

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|  |   |                                  |
|--|---|----------------------------------|
| IN RE:   | ) | MDL NO. 2543                     |
| GENERAL MOTORS LLC IGNITION                          | ) | 1:14-md-2543 (JMF)               |
| SWITCH LITIGATION                                    | ) |                                  |
| _____  | ) | HON. JESSE M. FURMAN             |
|  | ) |                                  |
| THIS DOCUMENT RELATES TO:                            | ) | Fed. R. Civ. Pro. 41(b); and 42; |
| <i>Elliott, et al. v. General Motors LLC, et al.</i> | ) | Local Rule 6.3;                  |
| 1:14-cv-7782-JMF                                     | ) | 28 U.S.C. §1407                  |
| <i>Sesay et al. v. General Motors LLC et al.,</i>    | ) |                                  |
| 1:14-cv- 0618-JMF, and                               | ) |                                  |
| <i>Bledsoe et al. v. General Motors LLC,</i>         | ) |                                  |
| 1:14-cv-7631-JMF                                     | ) |                                  |
| _____  | ) |                                  |

**NOTICE OF MOTION, MOTION FOR RECONSIDERATION,  
AND OBJECTIONS TO THE DISMISSAL OF THEIR CLAIMS  
BY THE *ELLIOTT, SESAY, AND BLEDSOE* PLAINTIFFS**

PLEASE TAKE NOTICE that on January 20, 2014, Celestine Elliott, Lawrence Elliott, Berenice Summerville,<sup>1</sup> Ishmail Sesay, Joanne Yearwood,<sup>2</sup> Paul Fordham, Momoh Kanu, Tynesia Mitchell, Dierra Thomas, and James Tibbs<sup>3</sup> (collectively “certain Plaintiffs”), Plaintiffs in the above-captioned actions who allege economic loss and property damage and who are not named in either of the Master Complaints submitted at the Court’s direction by Lead Counsel, hereby move pursuant to Local Rule 6.3 for reconsideration of the Court’s Order No. 29, entered on December 18, 2014 (Doc. 83, 14-mc-2543). Alternatively, pursuant to Order No. 29, certain Plaintiffs submit objections to the dismissal of their claims on the ground that their claims are well founded and meritorious but not asserted in the master complaints.

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<sup>1</sup> Mr. and Mrs. Elliott and Ms. Summerville are named Plaintiffs in *Elliott et al. v. General Motors LLC, et al.*, 14-cv-8382 (JMF).

<sup>2</sup> Mr. Sesay and Ms. Yearwood are named Plaintiffs in *Sesay et al. v. General Motors LLC et al.*, 1:14-cv-0618 (JMF).

<sup>3</sup> Mrrs. Fordham, Kanu, and Tibbs and Mss. Mitchell and Yearwood, along with Mr. and Mrs. Elliott, are among the named Plaintiffs in *Bledsoe et al. v. General Motors LLC*, 1:14-cv-7631 (JMF).

Certain Plaintiffs request that the Court reconsider the provisions of the Order that involuntarily dismisses the claims of those not named in the Master Complaints. There is no legal basis for the dismissal of Plaintiffs claims upon the filing of the Master Complaints. As explained in the accompanying memorandum of law, the filing of a Master Complaint can only become the “operative” complaint for those named in the Master Complaint. By joining the consolidated pleading, those named in the Master Complaint thereby consent to an amendment of their pleadings, and accordingly their joint filing of a Master Complaint can be said to “supercede” their earlier pleadings, just as would be the case for any party amending earlier pleadings. But the Master Complaints cannot become the operative pleadings for parties not named in the complaint, and cannot “supercede” their complaints without violating the bedrock principle of the law of consolidation, that is, that the procedure cannot work to affect the substantive rights of the parties, nor to merge their separate lawsuits into a single action.

Order 29 appears to envision that the eventual effect of the present “dismissal without prejudice” would be a “dismissal with prejudice” for any parties or claims that Lead Counsel decide not to include in amendments to the Master Complaints to be made by June 4, 2014. Plaintiffs’ due process rights to access to a judicial forum may not be subject to the discretion of fellow Plaintiffs’ counsel in this fashion, particularly in light of the fact that no class has been certified or may ever be certified in this action.

While dismissal without prejudice under FRCP 41(b) is discretionary, the wholesale and indiscriminate dismissal of the claims of parties not named in the Master Complaints is groundless. Such involuntary dismissal is usually exercised as a sanction for those who have failed to prosecute their claims or who have violated court orders, but Plaintiffs have committed no such wrongdoing. The dismissal of lawsuits consolidated here by Order of the JPML is also



Momoh Kanu, Tynesia Mitchell, Dierra  
Thomas and James Tibbs