



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE:

GENERAL MOTORS LLC IGNITION SWITCH
LITIGATION

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

This Document Relates to All Actions

ORDER NO. 119

-----X
JESSE M. FURMAN, United States District Judge:

**[Regarding Absent Class Member Discovery
Related to Fourth Amended Consolidated Complaint]**

The Court, having received and reviewed the parties' competing positions set forth in their November 16, 2016 and December 1, 2016 joint letters (Docket No. 3533, 3563), HEREBY ORDERS, ADJUDGES, and DECREES that Phase Three discovery of absent putative class members (members of the alleged classes that have not been named in the Fourth Amended Consolidated Complaint ("FACC")) shall proceed as follows.

1. Interrogatories.

(a) New GM may send interrogatories to absent class members in the State of California in order to identify ten (10) absent class members in that state for possible deposition. For the remaining jurisdictions that were or are contemplated to be the subject of motion practice on the Third Amended Consolidated Complaint and the FACC (Alabama, District of Columbia, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Texas, Virginia and Wisconsin), New GM may send interrogatories to absent class members in those jurisdictions in order to identify six (6) absent class members in each such jurisdiction for possible deposition. New GM shall have the right to conduct written discovery and depositions of absent class members in additional states if plaintiffs intend to seek certification of classes covered by those states.

(b) New GM will select the absent class members to whom interrogatories will be sent. The interrogatories will be limited in number and seek basic information written in plain English such as that authorized by the Court-approved Consumer Plaintiff Fact Sheet. (See Order No. 25, Docket No. 422; see also Docket. No. 1734 (describing basic discovery topics).) The interrogatories will include the safeguard disclosures addressed at

the November 10, 2016 status conference. (*See* 11/10/16 Tr. at 19-23; Order No. 117 § IV, Docket No. 3543.)

(c) Responding to the interrogatories will be voluntary; there is no sanction if the absent class member does not respond. However, in order to ensure an adequate opportunity for discovery, New GM will be entitled to send interrogatories to a sufficient number of absent class members in the jurisdictions described in Paragraph 1(a) above so that at least ten (10) absent class members in California and six (6) absent class members in the other jurisdictions answer the interrogatories in a timely manner. To that end, New GM may begin by sending interrogatories to fifty (50) absent class members in California and thirty (30) absent class members in each of the other jurisdictions, review how many sets of interrogatories are answered, and then determine whether interrogatories should be sent to additional class members to reach the minimum of ten (10) responses for California and six (6) responses for each of the other jurisdictions. If more than ten (10) absent class members in California and/or more than six (6) absent class members in each of the other states answer New GM's interrogatories, both New GM and the FACC plaintiffs may use those additional interrogatory answers in this litigation, subject to the opposing party's right to object on a basis other than that the answers exceeded the number provided in Paragraph 1(a) above; provided, however, that the number of depositions of absent class members in California and the other jurisdictions shall not exceed the number provided in Paragraph 2(a) below.

(d) New GM will provide Lead Counsel with a copy of the interrogatories New GM intends to send to absent class members. If Lead Counsel objects to any interrogatory, they must immediately notify New GM and, if the parties cannot resolve the issue, raise any such objection with the Court within two (2) days of the conclusion of the parties' meet and confer on the objection so that it can be resolved promptly and discovery will not be delayed. New GM is not obligated to provide Lead Counsel with the names of the absent class members to whom interrogatories are sent.

(e) If an absent class member's interrogatory answers indicate that the individual has in their possession, custody or control, basic relevant documents (such as service records or documents related to a sale or attempted sale of their vehicle), New GM may request such documents through a subpoena *duces tecum* in connection with the absent class member's deposition. Absent class members shall have 30 days to produce the requested documents. Under Federal Rule of Civil Procedure 45, New GM has the right to seek enforcement of the subpoenas it serves.

(f) New GM will provide Lead Counsel with copies of interrogatory answers and documents New GM receives from absent class members immediately upon receipt.

2. Depositions.

(a) New GM may conduct depositions of up to ten (10) absent class members in California and six (6) absent class members in each of the other jurisdictions listed in Paragraph 1(a) above.

(b) Depositions should be limited to four (4) hours (up to three (3) hours for New GM as the requesting party and up to one (1) hour for Lead Counsel for a limited cross-examination). Depositions may be taken in person (to, for example, facilitate the use of any exhibits) or, if counsel for New GM, Lead Counsel and the absent class member all agree, may be conducted telephonically. New GM will take any in-person depositions at a location near the absent class member's home or place of business, and otherwise coordinate with absent class members and Lead Counsel to minimize any intrusion on absent class member's time.

(c) After conferring with Plaintiffs about a proposed calendar, New GM shall subpoena the absent class members whom it intends to depose, and shall provide Lead Counsel with notice of all such subpoenas. Under Federal Rule of Civil Procedure 45, New GM has the right to seek enforcement of the subpoenas it serves.

(d) Except as set forth in Paragraph 2(a)-(c) above, depositions of absent class members will be governed by the Orders entered in this MDL, including but not limited to Order No. 36; provided, however, that for purposes of Paragraph 16 of Order No. 36, New GM shall have the right to depose a maximum of twenty-five (25) absent putative class members each calendar month. (*See* 10/13/16 Status Conf. Tr. 24:21-25; 25:24.)

SO ORDERED.

Date: December 2, 2016
New York, New York



JESSE M. FURMAN
United States District Judge