



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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JESSE M. FURMAN, United States District Judge:

ORDER NO. 42

[Establishing Common Benefit Fee and Expense Fund]

I. SCOPE OF ORDER

1. As noted in this Court’s Order No. 15 [Joint Coordination Order] [14-MD-2543 Docket No. 315], this federal multidistrict litigation, captioned *In re General Motors LLC Ignition Switch Litigation*, MDL Docket No. 2543 (the “MDL 2543 Proceeding”), is pending before the Hon. Jesse M. Furman in the United States District Court for the Southern District of New York (“the MDL 2543 Court”), and there exist other actions filed in state courts and in federal courts that involve the same subject matter as the MDL 2543 Proceeding (collectively defined as “Related Actions” in this Court’s Order No. 15). Related Actions in which the courts have entered this Court’s Order No. 15 [Joint Coordination Order] [14-MD-2543 Docket No. 315] are referred to collectively as “Coordinated Actions.” To reduce costs, burden, duplication, and inefficiency in discovery for the benefit of the courts, parties, and nonparties, Order No. 15 and related orders, including those specifying deposition protocols and providing for the production of documents into the MDL 2543 Document Depository, have been and will be issued by this Court, and endorsed by courts in the Coordinated Actions and perhaps by other courts in Related Actions.

2. Coordination and cooperation in the conduct of discovery and pre-trial matters results in the savings of time, money, and effort for all parties. Defendant will benefit from avoidance of (i) multiple written discovery and document requests, (ii) multiple depositions of a single witness, and (iii) duplicative depositions on related topics. Plaintiffs and their counsel will benefit by not having to pay for multiple depositories or to replicate, in their individual cases, the time and costs of document review and analysis, depositions, and other pretrial preparation on related issues. Plaintiffs in the MDL 2543 Proceeding and Related Actions will have the ability to work in coordinated fashion, further reducing duplication of cost and effort.

3. The purpose of this Order is to provide for the fair and equitable sharing of the burden of services performed and expenses incurred by attorneys acting for the common benefit of plaintiffs in Common Benefit Actions (as defined in paragraph 11, below), and to provide plaintiffs in Common Benefit Actions and their counsel with access to Common Benefit Work Product for use in Common Benefit Actions, as defined below.

4. This Order establishes a fund (the “Common Benefit Order Fund”) to reimburse and pay Participating Counsel (as defined in Order No. 13 [14-MD-2543 Docket No. 304]) for reasonable and necessary time and expenses spent on Common Benefit Work, as defined below and in Order No. 13. This is done through implementation of a back-end, contingent common benefit assessment, to be deducted and withheld by the Defendant from any settlement or judgment they pay to plaintiffs and their counsel in a Common Benefit Action and paid into the Common Benefit Order Fund by the Defendant as a credit against the settlement or judgment amount, as described more fully below. Pursuant to this Order, there is no up-front fee assessed from plaintiffs or their counsel in Common Benefit Actions to access Common Benefit Work

Product, and plaintiffs and their counsel in Common Benefit Actions are permitted to receive Common Benefit Work Product.

5. To further the objectives set forth in this Court's August 15, 2014, Order No. 8 [14-MD-2543 Docket No. 249] and September 16, 2014, Order No. 13 (Organization of Plaintiffs' Counsel, Protocols for Common Benefit Work and Expenses) [14-MD-2543 Docket No. 304], this Order (i) identifies the plaintiffs and their counsel participating as Common Benefit Actions and as Participating Counsel, (ii) identifies the plaintiffs and their counsel authorized to voluntarily participate as Common Benefit Actions and Participating Counsel, (iii) orders creation of the Common Benefit Order Fund, (iv) specifies the assessment amount and how it is to be computed for Common Benefit Actions in which there is a settlement or judgment, (v) provides general rules for payment of assessments into the Common Benefit Order Fund and distributions from the Common Benefit Order Fund to Participating Counsel for Common Benefit Expenses and Common Benefit Work, and (vi) identifies those authorized to receive and use Common Benefit Work Product.

A. Common Benefit Work

6. The Court's authority to enter this Order derives from the United States Supreme Court's common benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527, 26 L. Ed. 1157 (1881); refined in, *inter alia*, *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 5 S. Ct. 387, 28 L. Ed. 915 (1884); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 59 S. Ct. 777, 83 L. Ed. 1184 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 90 S. Ct. 616, 24 L. Ed. 2d 593 (1970); *Boeing Co. v. Van Gernert*, 444 U.S. 472, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); and approved and implemented in the MDL context, in *inter alia*, *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977); and *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525-29 (D. Nev. 1987). *See also Manual for Complex*

Litigation (Fourth) § 14.215; *In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 267 (E.D.N.Y. 2006) (“[I]t has been a common practice in the federal courts to impose set-asides in the early stages of complex litigation in order to preserve common-benefit funds for later distribution.”); *In re Pradaxa (Dabigatran Etexilate) Prods. Liab. Litig.* (MDL No. 2385), No. 3:12-md-02385-DRH-SCW, 2012 U.S. Dist. LEXIS 162110; (S.D. Ill. Nov. 13, 2012); and *In re Vioxx Prods. Liab. Litig.* (MDL No. 1657), 760 F.Supp.2d 640, 662 (E.D. La. 2010).

7. For purposes of this Order, “Common Benefit Work” shall include all work authorized by the court-appointed MDL 2543 Leadership (as provided and described in Order No. 13) and performed for the benefit of all plaintiffs in Common Benefit Actions, including pre-trial matters, motion practice, document review and analysis, depositions, and other discovery that advances plaintiffs’ generic claims, bellwether trial preparation, common experts, a potential comprehensive settlement process, and all other work that advances plaintiffs’ interests in the litigation of Common Benefit Actions to conclusion. It shall include work on common issue depositions under the Court’s February 23, 2015 [Amended] Deposition Protocol Order, Order No. 36 [14-MD-2543 Docket No. 204] that is reported as specified in Order No. 13, and any updates or amendments thereto.¹

8. While authorized Participating Counsel performing Common Benefit Work have the right to apply for a share of the common benefit assessment as set forth below, the Court’s expectation, given the unique circumstances of this litigation, is that Participating Counsel, who are already working primarily for the benefit of their own individual and/or class clients, would be paid primarily from their individual and/or class actions respectively, with relatively modest

¹ All generally applicable Orders issued in MDL No. 2543 are posted at www.gmignitionmdl.com/court-documents/court-orders/.

additional payment from the Common Benefit Order Fund for performing Common Benefit Work, reflecting the percentage hold-back of three percent (3%) provided in this Order.

9. As provided in paragraph 4 of Order No. 15 [14-MD-2543 Docket No. 315, pp. 3-4], plaintiffs' counsel in any Coordinated Action may, at the appropriate time and following the appropriate Orders (including Order Nos. 8, 13, 15 and this Order), submit time and expenses expended for authorized Common Benefit Work. Pursuant to this Order, in order to perform authorized Common Benefit Work and be permitted to submit time and expenses for doing so, plaintiffs' counsel in a Coordinated Action who are not deemed or required to sign the Participation Agreement attached as Exhibit A to this Order by the court in the Coordinated Action must voluntarily sign the Participation Agreement.

10. Any disputes arising under this Order that cannot be resolved by agreement of counsel will be resolved by this Court in the exercise of its jurisdiction over this complex litigation, under the equitable principles of the common benefit doctrine. *See, e.g., Sprague*, 307 U.S. at 166; *Smiley v. Sincoff*, 958 F.2d 498, 501 (2d Cir. 1992).

B. Application of this Order

11. This Order applies to the following actions and to all plaintiffs' counsel representing plaintiffs in such actions (collectively referred to as "Common Benefit Actions"):

- This Order applies to all cases now pending, as well as to any cases later filed in, transferred to, or removed to this Court and included as part of the MDL 2543 Proceeding, and to all filed or unfiled individual actions of the MDL 2543 Leadership that would be Related Actions if filed. All plaintiffs and their attorneys with actions pending, later filed in, transferred to, or removed to the MDL 2543 Proceeding are required to comply with this Order and are deemed to have signed the Participation Agreement attached as Exhibit A to this Order. Any case in the MDL 2543 Proceeding that is subsequently resolved by settlement or trial as part of a class action pursuant to Federal Rule of Civil Procedure 23 will not be subject to any assessment pursuant to this Order; rather, in the event of a

class action judgment or resolution, a separate order addressing class counsel fees and costs will be entered.²

- This Order applies to all Coordinated Actions in which the court where the Coordinated Action is pending enters an order endorsing this Order and either (i) deeming plaintiffs and their counsel in the Coordinated Action to have signed the Participation Agreement attached as Exhibit A or (ii) requiring plaintiffs and their Counsel in the Coordinated Action to sign the Participation Agreement.
- This Order applies to all Related Actions in which plaintiffs and their counsel voluntarily execute the Participation Agreement attached hereto as Exhibit A, including Coordinated Actions.
- This Order applies to all unfiled and tolled actions of clients of Participating Counsel that would be Related Actions if filed.

12. The following actions and matters shall not be Common Benefit Actions:

- All claims filed with the GM Ignition Compensation Claims Resolution Facility by the January 31, 2015, filing deadline, and settled through that Facility. This Order and its assessment shall apply to any such claim in the event it is not settled through the Facility and it is filed and satisfies the above definition of a Common Benefit Action and it is then added to the Master List as defined below;
- Related Actions in which plaintiffs and their counsel have not been ordered or deemed by the court where the Related Action is pending to have signed the Participation Agreement nor have they voluntarily signed it; and
- Filed and unfiled actions that are not Related Actions.

13. Plaintiffs and their counsel in the actions and matters discussed in paragraph 12 above are barred from (i) receiving or accessing Common Benefit Work Product for such actions and matters, (ii) participating in Common Benefit Work or incurring Common Benefit Expenses for such actions and matters, and (iii) entering into the Participation Agreement for such actions and matters.

² This Court takes no position in this Order on the merits of class action allegations asserted by plaintiffs in actions currently pending in the MDL 2543 Proceeding; rather, briefing on any motions by plaintiffs for class certification will be taken up at a later date.

14. This Order shall apply to all attorneys and law firms representing plaintiffs in each Common Benefit Action. Thus, if there is more than one attorney or law firm representing plaintiffs in a Related Action and any one of plaintiffs' attorneys voluntarily signs the Participation Agreement, the Related Action shall be deemed a Common Benefit Action and all attorneys and law firms representing plaintiffs in that Related Action are bound by the terms of this Order for that Related Action.

15. All attorneys and law firms representing plaintiffs in Common Benefit Actions are hereby approved as "Participating Counsel" as defined in Order No. 13. All attorneys and law firms representing plaintiffs in Common Benefit Actions shall be eligible to (i) perform Common Benefit Work, and (ii) receive payment for time and expenses for authorized Common Benefit Work and Common Benefit Expenses subject to the time and costs recording and reporting requirements set forth in Order Nos. 8 and 13, and any amendments or updates thereto. This Court directs the MDL 2543 Leadership to use best efforts to find roles for Participating Counsel who wish to participate in performing necessary Common Benefit Work and to promote the participation of Participating Counsel in common depositions in accordance with the deposition protocols of Order No. 36.

16. Counsel who represent plaintiffs in both Common Benefit Actions and actions or matters that do not qualify as Common Benefit Actions may only join the Participation Agreement for their Common Benefit Actions, access and use Common Benefit Work Product for their Common Benefit Actions, and be reimbursed for Common Benefit Work and Common Benefit Expenses for work performed for Common Benefit Actions. If Common Benefit Work Product is used in non-Common Benefit claims or actions, they shall be subject to the assessment and such other actions as deemed appropriate by the Court.

17. This Order shall apply such that the assessment amount for a Common Benefit Action is deducted from the Gross Monetary Recovery (as defined in paragraph 34 of this Order) owed to plaintiffs as settlement proceeds or a judgment, and only the proceeds remaining after deduction of the assessment amount shall be available, if applicable, to pay any private lien holder with a right to claim payment of the settlement or judgment proceeds, to the effect that such lien claims will be reduced by the three percent (3%) assessment, because those lien holders are benefiting from the Common Benefit Work performed by Participating Counsel. Private lien holders shall be subject to this Order in that assessment amounts for Common Benefit Actions will be deducted from the Gross Monetary Recovery because they are seeking to obtain part of the recovery obtained by a plaintiff in a Common Benefit Action who is subject to this Order and the jurisdiction of this Court. However, private lien holders' counsel shall not be Participating Counsel as defined in Order No. 13 and they shall not be eligible to make a claim to receive any distribution from the Common Benefit Fee Fund, or the Common Benefit Cost Fund, to sign the Participation Agreement attached as Exhibit A, or to have access to Common Benefit Work Product.

C. Participation Agreement (Exhibit A)

18. The Participation Agreement, Exhibit A attached hereto and incorporated herein, is an agreement among (1) the MDL 2543 Leadership and (2) plaintiffs and their counsel in Common Benefit Actions as defined in Section I(B) above. All counsel representing plaintiffs in Common Benefit Actions are specifically approved by this Court as "Participating Counsel" as defined in Order No. 13, and only plaintiffs' counsel in Common Benefit Actions are authorized to be Participating Counsel.

19. The Participation Agreement is a private and cooperative agreement among the MDL 2543 Leadership and Participating Counsel only; and not Defendant or Defendant's

counsel, or private lien holders or their counsel. This Court shall retain continuing and exclusive jurisdiction over the Parties and their Counsel deemed to have signed or voluntarily signing the Participation Agreement for the purpose of enforcing, implementing, and interpreting the Participation Agreement.

20. All plaintiffs and their counsel in Related Actions who wish to voluntarily enter into the Participation Agreement shall, within 45 days of this Order, sign the Participation Agreement, in order to be assured they will become Participating Counsel with the assessment amount set forth herein applied to their Common Benefit Actions. Any plaintiffs and their counsel who do not yet have a Related Action filed in any federal or state court and who wish to voluntarily sign the Participation Agreement shall, within 45 days of filing the Related Action in any court, sign the Participation Agreement, should they wish to assure that the Related Action will be assessed the assessment amount set forth in Section V.C.3 below. Failure by plaintiff and their counsel in a Related Action to voluntarily sign a Participation Agreement within the time frame set forth in this paragraph may result in higher assessment amount as a result of later participation. This Court directs the MDL 2543 Federal/State Liaison Counsel to promptly provide notice of this Order to counsel in all Coordinated Actions and Related Actions, including any Related Actions filed subsequent to entry of this Order.

21. Plaintiffs and their counsel who are authorized to enter into the Participation Agreement and who do so, whether voluntarily or as ordered pursuant to a court order, are bound by and may not withdraw from the Participation Agreement. Counsel representing plaintiffs in Common Benefit Actions shall be entitled to receive all Common Benefit Work Product. The MDL 2543 Leadership and all Participating Counsel shall comply with the rules set forth herein to govern distribution of Common Benefit Work Product.

22. Counsel authorized to voluntarily enter into the Participation Agreement but who choose not to execute the Participation Agreement are precluded from receiving Common Benefit Work Product. Counsel barred from entering into the Participation Agreement also are precluded from receiving Common Benefit Work Product.

23. Actual documents and images of documents produced by Defendant in response to discovery requests shall not be regarded as Common Benefit Work Product. Thus, plaintiffs and their counsel in Related Actions who are not deemed to have signed, or ordered to sign, the Participation Agreement and who do not agree to do so voluntarily may access and download documents produced by parties into the MDL 2543 Document Depository, which is described in Order No. 12. However, only plaintiffs and their Participating Counsel in Common Benefit Actions are permitted to access the Common Benefit Action Document Depository, initially described in Order No. 15, which will contain Common Benefit Work Product.

II. COMMON BENEFIT EXPENSES ELIGIBLE FOR REIMBURSEMENT

24. Only Participating Counsel are eligible for reimbursement of Common Benefit Expenses from the Common Benefit Order Fund. To be eligible for reimbursement from the Fund, said expenses must be: (a) reasonable and necessary; (b) for the common benefit of Common Benefit Actions; (c) appropriately authorized by the MDL 2543 Leadership as set forth in Order No. 13; (d) timely submitted within the defined limitations set forth in Order No. 13; and (e) verified by a partner or shareholder in the submitting law firm. Examples of Common Benefit Expenses include, but are not limited to, those costs described as “shared costs” and “held costs” in Order No. 13 at pages 12 to 16.

III. COMMON BENEFIT WORK ELIGIBLE FOR REIMBURSEMENT

25. Only Participating Counsel, as defined in Order No. 13 at 7, are eligible for reimbursement for time and effort expended for Common Benefit Work. Participating Counsel

shall be eligible for reimbursement for time and efforts expended for Common Benefit Work if said time and effort are: (a) reasonable and necessary; (b) for the common benefit of Common Benefit Actions; (c) appropriately authorized by the MDL 2543 Leadership as set forth in Order No. 13; (d) timely submitted under Order No. 13; and (e) verified by a partner or shareholder in the submitting law firm. Examples of Common Benefit Work, include, but are not limited to, those examples listed in Order No. 13 at pages 8 to 11.

IV. ESTABLISHING THE COMMON BENEFIT ORDER FUND

26. In its Order No. 13, the Court authorized Co-Lead Counsel to establish a bank account for the collection and deposit of assessments by the MDL No. 2543 Plaintiffs' Co-Lead Counsel from members of the Executive Committee, Liaison Counsel, Federal/State Liaison Counsel, and other counsel performing authorized Common Benefit Work (the "Common Benefit Expenses Fund").³ The Court now further authorizes and directs Plaintiffs' Co-Lead Counsel to establish another, separate interest-bearing bank account, the "Common Benefit Order Fund."

27. The Court directs Plaintiffs' Co-Lead Counsel to administer the Common Benefit Order Fund to receive and disburse funds for the purposes and pursuant to the limitations set forth in its Order No. 13, this Order, and any further orders of this Court.

28. By subsequent order of this Court, the Court will appoint a qualified certified public accountant (the "CPA"), approved by both Plaintiffs' Co-Lead Counsel and Defendant, to serve as Escrow Agent over the Common Benefit Order Fund and to keep detailed records of all

³ In its Order No. 13, the Court referred to this earlier-established Fund alternatively as the "Common Benefit 'Shared Costs' Fund" and the "Executive Committee Fund." That Fund collects front-end assessments from the Leadership and disburses those funds to pay the ongoing case costs of the litigation. By contrast, no funds are to be disbursed from the Common Benefit Order Fund without Court order. For clarity and consistency, the Court will refer to this fund as the "Common Benefit Expenses Fund" going forward.

deposits and to prepare tax returns and other tax filings in connection with the Common Benefit Order Fund. Plaintiffs' Co-Lead Counsel and Defendant shall submit proposed CPAs within 30 days of the entry of this Order. A subsequent order will specify the hourly rates to be charged by the CPA and for the CPA's assistants, who will be utilized where appropriate to control costs. The CPA must submit quarterly detailed bills to the Court and to Co-Lead Counsel. Upon approval by the Court, the CPA's bills will be paid from the Common Benefit Order Fund and will be considered a shared cost. The Plaintiffs' Liaison Counsel must provide a copy of this Order to the CPA.

29. The Common Benefit Order Fund is subject to the direction of this Court. No party or attorney will have any individual right to any of the deposits made into, or funds maintained in, the Common Benefit Order Fund; nor will such fund constitute the separate property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney, except as provided by further order of this Court. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the Common Benefit Order Fund, if permitted by applicable state laws and if subject to the conditions and contingencies of this Order and future orders.

30. In authorizing the establishment of the Common Benefit Order Fund, this Court expresses no opinion or prediction regarding an amount, if any, to be awarded as common benefit fees or costs in these proceedings; nor is the Court expressing an opinion or prediction that there will be any deposits into the Common Benefit Order Fund. No common benefit fees or expenses may be paid out of the Common Benefit Order Fund except by order of this Court on formal motion, with reasonable notice and an opportunity to be heard.

31. This Court shall have exclusive and continuing jurisdiction over the Common Benefit Order Fund and will retain such jurisdiction over the Common Benefit Order Fund, any disputes that might arise under this Order, and the ultimate distribution, if any, and termination of the Common Benefit Order Fund, even after the close of this MDL proceeding.

V. PAYMENTS INTO THE COMMON BENEFIT ORDER FUND

A. General Standards

32. All plaintiffs in Common Benefit Actions and their attorneys who agree to settle, compromise, or dismiss a Common Benefit Action, with or without trial, or who recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to the Common Benefit Action are subject to an assessment calculated on the Gross Monetary Recovery to be deducted therefrom and paid directly into the Common Benefit Order Fund, as provided herein, with the following exception. Any case in the MDL 2543 Proceeding that is resolved by settlement or trial as a class action or part of a class action pursuant to Federal Rule of Civil Procedure 23 will not be subject to any assessment pursuant to this Order; rather, in the event of a class action judgment or settlement, a separate procedure under Federal Rule of Civil Procedure 23(h) will be conducted and an order addressing class counsel fees and costs under applicable procedures and jurisprudence will be entered.

33. In that Rule 23(h) procedure, plaintiffs' counsel in any Common Benefit Action who have performed work that benefited the plaintiff class may submit such time and expenses, kept and reported in accordance with Orders Nos. 8 and 13, and seek an award of attorneys' fees and expenses. Any counsel who may be entitled to separate fees from any other source (e.g. a contingent fee agreement or any fee agreement with an individual plaintiff, or State entity or an award from the Common Benefit Order Fund) will, if requested by the Court, disclose the amount and source of those fees and expenses to the Court *in camera*, and to Co-Lead Counsel,

on a confidential basis. In evaluating and allocating any Court-awarded class action attorneys' fees and costs among applicant counsel, Co-Lead Counsel shall apply the same class benefit criteria to all applicant counsel's work, without offset or deduction from their submissions of time and expenses except as may be ordered by the Court under this paragraph.

B. Gross Monetary Recovery

34. "Gross Monetary Recovery" includes any and all amounts paid in a Common Benefit Action to plaintiffs' counsel on behalf of their clients, *pro se* plaintiffs, or any third party on behalf of a plaintiff as a result of a settlement or pursuant to a judgment. In computing the "Gross Monetary Recovery," the parties are to (a) exclude court costs that are to be paid by the Defendant; (b) include any payments to be made as the result of an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a plaintiff, and any governmental liens or obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future as determined by a third party with expertise and experience in making such present value calculations. The assessment shall apply to all of the Common Benefit Actions, as defined in paragraph 11 of this Order, of the plaintiffs' attorneys who are subject to this Order, whether as sole counsel or co-counsel. *See Pradaxa*, 2012 U.S. Dist. LEXIS 162110, *15016.

35. Unless otherwise agreed in writing by the parties in the Common Benefit Action, the Gross Monetary Recovery amount shall remain confidential and shall not be disclosed. Only in the event of a disagreement between the parties in the Common Benefit Action, and so the Court may resolve the disagreement to identify the Gross Monetary Recovery Amount to be used, shall the information required to compute the Gross Monetary Recovery amount be disclosed by the parties in the Common Benefit Action to the Court on a confidential basis. There shall be no opportunity for MDL 2543 Leadership, Participating Counsel, or any other

Party or non-Party to challenge a Gross Monetary Recovery amount agreed by the parties in the Common Benefit Action or to participate in the Court's determination of the proper Gross Monetary Recovery Amount in the event of a dispute between the parties in the Common Benefit Action.

C. Assessment Amount

36. The assessment amount to be deducted by Defendant from the Gross Monetary Recovery in a Common Benefit Action will be a total of three percent (3%) of the Gross Monetary Recovery: two percent (2%) for attorneys' fees; and one percent (1%) for expenses. Assessments not awarded by the Court for Common Benefit work or costs would be returned to the plaintiffs and counsel in the Common Benefit Action from which they were assessed, in an equitable manner.

37. This Order is not intended to result in the payment of an assessment for a Common Benefit Action in the MDL 2543 Proceeding and an additional assessment in any other Coordinated Action. In the event two assessments cover any Common Benefit Action, MDL 2543 Leadership and Participating Law Firm shall attempt a mutually agreeable resolution, to avoid multiple or excessive assessments. If the MDL Leadership and Participating Law Firm are unable to reach a mutually agreeable resolution, the issue will be brought to the attention of the MDL 2543 Court, which shall have authority to decide the issue after consultation with the jurist in the other jurisdiction.

38. The total assessment amount of three percent (3%) is to be deducted by Defendant from the Gross Monetary Recovery so that it shall apply to all plaintiffs in Common Benefit Actions, all counsel for plaintiffs in the Common Benefit Action who have a monetary interest, whether as sole counsel or co-counsel, and to all lienholders of plaintiffs in Common Benefit Actions.

39. This Court reserves jurisdiction under the common benefit doctrine to revisit the amount of the assessment or other provisions of this Order in the interest of justice or in extraordinary circumstances.

D. Court-Approved Master List of Participating Counsel and Common Benefit Actions

40. A Master List of all plaintiffs and Participating Counsel in Common Benefit Actions shall be maintained and updated by Plaintiffs' Federal/State Liaison Counsel and provided to: Defendant's Liaison Counsel, the CPA appointed by this Court to serve as Escrow Agent over the Common Benefit Fund, Plaintiffs' Co-Lead Counsel, and the Court or its designee. The Master List shall also be made available to all plaintiffs and their counsel with cases in this MDL 2543 Proceeding, as well as any other plaintiffs and their counsel who sign or are deemed by this Court or the court in a Coordination Action to have signed the Participation Agreement, upon request.

41. The Master List shall include all (i) plaintiffs and their counsel in Related Actions who have voluntarily executed the Participation Agreement with the MDL 2543 Leadership for Related Actions, and (ii) plaintiffs and their counsel for actions in this MDL 2543 Proceeding and in Coordinated Actions in which courts have endorsed this Order and deemed or ordered plaintiffs and their counsel to sign the Participation Agreement.

42. MDL 2543 Leadership and Participating Counsel shall not provide Common Benefit Work Product to any counsel who are not Participating Counsel, and Participating Counsel shall not use Common Benefit Work in actions or matters which are not Common Benefit Actions. Such use will result in an assessment against such matters, and such other action as deemed appropriate by the Court.

43. In the event any lawyer who is in the MDL 2543 Leadership or who is a Participating Counsel represents a claimant who submits an unfiled claim to a Defendant that would be a Related Action if filed, the lawyer shall inform the Defendant in writing that the claimant is represented by a lawyer who is in the MDL 2543 Leadership or who is a Participating Counsel and that the unfiled claim is a claim that would be a Related Action if filed.

E. Payment of Assessments

44. Defendant and its counsel shall not distribute any settlement or judgment proceeds to any plaintiff's counsel (or directly to a plaintiff or to a lien holder), or in any unfiled action in which the MDL 2543 Leadership or Participating Counsel attorney has informed the Defendant in writing that the claimant is represented by an attorney who is in the MDL 2543 Leadership or who is a Participating Counsel and that the unfiled action would be a Related Action if filed, in any actions included on the Master List as Common Benefit Actions until after: (1) the parties notify Plaintiffs' Liaison Counsel and Plaintiffs' Federal/State Liaison Counsel in writing of (a) the existence of a settlement and the name of the individual plaintiff's attorney, and (b) the identity of the case (without disclosing the amount of the settlement or any other terms of the settlement); and (2) Plaintiffs' Liaison Counsel and Plaintiffs' Federal/State Liaison Counsel have advised Defendant's counsel in writing whether the individual plaintiff's attorney's cases are subject to an assessment and the amount (stated as a percentage of the recovery) of the assessment pursuant to this Order (or such other percentage amount that applies under another or subsequent Order). Plaintiffs' Liaison Counsel and Plaintiffs' Federal/State Liaison Counsel shall share this information with Plaintiffs' Co-Lead Counsel, who shall otherwise keep this information confidential. For cases or unfiled actions subject to an assessment, Defendant is directed to withhold an assessment from any and all amounts paid to plaintiffs or claimants and their counsel, and to pay the three percent (3%) assessment (or such

other percentage amount applies under another or subsequent Order) into the Common Benefit Order Fund.

45. In no event shall a dispute between the MDL 2543 Leadership and Participating Counsel over the percentage of Gross Recovery Amount to be assessed be permitted to postpone, delay, block, or prevent the parties to a settlement of a Common Benefit Action.

46. No orders of dismissal of any Common Benefit Action included on the court-approved Master List shall be entered unless the parties to the Common Benefit Action stipulate in the dismissal or settlement that (a) the applicable assessment will be deducted and deposited into the Common Benefit Order Fund before or at the same time the settlement or judgment proceeds are paid to plaintiff and plaintiffs' counsel, or (b) that there is a dispute regarding the assessment amount and the Defendant has placed in escrow the greater of the possible assessment amounts pending resolution of the dispute by this Court. If, for any reason, the assessment is not or has not been so withheld, and the assessment applies to the case, the plaintiff and his/her counsel are jointly responsible for paying the assessment into the Common Benefit Order Fund promptly.

47. Counsel for each Defendant shall provide quarterly to the Court or its designee notice of the names and docket numbers of the cases for which it has paid an assessment into the Common Benefit Order Fund since the last such report. A report is not due if there are no payments made into the Common Benefit Order Fund by that Defendant during that quarter. At any time, Defendant may petition the Court to discontinue its quarterly reporting on grounds that circumstances no longer require such reporting.

48. Details of any individual settlement agreement, individual settlement amount, and individual amounts deposited into the Common Benefit Order Fund that the parties to the

individual settlement agree must be confidential shall be kept confidential and shall not be disclosed by the court-appointed CPA to Plaintiffs' Co-Lead Counsel the MDL 2543 Leadership, Participating Counsel, or to any other Party or non-Party to any Common Benefit Action. Nor shall such information be disclosed by the court-appointed CPA to the Court, or the Court's designee, unless the Court requests that it receive that information. Monthly statements prepared by the court-appointed CPA shall, however, be provided to Plaintiffs' Co-Lead Counsel, Plaintiffs' Liaison Counsel, Plaintiffs' Federal/State Liaison Counsel, and the Court showing only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance such that the amounts of confidential individual settlements remain confidential. These monthly statements shall be maintained as confidential by the recipients and the Court. Defendant shall have no obligation or liability regarding any assessment-related matter other than to withhold assessments in Common Benefit Actions as set forth in Paragraphs 11 and 43-46 of this Order.

VI. DISTRIBUTIONS TO PARTICIPATING COUNSEL

A. Court Approval

49. The amounts deposited into the Common Benefit Order Fund shall be available for distribution to Participating Counsel who have performed authorized Common Benefit Work, incurred authorized Common Benefit Expenses, and reported same as described in this Order and in Order No. 13. No amounts will be disbursed without review, approval, and order of the Court, or such other mechanism as the Court may order. This Court retains jurisdiction over any award or distribution to Participating Counsel from the Common Benefit Order Fund; and in furtherance of cooperation among courts with Coordinated Actions and Related Actions, this Court may seek input from those courts as appropriate.

B. Application for Distribution

50. Each Participating Counsel who performs authorized Common Benefit Work has the right to present an application for compensation and/or reimbursement prior to any distribution approved by this Court. Counsel who do not sign the Participation Agreement and who are not deemed to have signed the Participation Agreement by this Court or the court in a Coordinated Action shall not be eligible to receive common benefit payments for any work performed or expenses incurred. At the appropriate time, or upon motion by Plaintiffs' Co-Lead Counsel, this Court shall request Plaintiffs' Co-Lead Counsel to make recommendations to this Court for distributions from the Common Benefit Order Fund to Participating Counsel who have performed authorized Common Benefit Work and/or incurred Common Benefit Expenses. Plaintiffs' Co-Lead Counsel shall determine on their own the most fair and efficient manner by which to evaluate all of the time and expense submissions in making their recommendation to this Court. To the extent that counsel have received attorneys' fees or expense reimbursement for the same work from any other source (e.g., contingent fees, or a fee or cost award pursuant to Rule 23(h)), counsel shall make available to the Court, for review in camera, and to Plaintiffs' Co-Lead Counsel on a confidential basis, the amount that counsel has received, its source, and any relevant agreements. The Court's determination as to Common Benefit awards, while informed by the applications of counsel, the recommendations of Plaintiffs' Co-Lead Counsel, and the views and input of judicial colleagues in Common Benefit Actions, will be independent and final.

SO ORDERED.

Date: March 26, 2015
New York, New York



JESSE M. FURMAN
United States District Judge

EXHIBIT A

Participation Agreement

This Agreement is made this _____ day of _____, 2015, by and between the Plaintiffs' Counsel appointed by the United States District Court for the Southern District of New York as Transferee Court in MDL No. 2543 ("MDL 2543 Transferee Court") and [FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT] (the "Participating Law Firm") on behalf of, and with authorization from, the plaintiff clients of the firm listed above and on the attached Exhibit 1 who are plaintiffs in a Common Benefit Action as that term is defined in the Order Establishing Common Benefit Fee and Expense Fund entered by the Court in the MDL 2543 Proceeding.

WHEREAS, the United States District Court for the Southern District of New York has appointed as Plaintiffs' Co-Lead Counsel Steve W. Berman, Elizabeth J. Cabraser, and Robert C. Hilliard; as Federal/State Liaison Counsel Dawn M. Barrios; as Plaintiffs' Liaison Counsel Robin L. Greenwald; and as members of the Plaintiffs' Executive Committee David Boies, Lance A. Cooper, Melanie L. Cyganowski, Adam J. Levitt, Dianne M. Nast, Peter Prieto, Frank M. Pitre, Joseph F. Rice, Mark P. Robinson, Jr., and Marc M. Seltzer to serve as Court-Appointed Counsel to facilitate the conduct of pretrial proceedings in the federal actions relating to alleged Defects in certain vehicles manufactured by GM (collectively "MDL 2543 Court-Appointed Counsel");

WHEREAS, MDL 2543 Court-Appointed Counsel in association with other attorneys working for the benefit of plaintiffs in Common Benefit Actions at the express written direction of Co-Lead Counsel have developed, and continue to develop, work product that will be valuable in the litigation of federal and state court proceedings involving the allegedly defective GM vehicles (the "Common Benefit Work Product"); and

WHEREAS, the Participating Law Firm and its plaintiff clients listed on Exhibit 1 wish to gain access to the Common Benefit Work Product and establish an amicable, working relationship with MDL 2543 Court-Appointed Counsel for the mutual benefit of their clients, and/or were ordered by the MDL 2543 Court or the court in a Coordinated Action to sign this Agreement or deemed by the court to have signed this Agreement and be bound by it;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. With respect to each plaintiff they represent in a Common Benefit Action listed on Exhibit 1, each Participating Attorney or Participating Law Firm on behalf of themselves, their co-counsel, and their clients hereby authorizes Defendant to deduct from the gross settlement amount or judgment of the Common Benefit Action and deposit in the MDL No. 2543 Common Benefit Order Funds a percentage of the Gross Monetary Recovery which is equal to three percent (3%): two percent (2%) to be deposited into the Common Benefit Order Fund, and one percent (1%) to be deposited into the Common Benefit Expense Fund unless, as stated in the Order Establishing Common Benefit Fee and Expense Fund entered by the Court in the MDL 2543 Proceeding, unless the MDL 2543 Court or the court in a Coordinated Actions has ordered that a different percentage of the Gross Monetary Recovery be deducted in which case the Defendant will deduct that amount instead. For purposes of this Agreement, the Gross Monetary Recovery shall be computed as set forth in the Order Establishing Common Benefit Fee and Expense Fund. It is the intention of the MDL 2543 Court Appointed Counsel and the Participating Law Firm that such assessment shall be in full and final satisfaction of any present or future obligation on the part of each Participating Law Firm with respect to the Common Benefit Actions listed on Exhibit 1 to contribute to any

fund for the payment or reimbursement of any legal fees, services, or expenses incurred by, or due to, the MDL 2543 Leadership.

2. Each Participating Law Firm, on behalf of itself, its affiliated counsel, and its plaintiff clients in Common Benefit Actions listed on the attached Exhibit 1, affirms that it is authorized to grant and convey, and hereby grants and conveys, to Court-Appointed Counsel, a lien upon and/or a security interest in any recovery by any such client in connection with any Common Benefit Action listed on Exhibit 1 to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Law Firm will undertake all actions and execute all documents that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. In accordance with the Orders of the Court in the MDL 2543 Proceeding, the amounts deposited in the Common Benefit Order Funds will be available for distribution to Participating Counsel who have performed Common Benefit Work or incurred Common Benefit Expenses pursuant to written authorization from Plaintiffs' Co-Lead Counsel, under the reporting requirements of the MDL 2543 Court. Such sums will be distributed only upon an Order of the Court in the MDL 2543 Proceeding. Appropriate consideration will be given to the experience, talent, and contribution made by all of those authorized to perform Common Benefit Work and incur Common Benefit Expenses, including the Participating Law Firm.

4. Upon execution of this Participation Agreement, MDL 2543 Court-Appointed Counsel will provide to Participating Law Firm, to the extent developed, access to the Common Benefit Work Product. If the Court in the MDL 2543 Proceeding rules that the Participating Attorney or Participating Law Firm is not authorized to be a Participating

Counsel, then this Agreement shall be null and void and no access to Common Benefit Work Product will be permitted. In the event one or more plaintiffs and their actions or matters originally listed on Exhibit 1 are determined by the MDL 2543 Court-Appointed Counsel or the Court in the MDL 2543 Proceeding not to be plaintiffs in a Common Benefit Action, then Participating Law Firm will provide a revised Exhibit 1 listing only plaintiffs in a Common Benefit Action.

5. A Participating Law Firm will have access to the following resources, for use on behalf of their plaintiff clients listed in the attached Exhibit 1:

- a. Testing information and other expert discovery materials relevant to the various issues alleged in the Common Benefit Actions;
- b. Legal research and memoranda on legal issues relevant to all Common Benefit Actions and bellwether cases;
- c. Deposition database of all discovery depositions related to the MDL 2543 litigation;
- d. Transcript database of trial and court proceedings to the extent permissible;
- e. Any MDL 2543 trial package as it is developed or assistance with trial-related matters;
- f. Any further Common Benefit Work Product developed by or in conjunction with Court-Appointed Counsel as it relates to Common Benefit Actions; and
- g. the Common Benefit Action Document Depository, initially described in Order No. 15 (to the extent their contents may be permissibly shared under the Court's Orders). Whereas all parties to the MDL 2543 Proceeding and Related Actions may access

and download documents produced into the MDL 2543 Document Depository in accordance with the terms of the Order Protecting Confidentiality and Privilege pursuant to Order No. 12, only Participating Counsel for use in connection with their Common Benefit Actions shall have access to the Common Benefit Action Document Depository initially described in Order No. 15.

6. Participating Law Firm represents that the list appended hereto as Exhibit 1 is a full and complete list and correctly sets forth the name of each client represented by them who is a plaintiff in a Common Benefit Action as defined in the Order Establishing Common Benefit Fee and Expense Fund entered by the Court in the MDL 2543 Proceeding, including the Court and docket number of each such case.

7. Participating Law Firm shall provide a supplement to the list appended hereto as Exhibit 1 to MDL 2543 Court Appointed Counsel within 10 business days of a new retention or association in which the client becomes a plaintiff in a Common Benefit Action.

8. Both the initial proposed list provided by Participating Law Firm as Exhibit 1, any proposed supplemental additions to Exhibit 1, shall be subject to objection by Defendant. Participating Law Firm on behalf of its clients that it proposes to include on Exhibit 1 and itself agrees and understands that in the event the Court in the MDL 2543 Proceeding rules that a client of Participating Law Firm is not a plaintiff in a Common Benefit Action then the client shall be struck from Exhibit 1 and no Common Benefit Work Product may be used by the Participating Law Firm for the benefit of that client nor will any assessment be made with respect to any such client.

9. This Agreement shall apply to each and every client who is a plaintiff in a Common Benefit Action in which Participating Law Firm has a right or claim to a fee

recovery, and Participating Law Firm affirms that all such clients are listed on Exhibit 1 and agrees to supplement Exhibit 1 for any such new clients.

10. This Participation Agreement is not intended to result in the payment of an assessment for a Common Benefit Action in the MDL 2543 Proceeding and an additional assessment in any other Coordinated Action. In the event two assessments cover any Common Benefit Action, MDL 2543 Leadership and Participating Law Firm shall attempt a mutually agreeable resolution to avoid multiple or excessive assessments. If the MDL 2543 Leadership and Participating Law Firm are unable to reach a mutually agreeable resolution, the issue will be brought to the attention of the MDL 2543 Court, which shall have authority to decide the issue after consultation with the jurist in the other jurisdiction.

11. Participating Law Firm understands and agrees that by entering into the Participation Agreement, whether voluntarily or pursuant to a court order, Participating Law Firm and its listed clients are bound by, and may not withdraw from, the Participation Agreement, provided they satisfy the requirements for Participating Counsel and their clients are plaintiffs in a Common Benefit Action. However, if Participating Law Firm is not a Participating Counsel, then the Agreement shall be null and void, and if any of its clients are not plaintiffs in Common Benefit Actions then they do not qualify and may not be included as part of this Agreement.

12. The MDL 2543 Transferee Court shall have exclusive and continuing jurisdiction to adjudicate any unresolved dispute arising under this Agreement.

By: _____
Attorney at Participating Law Firm
authorized to sign for Participating Law Firm
and clients listed on Exhibit 1
[Attorney Name and Law Firm Name and
Address]

On behalf of:
On Behalf of Clients Listed in
Attached Exhibits

