



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)

This Document Relates To:
Fleck, et al. v. General Motors LLC, 14-CV-8176

ORDER

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JESSE M. FURMAN, United States District Judge:

[Regarding New GM’s Objections to Excerpts from the DPA Statement of Facts]

Having considered the parties’ submissions regarding proposed redactions to the Deferred Prosecution Agreement (“DPA”) Statement of Facts (*see* Docket Nos. 1961, 1962; *see also* Docket No. 2009, at 5), the Court makes the following rulings with respect to New GM’s objections:

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Page 1—“Overview” title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 1	Unfair prejudice, confusing the issues, wasting time, unnecessary. <i>See, e.g., Nibbs v. Goulart</i> , 822 F.Supp.2d 339, 351 (S.D.N.Y. Sept. 16, 2011) (excluding testimony as “unnecessary, irrelevant and inadmissible under FRE 403.”).	OVERRULED.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Para. 4	Unfair prejudice (including as OSI), misleading the jury, confusing the issues, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. Many of Plaintiff's proposed OSIs have been deemed substantially similar, particular as relevant to the issue of notice. (<i>See</i> Docket No. 1968). Additionally, relevant to punitive damages.
Para. 10	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time.	OVERRULED. New GM's continued sale of defective vehicles is relevant to motive and punitive damages; these admitted facts are not unduly prejudicial.
Para. 11	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. Relevant to the issue of punitive damages and New GM's admitted delay in recalling defective vehicles.
Page 3—"Regulatory Framework and GM's Formal Recall Process" title	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED in part and SUSTAINED in part. The section heading is not unduly prejudicial or cumulative. But in light of the Court's ruling on Paragraphs 12-13, the words "Regulatory Framework and" are irrelevant and potentially confusing.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Paras. 12-13	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time (the Court will instruct the jury as to the law applicable to plaintiff's claims).	SUSTAINED. The regulatory framework has the potential to cause confusion, and is cumulative of the NHTSA Consent Order. Furthermore, it is the province of the Court to instruct the jury as to any applicable law.
Page 4—"GM Equips Cars with a Defective Switch" title	Wasting time and needlessly cumulative of facts described in the SOF paragraphs.	OVERRULED.
Para. 19	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, unnecessary. <i>See, e.g., Nibbs v. Goulart</i> , 822 F.Supp.2d 339, 351 (S.D.N.Y. Sept. 16, 2011) (excluding testimony as "unnecessary, irrelevant and inadmissible under FRE 403.>").	SUSTAINED. These comments are potentially unfairly prejudicial and have little probative value.
Paras. 27-28	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	SUSTAINED. These comments are potentially unfairly prejudicial and have little probative value.
Page 6—"GM Considers a Fix" title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Para. 36	Unfair prejudice, wasting time, needlessly cumulative of facts described in ¶ 36 and other evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. This comment is not unfairly prejudicial and leads into the discussion to come.
Para. 38	Needlessly cumulative of facts described in ¶ 38 and other evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. This comment places the rest of the paragraph in context and is not unduly cumulative.
Page 8—“The Changes to the Switch and the Key” title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 40	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time.	SUSTAINED. This comment is potentially unfairly prejudicial and adds little probative value, especially insofar as it pertains to Old GM’s conduct.
Para. 43	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. Relevant to the issue of New GM’s notice and punitive damages.
Page 9—“The Defective Switch’s Deadly Consequences” title (including fn. 5)	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Paras. 45-55	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED in light of the Court's ruling on OSI evidence (<i>see</i> Docket No. 1968), the ruling on the admissibility of evidence concerning the <i>Melton</i> settlement (<i>see</i> Docket No. 1770), and New GM's subsequent agreement (<i>see</i> Docket No. 2009, at 5), except that footnote 5 shall be redacted on the ground that it is cumulative and, to the extent it references alleged deaths, more prejudicial than probative.
Para. 56	Unfair prejudice (including OSI) and needlessly cumulative of facts described in ¶¶ 8, 100, 108, 115.	OVERRULED in light of the Court's ruling on OSI evidence (<i>see</i> Docket No. 1968), the admissibility of evidence concerning the settlement in <i>Melton</i> and other cases (<i>see</i> Docket No. 1770), and New GM's subsequent agreement (<i>see</i> Docket No. 2009, at 5).
Page 11—"GM Identifies the Connection Between the Ignition Switch and Airbag Non-Deployment and Initiates a Formal Investigation" title	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Paras. 57-60	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED in light of the Court's ruling on OSI evidence (<i>see</i> Docket No. 1968), the admissibility of evidence concerning the settlement in <i>Melton</i> and other cases (<i>see</i> Docket No. 1770), and New GM's subsequent agreement (<i>see</i> Docket No. 2009, at 5).
Para. 61	Unfair prejudice.	OVERRULED. This paragraph is not unfairly prejudicial, and is relevant to notice and New GM's investigation of the ignition switch defect.
Para. 62	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED in light of New GM's subsequent agreement (<i>see</i> Docket No. 2009, at 5).
Page 12—"GM Identifies the Defective Switch as the Likely Cause of Airbag Non-Deployment in 2005-2007 Model Year Cobalts" title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 64	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time.	OVERRULED. The probative value of the phrase is not substantially outweighed by any unfair prejudice.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Para. 69	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED in light of the Court's ruling on OSI evidence (<i>see</i> Docket No. 1968) and New GM's subsequent agreement (<i>see</i> Docket No. 2009, at 5).
Para. 70	Unfair prejudice and unnecessary. <i>See, e.g., Nibbs v. Goulart</i> , 822 F.Supp.2d 339, 351 (S.D.N.Y. Sept. 16, 2011) (excluding testimony as "unnecessary, irrelevant and inadmissible under FRE 403.>").	SUSTAINED. This editorial comment is potentially unfairly prejudicial, and has little or no probative value to the issues in Plaintiff's case.
Paras. 76-77	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED in light of the Court's ruling on OSI evidence. (<i>See</i> Docket No. 1968).
Page 15—"GM's Representations to NHTSA About Its Recall Process" title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 79	Unfair prejudice and needlessly presenting cumulative evidence of facts described in ¶¶ 80-81.	SUSTAINED. Potentially unfairly prejudicial, and unnecessary in light of the facts in the following paragraphs.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Page 16—"GM Delays Recall After Learning of the 2006 Switch Change" title	Unfair prejudice and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Paras. 83-84	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF), and litigation conduct under Rule 403/December 3, 2015 Mem. Op. and Order on New GM's Motion <i>in Limine</i> No. 10.	SUSTAINED in part and OVERRULED in part. SUSTAINED as to the word "heavy" in Paragraph 83 and the entirety of Paragraph 84, which come too close to implicating New GM's litigation conduct in the <i>Melton</i> matter. (<i>See</i> Docket No. 1791). The rest of Paragraph 83 is highly relevant to notice and New GM's conduct in addressing the ignition switch defect, and not unfairly prejudicial. (<i>See id.</i>).
Para. 85	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. These facts are not unduly prejudicial, and are highly relevant to the issue of New GM's notice.
Paras. 88-90	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	OVERRULED. These facts are highly relevant to the issue of New GM's notice, and are not unfairly prejudicial. Furthermore, New GM has subsequently agreed to the introduction of Paragraph 90 (<i>see</i> Docket No. 2009, at 5).

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Page 17—“GM Receives Documentary Evidence of the Part Change and Finally Begins the Recall Process” title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Paras. 91-92	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	SUSTAINED in part and OVERRULED in part. All but the first sentence of paragraph 91 and the words “GM . . . settled the Georgia Crash case” in paragraph 92 should be redacted on the ground that the potentially unfair prejudice of the text (much of which intrudes on the jury’s role) substantially outweighs its probative value.
Page 18—“GM Makes Further Statements to NHTSA About Its Recall Process” title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 95	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence (if Court allows introduction of Valukas Report and/or other evidence that is repetitive of the SOF).	SUSTAINED for the same reasons that call for redaction of paragraphs 91 and 92.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Para. 97	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time.	SUSTAINED. NHTSA's knowledge (or lack thereof) is has limited or no probative value and, especially in light of the NHTSA Consent Order, is unnecessary and potentially unfairly prejudicial.
Page 19—"GM Delays Recall for Three More Months" title	Unfair prejudice and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 100	Unfair prejudice and needlessly presenting cumulative evidence of facts described in ¶¶ 63-78, 82-94.	OVERRULED. This factual phrase is not needlessly cumulative of the material to which it provides context, and is highly probative of New GM's response to the ignition switch defect.
Para. 107	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time (the Court will instruct the jury as to the law applicable to plaintiff's claims), and needlessly presenting cumulative evidence of facts described in ¶¶ 7, 73, 77, 78.	SUSTAINED. This material is cumulative of the NHTSA Consent Order.
Page 20—"Recall" title	Needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Para. 110	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time.	SUSTAINED. This phrase is potentially unfairly prejudicial, and has limited or no probative value.

<u>SOF Page/Paragraph (or portion thereof)</u>	<u>New GM Objection</u>	<u>Ruling</u>
Page 20—"GM's Certification for Pre-Owned Vehicles" title	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time as it is undisputed that plaintiff Scheuer did not own a Certified Pre-Owned Vehicle, and needlessly cumulative of the facts described in the SOF paragraphs covered by the title.	OVERRULED.
Paras. 112-114	Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time as the designated portion refers to Certified Pre-Owned Vehicles and it is undisputed that plaintiff Scheuer did not own a Certified Pre-Owned Vehicle.	OVERRULED. New GM's Certified Pre-Owned program is potentially relevant to New GM's motive and intent in concealing the ignition switch defect and to the relationship between Old and New GM in ways that could bear on a finding of tort liability. (<i>See</i> Docket No. 1980).
Page 20—"Conclusion" title	Needlessly cumulative of the facts described in the SOF paragraph covered by the title.	OVERRULED.
Para. 115	Unfair prejudice (including as OSI), confusing the issues, misleading the jury, undue delay, wasting time, and needlessly presenting cumulative evidence of facts described in the forgoing paragraphs of the SOF, including but not limited to ¶¶ 3, 4, 5, 7, 8, 10, 26, 61, 65, 68, 72, 73, 77, 78, 101, 103, 107.	SUSTAINED. This summary is unnecessary, cumulative of the other information in the Statement of Facts, and could be unfairly prejudicial as a highly suggestive summary of the issues in the case.

Except where noted, the foregoing rulings largely address objections as to cumulativeness without regard for other evidence that Plaintiff may offer. As noted at the final pretrial conference held earlier today and previously (*see* Docket No. 1968, at 7; December 17, 2015

Hr'g Tr. 10-11), the Court will address any objections or issues of cumulativeness writ large during the course of trial.

SO ORDERED.

Dated: January 6, 2016
New York, New York



JESSE M. FURMAN
United States District Judge