813.2334  
Fax: [1] 248.813.2333

The involved parts are manufactured in Mexico.

ATTACHMENT B - 573.6(c)(6)

**CHRONOLOGY**

**Re: Recall of 2006-2007 Chevrolet HHR and Pontiac Solstice,  
2003-2007 Saturn Ion, and 2007 Saturn Sky Vehicles**

On February 7, 2014, General Motors (“GM”) notified the National Highway Transportation Safety Administration (“NHTSA”) of its decision to recall 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles. By letter dated February 24, 2014, GM submitted to NHTSA a chronology of principal events that were the basis for the determination that the defect related to motor vehicle safety, with respect to the recall of the Cobalt and G5 vehicles (“the Cobalt and G5 recall”).

In making this recall determination, GM’s Executive Field Action Decision Committee (“EFADC”) was asked to consider a proposed recall only of the Cobalt and G5 vehicles. The submissions to the EFADC did not propose a recall of the Ion, HHR, Solstice and Sky vehicles. Following GM’s announcement of the Cobalt and G5 recall on February 7, 2014, as will be discussed in more detail below, the decision was made to conduct a more in-depth analysis of information related to the vehicles that were listed on Service Bulletins 05-02-35-007 and 05-02-35-007A, but were not included in the February 7, 2014 recall submission to NHTSA.

By letter dated February 25, 2014, GM notified NHTSA of its decision to recall all of the other vehicles listed in the aforementioned Service Bulletins—specifically, 2003-2007 model year Saturn Ion, 2006-2007 model year Chevrolet HHR and Pontiac Solstice, and 2007 model year Saturn Sky vehicles (“the Ion, HHR, Solstice and Sky recall”). Because these vehicles were equipped with the same ignition switch installed in the 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles, the chronology submitted on February 24, 2014, with respect to the Cobalt and G5 recall is relevant to GM’s decision to issue the Ion, HHR, Solstice and Sky recall. In addition to the events set forth in the chronology submitted to NHTSA regarding the Cobalt and G5 recall, the following describes the principal events that were the basis for the determination, relating to the Ion, HHR, Solstice and Sky recall, that the defect related to motor vehicle safety. GM’s review of data and information relating to the recalled vehicles continues.

\* \* \*

**2005.** GM employees received field reports of Chevrolet Cobalt vehicles losing engine power, including instances in which the key moved out of the “run” position when a driver inadvertently contacted the key or steering column. Engineering inquiries, known within GM as Problem Resolution Tracking System (“PRTS”) reports, were opened to assess this issue. During the course of a PRTS opened in May 2005, an engineer proposed that GM redesign the key head from a “slotted” to a “hole” configuration. That proposal was initially approved, but later cancelled. The PRTS process led to GM’s issuing Information Service Bulletin 05-02-35-007 in December 2005. This Service Bulletin provided “Information on Inadvertent Turning of Key Cylinder, Loss of Electrical System and No DTCs,” and applied to a number of vehicles, including vehicles subject to the Ion, HHR, Solstice and Sky recall—specifically, 2003-06 Saturn Ion, 2006 Chevrolet HHR,

and 2006 Pontiac Solstice vehicles—all of which were equipped with the same ignition switch as the Cobalt. The Service Bulletin informed dealers that: “there is potential for the driver to inadvertently turn off the ignition due to low ignition key cylinder torque/effort”; “[t]he concern is more likely to occur if the driver is short and has a large and/or heavy key chain”; and “the customer should be advised of this potential and should take steps to prevent it—such as removing unessential items from their key chain.” In addition, the Service Bulletin advised that “Engineering has come up with an insert for the key ring so that it goes from a ‘slot’ design to a hole design. As a result, the key ring cannot move up and down in the slot any longer—it can only rotate on the hole.” The Service Bulletin further stated that, “[i]n addition, the previous key ring has been replaced with a smaller, 13 mm design. This will result in the keys not hanging as low as in the past.”

Certain of the reported incidents that pre-dated GM’s issuance of Service Bulletin 05-02-35-007 and GM’s public response to inquiries about those incidents were chronicled in newspaper articles that appeared in THE NEW YORK TIMES, THE PLAIN DEALER (Cleveland, OH), and THE DAILY ITEM (Sunbury, PA). GM concluded in December 2005 that the Service Bulletin and field service campaign were the appropriate response to the reported incidents, given that the car’s steering and braking systems remained operational even after a loss of engine power, and the car’s engine could be restarted by shifting the car into either neutral or park.

**2006.** On April 26, 2006, the GM design engineer responsible for the ignition switch installed in all of the vehicles subject to the Cobalt and G5 recall and the Ion, HHR, Solstice and Sky recall signed a document approving changes to the ignition switch proposed by the supplier. This document referred to the “GMX 357” vehicle platform, which was GM’s internal designation for the Saturn Ion. The approved changes included, among other things, the use of a new detent plunger and spring that increased torque force in the ignition switch. This change to the ignition switch was not reflected in a corresponding change in the part number for the ignition switch. GM believes that the supplier began providing the re-designed ignition switch to GM for all of the recalled vehicles at some point during the 2007 model year.

In May 2006, a field evaluation inquiry, known within GM as a Field Performance Report (“FPR”), was opened to address customer complaints that their Saturn Ion vehicles would neither crank nor start. Attached to this FPR was a document bearing the logo of the ignition switch supplier, titled “PROPOSED PCB [printed circuit board] LAYOUT.” Under “[p]roblem description,” the document stated, “[s]witch presents Contact Bounces & contact permanent deformation,” “[c]ustomer rejects switches,” and “[f]unctional Problem when car starts.” The “[p]roposed actions from Product Engineering” included “[c]hange PCB design to remove via holes from contact traces,” “[e]nlarge PCB vias to avoid contactors being in via limits,” and “[d]etent plunger to increase torque force to be within spec.” Under “[c]urrent status for PCB,” the document stated, among other things, “1.-Validation for Torque & Angle for timing corrections ~ DONE,” “2.-GM RDE approve GM3660 ~ DONE,” and “6.-SOP @ Condura for new PCB & Spring/Plunger ~ 6/30/06.” The FPR was closed, citing Technical Service Bulletin 06-02-35-017.

GM updated Service Bulletin 05-02-35-007 in October 2006 to include additional vehicles and model years, including the vehicles subject to the Ion, HHR, Solstice and Sky recall—specifically, the 2007 Saturn Ion, the 2007 Chevrolet HHR, the 2007 Pontiac Solstice, and the 2007 Saturn Sky and the 2007 Pontiac G5. GM’s warranty records indicate that GM dealers have provided key inserts to 474 customers who brought their vehicles into dealers for service.

**2007.** A GM investigating engineer was tasked with tracking crashes in which Cobalts were involved in frontal impacts and the airbags did not deploy, in order to try to identify common characteristics of these crashes. Data from the vehicles’ sensing and diagnostic modules (“SDM’s”) were available for nine of the crashes, and that data showed that the ignition was in the “run” position in five of the crashes and in the “accessory” position in four of the crashes. Such information was not available for Saturn Ion vehicles because they were equipped with an SDM that was not designed to record when the engine was not running.

GM discontinued production of the Ion at the end of the 2007 model year, as previously planned.

**2011.** In late July 2011, a meeting was held at GM involving Legal Staff, Field Performance Assessment (“FPA”) and Product Investigations personnel who would be involved in the Field Performance Evaluation (“FPE”) process. Soon thereafter, in August 2011, a Field Performance Assessment Engineer (“FPAE”) was assigned to move forward with an FPE investigation of a group of crashes in which airbags in 2005-2007 model year Chevrolet Cobalts and a 2007 Pontiac G5 had not deployed during frontal impacts, which also included a review of information related to the Ion, HHR and Solstice vehicles. This FPE investigation did not identify frontal-impact crashes involving 2004 model year Saturn Ion vehicles that resulted in fatalities in which the recall condition may have caused or contributed to the airbags’ non-deployment. These crashes have since been identified and are included below in the number of crashes identified based on the data and information collected and reviewed to date.

During the course of the FPE investigation, the FPAE’s analyses included the following: reviewing data relating to complaints of stalling in the Ion for all model years; reviewing data relating to crashes involving Ions from certain model years in which airbags had not deployed; testing the torque performance of ignition switches from salvage yard vehicles, including Ions, HHRs, Cobalts and G5s (but not Solstice or Sky vehicles); measuring the difference among a wide variety of GM vehicles in the distance between a driver’s knee and the ignition; and studying vehicles’ different steering columns and shrouds, including those of the Ion and the Cobalt.

GM’s FPE process consisted of several steps, beginning with investigation of the issue, then presentation of potential solutions to decision makers, and culminating in a decision and implementation of that decision. At the outset of the process, investigating engineers worked to develop a technical understanding of the issue. They then presented their findings and proposed solutions to the Field Product Evaluation Recommendation Committee (“FPERC”). The FPERC’s recommendations were then presented to the Executive Field Action Decision Committee (“EFADC”), which decided on a course of action. The FPERC and EFADC could request further analysis before making recommendations or decisions as to what, if any, field action was warranted.

**2012.** Based on the information accessed and collected by the FPAE, the investigation sought, among other things, to determine whether there were known engineering reasons that would explain why certain reported non-deployment crashes involved 2007 and earlier model year Ion vehicles. In May 2012, the assigned FPAE studied a cross-section of steering columns and ignition switches from Chevrolet Cobalts, Chevrolet HHRs, Pontiac G5s, and Saturn Ions, in model years ranging from 2003 through 2010. The FPAE accessed, inspected, and tested these steering columns and ignition switches for torque performance at a salvage yard. Some of these ignition switches—including a number for model year 2004-2007 Ion and model year 2006-2008 HHR vehicles—exhibited torque performance below that specified by GM for the ignition switch. Because the Ion was discontinued after model year 2007, no Ion vehicles from later model years could be tested for torque performance.

The FPE investigation focused on determining the cause of these variations in torque performance by model year. A review of GM's records by those involved in the investigation did not identify design changes to the ignition switch that would explain the variations in torque performance for the 2007 and earlier model year vehicles and that of the 2008 and later model year vehicles, with the exception of the Ion which ceased production after the 2007 model year. GM also considered other components that might potentially influence the torque performance of the ignition switches, including changes made to the Cobalt's anti-theft system at the beginning of the 2008 model year. Again, no explanation was discovered. GM engineers conducted separate studies using the "Red X" and "Design for Six Sigma" problem-solving methodologies, in hopes of better understanding the differences in observed torque performance, but those, too, produced inconclusive results. These latter studies were concluded in November 2012 and January 2013, respectively.

The FPAE collected some data relating to certain Saturn Ion crashes in which airbags did not deploy and where injuries occurred, and discussed the data with at least one other investigator to evaluate whether the ignition switch in Ion vehicles may have caused or contributed to airbag non-deployment. This analysis identified two crashes involving Ion vehicles—from model years 2005 and 2007—in which the FPAE concluded that the ignition switch torque performance could potentially have resulted in airbag non-deployment upon frontal impact. These two crashes did not result in fatalities.

**2013.** In late April 2013, the FPAE learned that the torque performance of a GM service part ignition switch purchased after 2010 differed substantially from that of an ignition switch that was original equipment installed on a 2005 Cobalt. He also learned that others had observed and documented that the detent plunger and spring used on the service part switch differed from those used on the original equipment switch installed on the 2005 Cobalt. Shortly thereafter, GM retained outside engineering resources to conduct a comprehensive ignition switch survey and assessment. That investigation included torque performance testing, ignition switch teardowns, and x-ray analyses of ignition switches in used production vehicles both before and after the 2007 model year. The data gathered by GM's outside technical expert showed that: the ignition switches that he tested that had been installed in early-model Ion and Cobalt vehicles did not meet GM's torque specification; changes had been made to the ignition switch's detent plunger and spring several years after the start of production; and those changes most likely explained the variation from GM's specifications for torque performance observed in the original switches installed in 2007 and earlier model year vehicles.

On October 29, 2013, after dialogue with the supplier, GM was provided with supplier records showing that changes had in fact been made to the detent plunger and spring late in the 2006 calendar year. Those changes increased the switch's torque performance. Testing and analysis further determined that whether a key moves from the "run" to "accessory" position and how that key movement affects airbag deployment depends on a number of factors, including: vehicle steering inputs and path of travel immediately before key movement; the weight and load on the key ring immediately before key movement; whether the installed ignition switch meets the torque specifications that GM provided to its supplier; and the timing of the movement of the key out of the "run" position relative to the activation of the airbag's sensing algorithm of the crash event.

Upon completion of this analysis, the issue was presented to the Field Performance Evaluation Review Committee ("FPERC") and the Executive Field Action Decision Committee ("EFADC"). These two committees reviewed the findings in early December, culminating in an EFADC meeting on December 17, 2013. Factual questions were raised at that meeting that required further analysis, the findings of which were presented at a second EFADC meeting on January 31, 2014, on which date the EFADC directed a safety recall of the Chevrolet Cobalt and Pontiac G5 for model years 2005 through 2007.

As part of the FPE analysis, PowerPoint documents were prepared for purposes of presenting the investigative findings and recommendation to the EFADC on December 17, 2013, and January 31, 2014. The PowerPoint documents reflect the fact that the EFADC was asked to consider a proposed recall of only the Cobalt and G5 vehicles. The members of the EFADC received a primary slide deck in advance of the meeting. For these two meetings, a "backup" slide deck was prepared so that additional slides could be presented, as necessary, in order to respond to questions posed by EFADC members. The primary slide decks for these meetings include information relating to the FPAE's examination of the Ion and HHR vehicles and the results of field testing of vehicles' ignition switch torque performance, which reflected a number of model year 2004-2007 Ion and model year 2006-2008 HHR vehicles that were below GM specifications. The "backup" decks for these two meetings also include information relating to the FPAE's examination of key insert claims data for the Ion, HHR and Solstice vehicles, and proffered differences between the Cobalt, Ion and HHR vehicles that could explain a perceived absence of the recall condition in the Ion and HHR vehicles. These documents do not contain any information relating to the Sky vehicles. The "backup" slide decks also included factual material relating to other vehicles, including: (1) a chart, which in part reflects "Ignition Switch Position from SDM Download – Airbag Non-Deployment Incidents," and which identifies two crashes involving Ion vehicles— from model years 2005 and 2007—in which the ignition switch torque performance could potentially have resulted in airbag non-deployment upon frontal impact (also referred to as "unconfirmed reports")<sup>1</sup> and a statement that there were no such incidents for the HHR; (2) the review of Vehicle Owner Questionnaires ("VOQ's") for Ion and HHR vehicles; (3) photographs comparing the steering columns in Ion and Cobalt vehicles; and (4) a copy of the April 26, 2006 document approving changes to the ignition switch proposed by the supplier. It is not clear which of the backup slides were reviewed during these two meetings.

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<sup>1</sup> These two crashes did not result in fatalities.

The submissions to the EFADC did not propose a recall of the Ion, HHR, Solstice and Sky vehicles. The data collected by the FPAE did not include the crashes involving model year 2004 Ion vehicles that resulted in fatalities in which the recall condition may have caused or contributed to the airbags' non-deployment. As stated above, these crashes have since been identified. GM has provided copies of these PowerPoint documents to NHTSA.

**2014.** Additional analyses were conducted in February 2014 relating specifically to the Ion, HHR, Solstice and Sky vehicles. These analyses included a collection and review of data regarding crashes involving these vehicles and allegations of airbag non-deployment. The analyses also included a search for and review of FPR and PRTS reports relating to these vehicles, regardless of model year; a number of these, initiated in 2003 and 2006, addressed complaints of stalling in Ion vehicles.<sup>2</sup> One report initiated in 2001, during pre-production development of the Ion, addressed an issue relating to the ignition switch's "passlock" system. The report stated that the causes of the problem included "low detent plunger force" in the ignition switch, and stated that an ignition switch design change had resolved the problem. A 2003 report documented an instance in which the service technician observed a stall while driving, noted that "[t]he owner had several keys on the key ring," and stated that "[t]he additional weight of the keys had worn out the ignition switch." In that instance, the technician replaced the ignition switch and the FPR was closed. Other reports primarily addressed customer complaints of not being able to start their Ions' engines, but the warranty and technical assistance data collected in support of these reports included complaints of stalling.

An EFADC meeting was held on February 24, 2014, on which date the EFADC directed a safety recall of the Chevrolet HHR and Pontiac Solstice for model years 2006 and 2007, Saturn Ion for model years 2003 through 2007, and the Saturn Sky for model year 2007.

The dealers are to replace the ignition switch. GM provided dealers notification of the recall on February 26, 2014 and March 4, 2014. GM will be providing a recall service bulletin to dealers on or about April 7, 2014. GM mailed the owner letters on March 10 and 11, 2014. Pursuant to 577.11(e), GM will provide reimbursement to owners for repairs completed on or before ten days after the owner mailing is completed.

Based on the data and information collected, reviewed, and analyzed to date, GM has identified eight frontal-impact crashes in the United States involving 2003 to 2007 model year Saturn Ion vehicles in which the recall condition may have caused or contributed to the airbags' non-deployment. Of these eight crashes, GM is currently aware of four involving the Saturn Ion that resulted in four fatalities (all of which involved 2004 model year vehicles) and six injuries of frontal occupants (which involved 2004, 2005, 2006 & 2007 model year vehicles). GM is currently aware of three frontal-impact crashes in the United States involving 2006 to 2007 model year Chevrolet HHR vehicles in which the recall condition may have caused or contributed to the airbags' non-deployment. These three crashes resulted in three injuries to frontal occupants. GM

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<sup>2</sup> GM is prepared to share with NHTSA upon request the PRTS and FPR reports referenced in this document.

is not currently aware of any frontal-impact crashes in the United States involving 2006-2007 model year Pontiac Solstice or 2007 model year Saturn Sky vehicles in which the recall condition may have caused or contributed to the airbags' non-deployment. It is important to emphasize that GM continues to review data and information relating to the recalled vehicles in order to evaluate, among other things, whether there were any other crashes involving the recalled vehicles in which the recall condition may have caused or contributed to the airbags' non-deployment.

GM employees became aware of most of the aforementioned crashes within two weeks of the dates on which they occurred. As GM learned of these crashes, employees undertook to investigate the underlying facts and circumstances to determine, among other things, why the airbags had not deployed. Throughout this period, GM was involved in claims and lawsuits with respect to the Ion and HHR vehicles where the non-deployment of airbags may have been caused by the ignition switch condition. These eleven crashes in the United States are out of a total U.S. population of 748,024 vehicles subject to the Ion, HHR, Solstice and Sky recall. GM's review of data and information relating to the recalled vehicles continues.

# EXHIBIT

## “L”

# **IMPORTANT SAFETY RECALL**

## **Death or serious injury could result**

**DO NOT DRIVE ALERT**

**WARNING - IMMEDIATE ATTENTION REQUIRED**

**YOUR RECENTLY RECALLED VEHICLE MAY SUDDENLY AND UNEXPECTEDLY SHUT OFF. INCLUDING POWER STEERING, POWER BRAKING AND AIRBAG DEPLOYMENT CAPABILITIES.**

**YOU CAN NOT PREVENT THIS AND MUST IMMEDIATELY PARK YOUR VEHICLE NOW**

**Due to a defect in your vehicle's ignition, your ignition may immediately switch to the off position, causing loss of power and loss of control of your vehicle. This defect can result in injury and death. We recommend you immediately have your vehicle repaired. If you cannot get the vehicle repaired immediately, you should Park your vehicle until repairs are performed.**

April 2014

Dear GM Customer:

This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.

General Motors has decided that a defect which relates to motor vehicle safety exists in 2005-2010 model year (MY) Chevrolet Cobalt, 2006-2011 MY Chevrolet HHR, 2005-2010 MY Pontiac Pursuit, 2006-2010 MY Pontiac Solstice, 2007-2010 MY Pontiac G5, 2003-2007 MY Saturn Ion, and 2007-2010 MY Saturn Sky vehicles. As a result, GM is conducting a recall. We apologize for this inconvenience. However, we are concerned about your safety and continued satisfaction with our products.

**I M P O R T A N T**

- This notice applies to your 2005-2010 MY Chevrolet Cobalt, 2006-2011 MY Chevrolet HHR, 2005-2010 MY Pontiac Pursuit, 2006-2010 MY Pontiac Solstice, 2007-2010 MY Pontiac G5, 2003-2007 MY Saturn Ion, and 2007-2010 MY Saturn Sky. It is involved in safety recall 13454/14063.
- **Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**
- When parts become available, GM will notify you to schedule an appointment with your GM dealer.
- The recall repairs will be performed for you at **no charge**.

### **Why is your vehicle being recalled?**

There is a risk, under certain conditions, that your ignition switch may move out of the “run” position, resulting in a partial loss of electrical power and turning off the engine. This risk increases if your key ring is carrying added weight (such as more keys or the key fob) or your vehicle experiences rough road conditions or other jarring or impact related events. If the ignition switch is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality.

**Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**

### **What will we do?**

PARTS ARE NOT CURRENTLY AVAILABLE, but when parts are available, your GM dealer will replace the ignition switch on your vehicle. This service will be performed for you at no charge. Because of scheduling requirements, it is likely that your dealer will need your vehicle longer than the actual service correction time of approximately 30 minutes.

We are working as quickly as possible to obtain parts, and expect to have parts beginning in April of this year. We will contact you as soon as parts are available so that you can schedule an appointment with your dealer to have your vehicle repaired.

### **What should you do?**

When GM notifies you that parts are available, you should contact your GM dealer to arrange a service appointment. In the meantime, remove all items other than the vehicle key from your key ring.

**Did you already pay for this repair?**

When GM notifies you that parts are available, GM will also provide instructions for you to request reimbursement if you paid for repairs for the recall condition previously.

**Do you have questions?**

If you have questions or concerns that your dealer is unable to resolve, please contact the appropriate Customer Assistance Center at the number listed below.

**Division Number Text Telephones (TTY)**

Chevrolet 1-800-222-1020 1-800-833-2438

Pontiac 1-800-762-2737 1-800-833-7668

Saturn 1-800-553-6000 1-800-833-6000

Puerto Rico – English 1-800-496-9992

Puerto Rico – Español 1-800-496-9993

Virgin Islands 1-800-496-9994

If after contacting your dealer and the Customer Assistance Center, you are still not satisfied we have done our best to remedy this condition without charge and within a reasonable time, you may wish to write the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or call the toll-free Vehicle Safety Hotline at 1.888.327.4236 (TTY 1.800.424.9153), or go to <http://www.safercar.gov>. The National Highway Traffic Safety Administration Campaign ID Number for this recall is 14V-047.

Federal regulation requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

Jim Moloney

General Director,

Customer and Relationship Services

GM Recall Numbers: 13454 and 14063

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

CHARLES SILVAS and GRACE SILVAS,  
Plaintiffs

v.

GENERAL MOTORS, LLC,  
Defendant

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Case No.: 2:14-cv-00089

**ORDER GRANTING MANDATORY INJUNCTION**

On April 4, 2014, the Court considered *Plaintiffs' Emergency Motion for a Mandatory Injunction and Relief Under 28 U.S.C. § 1651(a) to Compel Defendants to Issue a "Park It Now" Alert in the Interest of Public Welfare and Safety*. Plaintiffs appeared in person and by and through their attorney of record, and Defendant, General Motors, LLC also appeared in person by and through its attorney of record. The Court, after reviewing the pleadings on file, the exhibits, the evidence submitted at the injunction hearing, and hearing the arguments of counsel, FINDS as follows:

1. Plaintiffs will likely suffer irreparable harm and injury in two forms:
  - (a) Plaintiffs are exposed to greater economic loss and further diminution in their vehicle's value every time another defective vehicle causes injury; and
  - (b) without the injunction, Plaintiffs face a credible threat of future harm because the ignition switch in any one of the other 2.2 million defective vehicles still on the road may fail, causing a collision that impacts the Plaintiffs.
2. The potentially life-taking injury is irreparable.
3. There is a substantial likelihood that Plaintiffs will prevail on the merits.
4. A bond is not necessary in this case, as Plaintiffs lack the financial resources to post a bond and there is no risk of monetary loss to the party enjoined or restrained.

It is therefore **ORDERED**, that on or before \_\_\_\_\_, 2014, Defendant be compelled to expand the current GM Recall Number 14-v047, and issue a “Park It Now” Alert, in accordance with the form and content of the Alert attached hereto as “Exhibit A.”

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U.S. DISTRICT JUDGE

# EXHIBIT

“A”

# **IMPORTANT SAFETY RECALL**

## **Death or serious injury could result**

**DO NOT DRIVE ALERT**

**WARNING - IMMEDIATE ATTENTION REQUIRED**

**YOUR RECENTLY RECALLED VEHICLE MAY SUDDENLY AND UNEXPECTEDLY SHUT OFF. INCLUDING POWER STEERING, POWER BRAKING AND AIRBAG DEPLOYMENT CAPABILITIES.**

**YOU CAN NOT PREVENT THIS AND MUST IMMEDIATELY PARK YOUR VEHICLE NOW**

**Due to a defect in your vehicle's ignition, your ignition may immediately switch to the off position, causing loss of power and loss of control of your vehicle. This defect can result in injury and death. We recommend you immediately have your vehicle repaired. If you cannot get the vehicle repaired immediately, you should Park your vehicle until repairs are performed.**

April 2014

Dear GM Customer:

This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.

General Motors has decided that a defect which relates to motor vehicle safety exists in 2005-2010 model year (MY) Chevrolet Cobalt, 2006-2011 MY Chevrolet HHR, 2005-2010 MY Pontiac Pursuit, 2006-2010 MY Pontiac Solstice, 2007-2010 MY Pontiac G5, 2003-2007 MY Saturn Ion, and 2007-2010 MY Saturn Sky vehicles. As a result, GM is conducting a recall. We apologize for this inconvenience. However, we are concerned about your safety and continued satisfaction with our products.

**I M P O R T A N T**

- This notice applies to your 2005-2010 MY Chevrolet Cobalt, 2006-2011 MY Chevrolet HHR, 2005-2010 MY Pontiac Pursuit, 2006-2010 MY Pontiac Solstice, 2007-2010 MY Pontiac G5, 2003-2007 MY Saturn Ion, and 2007-2010 MY Saturn Sky. It is involved in safety recall 13454/14063.
- **Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**
- When parts become available, GM will notify you to schedule an appointment with your GM dealer.
- The recall repairs will be performed for you at **no charge**.

### **Why is your vehicle being recalled?**

There is a risk, under certain conditions, that your ignition switch may move out of the “run” position, resulting in a partial loss of electrical power and turning off the engine. This risk increases if your key ring is carrying added weight (such as more keys or the key fob) or your vehicle experiences rough road conditions or other jarring or impact related events. If the ignition switch is not in the run position, the air bags may not deploy if the vehicle is involved in a crash, increasing the risk of injury or fatality.

**Until the recall repairs have been performed, it is very important that you remove all items from your key ring, leaving only the vehicle key. The key fob (if applicable), should also be removed from your key ring.**

### **What will we do?**

PARTS ARE NOT CURRENTLY AVAILABLE, but when parts are available, your GM dealer will replace the ignition switch on your vehicle. This service will be performed for you at no charge. Because of scheduling requirements, it is likely that your dealer will need your vehicle longer than the actual service correction time of approximately 30 minutes.

We are working as quickly as possible to obtain parts, and expect to have parts beginning in April of this year. We will contact you as soon as parts are available so that you can schedule an appointment with your dealer to have your vehicle repaired.

### **What should you do?**

When GM notifies you that parts are available, you should contact your GM dealer to arrange a service appointment. In the meantime, remove all items other than the vehicle key from your key ring.

**Did you already pay for this repair?**

When GM notifies you that parts are available, GM will also provide instructions for you to request reimbursement if you paid for repairs for the recall condition previously.

**Do you have questions?**

If you have questions or concerns that your dealer is unable to resolve, please contact the appropriate Customer Assistance Center at the number listed below.

**Division Number Text Telephones (TTY)**

Chevrolet 1-800-222-1020 1-800-833-2438

Pontiac 1-800-762-2737 1-800-833-7668

Saturn 1-800-553-6000 1-800-833-6000

Puerto Rico – English 1-800-496-9992

Puerto Rico – Español 1-800-496-9993

Virgin Islands 1-800-496-9994

If after contacting your dealer and the Customer Assistance Center, you are still not satisfied we have done our best to remedy this condition without charge and within a reasonable time, you may wish to write the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or call the toll-free Vehicle Safety Hotline at 1.888.327.4236 (TTY 1.800.424.9153), or go to <http://www.safercar.gov>. The National Highway Traffic Safety Administration Campaign ID Number for this recall is 14V-047.

Federal regulation requires that any vehicle lessor receiving this recall notice must forward a copy of this notice to the lessee within ten days.

Jim Moloney

General Director,

Customer and Relationship Services

GM Recall Numbers: 13454 and 14063