



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)
14-MC-2543 (JMF)

This Document Relates to All Actions
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AGREED PARTS PRESERVATION ORDER NO. 6

I. Introduction

General Motors LLC (“New GM”) and Plaintiffs, through Lead Counsel for the MDL Plaintiffs, (collectively, the “Parties”) jointly submit this Order (“Agreed Parts Preservation Order No. 6”) for approval and entry by the Court. This Order sets forth New GM’s obligations for maintaining and preserving recalled parts covered by (a) National Highway Traffic Safety Administration (“NHTSA”) Recall Campaigns 14V-092, 14V-246, 14V-251, 14V-259, 14V-265, 14V-298, 14V-299, 14V-339, 14V-342, 14V-345, 14V-346, 14V-375, 14V-377, 14V-394, 14V-404, 14V-417, 14V-451, 14V-300, 13V-615 and (b) field actions outlined in New GM Bulletin No. 14036 (Incorrect Safety Lock Switch), New GM Bulletin No. 14043 (Incorrect Transmission Thrust Bearing), New GM Bulletin No. 14047 (Tail Lamp Gasket Seal), New GM Bulletin No. 14076 (Engine Noise), New GM Bulletin No. 14166 (Seat Mounted Side Impact Airbag Connector). The NHTSA Recall Campaigns and New GM Field Actions covered by this Order will be referred to as the “Relevant Recall Campaigns” for purposes of this Order.

II. Background

1. On June 12, 2014, the United States Judicial Panel on Multidistrict Litigation assigned *In re: General Motors LLC Ignition Switch Litigation*, 14-MD-2543 (“MDL 2543”), to this Court for coordinated or consolidated pretrial proceedings. (14-MD-2543 Docket No. 1.)

2. On June 25, 2014, this Court entered Order No. 1, which states, among other things, that “[a]ll parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action.” (14-MD-2543 Docket No. 19 at 12.) The Order further states that “[u]ntil the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation.” (*Id.*) Further, the Parties had at all times been subject to preservation obligations as soon as the duty to preserve arose.

3. Since entry of Order No. 1, the Court has entered five Agreed Orders regarding the preservation of parts covered by various NHTSA Recall Campaigns:

(A) Agreed Preservation Order No. 1 (14-MD-2543 Docket No. 238) regarding parts covered by NHTSA Recall Campaign 14v-047000;

(B) Agreed Preservation Order No. 2 (14-MD-2543 Docket No. 279) regarding parts covered by NHTSA Recall Campaigns 14V-118, 14V-153, 14V-224, and 14V-266;

(C) Agreed Preservation Order No. 3 (14-MD-2543, Docket No. 344) regarding parts covered by NHTSA Recall Campaign 14V-151;

(D) Agreed Preservation Order No. 4 (14-MD-2543 Docket No. 403) regarding parts covered by NHTSA Recall Campaigns 14V-116, 14V-446, as well as field actions under New GM Bulletin No. 13434, and New GM Bulletin No. 14096; and

(E) Agreed Preservation Order No. 5 (14-MD-2543 Docket No. 605) regarding parts covered by NHTSA Recall Campaigns 14V-240, 14V-253, 14V-315, and 14V-341.

In these Preservation Orders, the Court recognized that, with regard to preservation obligations, “it is appropriate for the Court to enter preservation orders which properly balance the

right of Plaintiffs to obtain relevant evidence against the potential undue burden and expense of preserving large numbers of parts that have been the subject of the Relevant Recall Campaigns.”

(*See, e.g.*, Preservation Order No. 2 at ¶ 15; Preservation Order No. 4 at ¶ 16.)

4. This Order concerns the Relevant Recall Campaigns, which present similar burden and cost issues.

III. Relevant Recall Campaigns

5. **NHTSA Recall Campaign 14V-092 (New GM Recall No. 14048):** NHTSA Recall Campaign 14V-092 concerns transmission shift cable adjusters. Specifically, on February 20, 2014, New GM notified NHTSA that it was conducting a safety-related recall for transmission shift cable adjusters for model year 2014 Buick Regal, model year 2014 Buick LaCrosse, model year 2014 Buick Verano, model year 2014 Buick Enclave, model year 2014 Chevrolet Impala, model year 2014 Chevrolet Malibu, model year 2014 Chevrolet Cruze, model year 2014 Chevrolet Traverse, and model year 2014 GMC Acadia vehicles. This recall affects 355 vehicles.

6. **NHTSA Recall Campaign 14V-246 (New GM Recall No. 14204):** NHTSA Recall Campaign 14V-246 concerns tie rods. Specifically, on May 13, 2014, New GM notified NHTSA that it was conducting a safety-related recall for tie rods for model year 2014 Chevrolet Silverado, model year 2014 GMC Sierra, and model year 2015 Chevrolet Tahoe LTZ vehicles. This recall affects 477 vehicles.

7. **NHTSA Recall Campaign 14V-251 (New GM Recall No. 13146):** NHTSA Recall Campaign 14V-251 concerns low-beam headlamps. Specifically, on May 14, 2014, New GM notified NHTSA that it was conducting a safety-related recall for low-beam headlamps for model year 2005-2007 Chevrolet Corvette vehicles. This recall affects 103,158 vehicles.

8. **NHTSA Recall Campaign 14V-259 (New GM Recall Nos. 14220, 14249, 14352):** NHTSA Recall Campaign 14V-259 concerns air bags. Specifically, on May 16, 2014 and in a superseding letter on May 27, 2014, New GM notified NHTSA that it was conducting a safety-related recall for air bags for model year 2015 Cadillac Escalade and model year 2015 Cadillac Escalade ESV vehicles. This recall affects 2,838 vehicles.

9. **NHTSA Recall Campaign 14V-265 (New GM Recall No. 14208):** NHTSA Recall Campaign 14V-265 concerns loose fuse blocks. Specifically, on May 19, 2014, New GM notified NHTSA that it was conducting a safety-related recall for loose fuse blocks for model year 2015 Chevrolet Silverado 1500 HD and model year 2015 GMC Sierra HD vehicles. This recall affects 58 vehicles.

10. **NHTSA Recall Campaign 14V-298 (New GM Recall No. 14211):** NHTSA Recall Campaign 14V-298 concerns front passenger airbag inflators. Specifically, on June 5, 2014, New GM notified NHTSA that it was conducting a safety-related recall for front passenger airbag inflators for model year 2013 Chevrolet Spark and model year 2013 Buick Encore vehicles. This recall affects 61 vehicles.

11. **NHTSA Recall Campaign 14V-299 (New GM Recall No. 14219):** NHTSA Recall Campaign 14V-299 concerns sensing and diagnostic modules. Specifically, on June 5, 2014, New GM notified NHTSA that it was conducting a safety-related recall for sensing and diagnostic modules for model year 2014 Chevrolet Corvette vehicles. This recall affects 33 vehicles.

12. **NHTSA Recall Campaign 14V-339 (New GM Recall No. 14356):** NHTSA Recall Campaign 14V-339 concerns power steering hose clamps. Specifically, on June 18, 2014, New GM notified NHTSA that it was conducting a safety-related recall for power steering hose

clamps for model year 2015 Chevrolet Silverado HD vehicles and model year 2015 GMC Sierra HD vehicles. This recall affects 124,527 vehicles.

13. **NHTSA Recall Campaign 14V-342 (New GM Recall No. 14240):** NHTSA Recall Campaign 14V-342 concerns side impact airbags. Specifically, on June 18, 2014, New GM notified NHTSA that it was conducting a safety-related recall for side impact airbags for model year 2014 Chevrolet Corvette vehicles. This recall affects 712 vehicles.

14. **NHTSA Recall Campaign 14V-345 (New GM Recall No. 14310):** NHTSA Recall Campaign 14V-345 concerns floor mats. Specifically, on June 18, 2014, New GM notified NHTSA that it was conducting a safety-related recall for floor mats for model year 2014 Chevrolet Silverado LD and model year 2014 GMC Sierra LD vehicles. This recall affects 184 vehicles.

15. **NHTSA Recall Campaign 14V-346 (New GM Recall No. 14294):** NHTSA Recall Campaign 14V-346 concerns ignition keys. Specifically, on June 19, 2014, New GM notified NHTSA that it was conducting a safety-related recall for ignition keys for model year 2010-2014 Chevrolet Camaro vehicles. This recall affects 464,712 vehicles.

16. **NHTSA Recall Campaign 14V-375 (New GM Recall No. 14295):** NHTSA Recall Campaign 14V-375 concerns windshield wipers. Specifically, on June 26, 2014, New GM notified NHTSA that it was conducting a safety-related recall for windshield wipers for model year 2013-2014 Chevrolet Caprice vehicles and model year 2014 Chevrolet SS vehicles. This recall affects 4,794 vehicles.

17. **NHTSA Recall Campaign 14V-377 (New GM Recall No. 14302):** NHTSA Recall Campaign 14V-377 concerns rear shock absorbers. Specifically, on June 26, 2014, New GM notified NHTSA that it was conducting a safety-related recall for rear shock absorbers for model year 2014 Chevrolet Corvette vehicles. This recall affects 1,939 vehicles.

18. **NHTSA Recall Campaign 14V-394 (New GM Recall Nos. 14497, 14172):** NHTSA Recall Campaign 14V-394 concerns ignition keys. Specifically, on July 2, 2014 and in a superseding letter on July 16, 2014, New GM notified NHTSA that it was conducting a safety-related recall for ignition keys for model year 2003-2014 Cadillac CTS and model year 2004-2006 Cadillac SRX vehicles. This recall affects 554,328 vehicles.

19. **NHTSA Recall Campaign 14V-404 (New GM Recall No. 14309):** NHTSA Recall Campaign 14V-404 concerns driver's door modules. Specifically, on July 2, 2014, New GM notified NHTSA that it was conducting a safety-related recall for driver's door modules for model year 2005-2007 Saab 9-7x, model year 2006 GMC Envoy XL, model year 2006 Chevrolet Trailblazer EXT, model year 2006-2007 Buick Rainier, model year 2006-2007 GMC Envoy, model year 2005-2007 Isuzu Ascender, and model year 2006-2007 Chevrolet Trailblazer vehicles. This recall affects 184,611 vehicles.

20. **NHTSA Recall Campaign 14V-417 (New GM Recall No. 14257):** NHTSA Recall Campaign 14V-417 concerns engine block heaters. Specifically, on July 2, 2014, New GM notified NHTSA that it was conducting a safety-related recall for engine block heaters for model year 2013-2014 Chevrolet Cruze, model year 2012-2014 Chevrolet Sonic, model year 2013-2014 Buick Encore, and model year 2013-2014 Buick Verano vehicles. This recall affects 2,990 vehicles.

21. **NHTSA Recall Campaign 14V-451 (New GM Recall No. 14359):** NHTSA Recall Campaign 14V-451 concerns roof rail air bags. Specifically, on July 22, 2014, New GM notified NHTSA that it was conducting a safety-related recall for roof rail air bags for model year 2015 Chevrolet Suburban, model year 2015 Chevrolet Tahoe, model year 2015 GMC Yukon, and model year GMC Yukon XL Denali vehicles. This recall affects 22 vehicles.

22. **NHTSA Recall Campaign 14V-300 (New GM Recall No. 12261):** NHTSA Recall Campaign 14V-300 concerns intermittent airbag warning light. Specifically, on June 5, 2014, New GM notified NHTSA that it was conducting a safety-related recall for intermittent airbag warning light for model year 2012 Chevrolet Cruze, model year 2012 Buick Verano, model year 2012 Chevrolet Camaro, and model year 2012 Chevrolet Sonic vehicles. This recall affects 38,636 vehicles.

23. **NHTSA Recall Campaign 13V-615 (New GM Recall Nos. 13420, 13421):** NHTSA Recall Campaign 13V-615 concerns fuel pump malfunction. Specifically, on December 10, 2013, New GM notified NHTSA that it was conducting a safety-related recall for fuel pump malfunction for model year 2012-2013 Chevrolet Silverado and 2012-2013 GMC Sierra vehicles. This recall affects 7,840 vehicles.

24. **New GM Bulletin No. 14036:** New GM Bulletin No. 14036 concerns incorrect safety lock switches. On or about February 13, 2014, New GM notified New GM Dealerships across the country that it was conducting a customer satisfaction field action for incorrect safety switches for model year 2014 Chevrolet Cruze vehicles. This field action affects 1,778 vehicles.

25. **New GM Bulletin No. 14043:** New GM Bulletin No. 14043 concerns transmission thrust bearings. On or about March 3, 2014, New GM notified New GM Dealerships across the country that it was conducting a customer satisfaction field action for incorrect transmission thrust bearings for model year 2012 Chevrolet Silverado HD and 2012 GMC Sierra vehicles. This field action affects 247 vehicles.

26. **New GM Bulletin No. 14047:** New GM Bulletin No. 14047 concerns tail lamp gasket seals. On or About May 8, 2014, New GM notified New GM Dealerships across the country

that it was conducting a customer satisfaction field action for tail lamp gasket seals for model year 2014 Chevrolet Impala vehicles. This field action affects 2,354 vehicles.

27. **New GM Bulletin No. 14076:** New GM Bulletin No. 14076 concerns engine noise. On May 9, 2014, New GM notified New GM Dealerships across the country that it was conducting a field action for engine noise for model year 2014 Chevrolet Spark vehicles. This field action affects 9,105 vehicles.

28. **New GM Bulletin 14166:** New GM Bulletin No. 14166 concerns mounted side impact airbag connectors. On or about July 28, 2014, New GM notified New Dealerships across the country that it was conducting a customer satisfaction field action for seat mounted side impact airbag connectors for model year 2014 Chevrolet Silverado 1500 and model year 2014 GMC Sierra 1500 vehicles. This field action affects 104,504 vehicles.

IV. New GM's Preservation Efforts

29. New GM represents that it previously requested that New GM dealerships across the country preserve parts removed from vehicles upon completion of work associated with recall campaigns. New GM believes that, pursuant to this request, New GM dealerships across the nation are storing parts replaced in connection with the Relevant Recall Campaigns. However, this effort is not sustainable in that numerous New GM dealerships are running out of storage space for such parts.

30. The Parties agree that based on the above representations, New GM has preserved or taken reasonable steps to preserve parts recalled under the Relevant Recall Campaigns.

V. Protocol for Preservation of Parts Subject to the Relevant Recall Campaigns

31. New GM represents that: (1) New GM dealerships are presently and will continue to be subject to undue burden and unnecessary costs if they continue to collect and store all of the

recalled parts subject to the Relevant Recall Campaigns; (2) New GM dealerships cannot continue the practice described in paragraph 29 because numerous New GM dealerships are already running out of space in which to store recalled parts; and (3) New GM would be subject to undue burden as well as unnecessary and substantial costs were New GM to attempt to gather all of the parts subject to the Relevant Recall Campaigns from dealers and attempt to centralize the storage of parts. Plaintiffs are amenable to modifying New GM's preservation obligations so long as Plaintiffs are in no way prejudiced. The Parties continue to agree that it is appropriate for the Court to enter preservation orders that properly balance the right of Plaintiffs to obtain relevant evidence against the potential undue burden and expense of preserving large numbers of parts that have been the subject of the Relevant Recall Campaigns.

32. For good cause shown, the Court enters this Order with respect to New GM's obligations to preserve parts covered by the Relevant Recall Campaigns. This Order supersedes Order No. 1, entered on June 25, 2014, with respect to any potential obligation that New GM might have regarding preserving parts covered by the Relevant Recall Campaigns.

A. Parts Associated with Named Plaintiffs

33. New GM shall undertake reasonable efforts to assist any named plaintiff in a case pending in MDL 2543 (or another venue) with preserving parts covered by the Relevant Recall Campaigns that may be relevant to plaintiffs' claims. To allow New GM to do so, before a recall repair is performed, a named plaintiff (or his or her counsel) must provide both the dealership replacing any such part(s) and New GM with reasonable, advance notice that the plaintiff wishes to have any such part(s) preserved for purposes of litigation.¹ New GM will then use reasonable

¹ "[R]easonable, advance notice" means written notification to both New GM and the dealership at which the recall-related work is scheduled; the written notification must be received by New GM no less than five business days before the scheduled recall-related work. The notice to New GM should be sent to Andrew Bloomer, Kirkland

efforts to arrange for the dealership making the repair to return any such part(s) to New GM for storage and preservation.²

B. Preservation of Representative Sample of Other Parts

34. As noted in paragraph 29, New GM believes that dealerships across the nation are currently storing or are in the process of storing parts from millions of vehicles subject to recall campaigns. The Parties recognize and agree that it would be unreasonable and unduly burdensome for New GM to request and attempt to receive and store all parts subject to recall campaigns.

Accordingly, unless otherwise instructed by the Court, New GM is only obligated to take reasonable steps to preserve recalled parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns. Subject to footnote 3, this will result in the preservation of recalled parts from:

- 4 vehicles recalled pursuant to NHTSA Recall Campaign 14V-092;
- 5 vehicles recalled pursuant to NHTSA Recall Campaign 14V-246;
- 1032 vehicles recalled pursuant to NHTSA Recall Campaign 14V-251;
- 28 vehicles recalled pursuant to NHTSA Recall Campaign 14V-259;
- 1 vehicle recalled pursuant to NHTSA Recall Campaign 14V-265;
- 1 vehicle recalled pursuant to NHTSA Recall Campaign 14V-298;
- 1 vehicle recalled pursuant to NHTSA Recall Campaign 14V-299;

& Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, and must include: (1) the identification number (“VIN”) of the vehicle that will be the subject of the recall-related work; (2) the contact information for the dealership at which the recall-related work is scheduled; and (3) the NHTSA Recall Campaign under which the recall-related work will occur.

² “[R]easonable efforts” are specifically defined as follows: New GM shall contact the dealership at which the recall-related work is to take place and request that the part(s) at issue be shipped to a centralized storage facility where they will be logged by VIN through which vehicle repair information can be identified.

- 1,245 vehicles recalled pursuant to NHTSA Recall Campaign 14V-339;
- 7 vehicles recalled pursuant to NHTSA Recall Campaign 14V-342;
- 2 vehicles recalled pursuant to NHTSA Recall Campaign 14V-345;
- 4,647 vehicles recalled pursuant to NHTSA Recall Campaign 14V-346;
- 48 vehicles recalled pursuant to NHTSA Recall Campaign 14V-375;
- 19 vehicles recalled pursuant to NHTSA Recall Campaign 14V-377;
- 5,543 vehicles recalled pursuant to NHTSA Recall Campaign 14V-394;
- 1,846 vehicles recalled pursuant to NHTSA Recall Campaign 14V-404;
- 30 vehicles recalled pursuant to NHTSA Recall Campaign 14V-417;
- 1 vehicle recalled pursuant to NHTSA Recall Campaign 14V-451;
- 386 vehicles recalled pursuant to NHTSA Recall Campaign 14V-300;
- 78 vehicles recalled pursuant to NHTSA Recall Campaign 13V-615;
- 18 vehicles recalled pursuant to New GM Bulletin No. 14036;
- 3 vehicles recalled pursuant to New GM Bulletin No. 14043;
- 24 vehicles recalled pursuant to New GM Bulletin No. 14047;
- 91 vehicles recalled pursuant to New GM Bulletin No. 14076; and
- 1,045 vehicles recalled pursuant to New GM Bulletin No. 14166.

35. The Parties agree that preservation of these parts will result in New GM preserving a statistically significant and representative sample of parts covered by the Relevant Recall Campaigns and New GM may not argue otherwise for any purpose in litigation.³ The Parties

³ The Parties recognize that New GM dealerships may not actually replace parts in connection with all the NHTSA Recall Campaigns and all of the field actions listed in this Order in that the recall-related work performed by a dealer for some of these campaigns involves an inspection of the vehicles affected by the recall and a replacement of parts only if deemed necessary following inspection. Accordingly, New GM's preservation obligation with respect to contingent part replacements will be to preserve 1% of the recalled parts received from the vehicles

expect to reach substantially similar agreements concerning parts subject to recalls that are not yet addressed by an agreed preservation order.

36. To implement the preservation protocol detailed above in paragraph 34 and footnote 3, upon entry of Agreed Parts Preservation Order No. 6, New GM will request on a forward-going basis that New GM dealerships that replace parts pursuant to the Relevant Recall Campaigns send those parts to a centralized New GM storage facility for preservation (the "Preservation Request"). After the entry of Agreed Parts Preservation Order No. 6, New GM will receive all such recalled parts until it has received recalled parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns, subject to footnote 3. The Preservation Request shall also inform dealers that they may dispose of all parts previously replaced and now stored by the dealers in connection with the Relevant Recall Campaigns in the normal course of business.

37. Subject to paragraphs 34, 36 and footnote 3, New GM is not required to attempt to preserve parts covered by the Relevant Recall Campaigns over and above the number of parts identified in paragraph 34 and footnote 3. Thus, once New GM has received parts from 1% of the total number of vehicles recalled pursuant to the Relevant Recall Campaigns, as detailed in paragraphs 34, 36 and footnote 3, New GM shall communicate to dealerships that the dealerships are not being requested to return additional parts to New GM and do not need to preserve any parts removed from vehicles pursuant to the Relevant Recall Campaigns on a forward-going basis. In addition, in the event that New GM receives parts from more than 1% of the total number of

where a replacement is necessary *or*, in the event recalled parts are received from less than 1% of this vehicle population, however many parts are received from these campaigns by December 31, 2015.

vehicles recalled pursuant to the Relevant Recall Campaigns as detailed in paragraph 34 and footnote 3 (“Excess Parts”), New GM may dispose of and not preserve the Excess Parts.

38. This Order shall also apply to related cases later filed in, removed to, or transferred to this Court.

39. All parties reserve the right to request a modification of this Order, including seeking an order further limiting preservation obligations with respect to parts preserved pursuant to the Relevant Recall Campaigns.

SO ORDERED.

Dated: April 27, 2015
New York, New York



JESSE M. FURMAN
United States District Judge