UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

)THIS DOCUMENT RELATES TO:)Elliott, et al. v.. General Motors LLC, et al.)1:14-cv-7782-JMF)Sesay et al. v. General Motors LLC et al.,)1:14-cv-0618-JMF, and)Bledsoe et al. v. General Motors LLC,)1:14-cv-7631-JMF

MDL NO. 2543 1:14-md-2543 (JMF)

HON. JESSE M. FURMAN

Fed. R. Civ. Pro. 41(b); and 42; Local Rule 6.3; 28 U.S.C. §1407

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,¹ Ishmail Sesay, Joanne Yearwood,² Paul Fordham, Momoh Kanu,

Tynesia Mitchell, Dierra Thomas, and James Tibbs³ (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.

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

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

³ 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).

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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

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inconsistent with the Court's obligations as a transferee court in a multidistrict proceeding to conduct pretrial proceedings and then to remand cases back to transferor courts for ultimate disposition, particularly in light of that Panel's enlargement of the terms of its original consolidation and transfer order to include a wide range of alleged hazards beyond the ignition switch hazard that first gave rise to these proceedings and that are the primary focus of the Master Complaints.

Certain Plaintiffs request that the Court reinstate their claims and consider one of the many other alternatives that sister Courts have utilized in consolidated proceedings for streamlining these proceedings and for avoiding duplicative litigation.

In the event the Court declines certain Plaintiffs' motion for reconsideration of Order No. 29, they object pursuant to the Order to the dismissal of the claims because they assert meritorious claims that are not asserted in the Master Complaints, as detailed in the the objections filed contemporaneously.

This motion and objection is based on this notice, the concurrently filed objections and memorandum of law and filed in support, and court files for the above captioned actions

Dated: January 2, 2014

Respectfully submitted,

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Momoh Kanu, Tynesia Mitchell, Dierra Thomas and James Tibbs