

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DANNY HARRISON, et al.,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

Civil No. 2:21-cv-12927

Hon. Laurie J. Michelson

Magistrate Judge Anthony P. Patti

JOINT RULE 26(f) REPORT

I. BACKGROUND OF THE ACTION

Named plaintiffs in this case bring a putative class action (“Action”) against Defendant General Motors LLC (“GM”) based on an allegedly defective valve-train system. Plaintiffs allege that this defect is present in any 2014-2021 Buick, Cadillac, Chevrolet, or GMC Vehicle equipped with a 5.3L, 6.0L, or 6.2L V8 engine (the “Class Vehicles”). Plaintiffs’ Second Amended Class Action Complaint (“SAC”) asserts approximately 82 claims, including claims for breach of express warranty, breach of implied warranty of merchantability, unjust enrichment, common law fraud by omission/fraudulent concealment, violations of the Magnuson-Moss Warranty Act, and violations of consumer protection laws. *See* ECF No. 48. GM denies the allegations in Plaintiffs’ SAC and specifically denies that the Class Vehicles have a singular “valve train defect.”

On January 19, 2023, the Court granted in part and denied in part GM's motion to dismiss Plaintiffs' First Amended Complaint, *see* ECF No. 44, and GM's motion to compel arbitration, ECF No. 45. The Court dismissed all of Plaintiffs' unjust enrichment claims and upheld all of Plaintiffs' fraud by omission claims (except for Plaintiff Mouradjian). The remaining claims were either upheld or dismissed based on Plaintiff-specific allegations of the law in a given state. None of the Plaintiffs at issue in the motion to dismiss opinion, who reside in 13 different states, were dismissed entirely. The Court also compelled 17 Plaintiffs' claims to arbitration, staying those claims for the time being. ECF No. 45. Plaintiffs filed the SAC on March 9, 2023. ECF No. 48.

This report reflects the Parties' discussions at the Rule 26(f) conference, which took place on February 27, 2023, with a follow-up call taking place on March 24, 2023. Given the Parties' differing views on how this case should proceed, the Parties respectfully request a Scheduling Conference with the Court.

II. PRINCIPAL FACTUAL AND LEGAL ISSUES FOR BOTH SIDES

A. Plaintiffs' Statement

Plaintiffs' remaining claims are detailed in the Court's chart at the end of its Opinion and Order Granting in Part GM's Motion to Dismiss. *See* ECF No. 44, PageID.5433-5434.

Plaintiffs allege that GM manufactured, marketed, distributed, and sold the Class Vehicles without disclosing that the Class Vehicles' valve train systems were defective in design, workmanship and/or material. The defect results in engine noises and subsequent misfiring of the engines as valves fail to open and close at the appropriate times. This causes the Class Vehicles to stall, surge, or lose power while driving. The Court provides a summary of the factual background of Plaintiffs' claims in the motion to dismiss opinion. *See* ECF No. 44, PageID.5370-5374.

Plaintiffs are cognizant of the Court's concern as to the breadth of this case. *See* ECF No. 44, PageID.5369 ("In what is a borderline unwieldy single lawsuit, [Plaintiffs] bring a host of claims . . ."); PageID.5432 ("The Court is concerned that discovery will be unmanageable if Plaintiffs litigate a general valve-train defect in one case."). In order to efficiently proceed with the prosecution of this case and avoid the expenditure of unnecessary time and resources by the Court and the Parties, Plaintiffs propose that the Court adopt Plaintiffs' proposal below as to "Focused Discovery," in addition to utilizing bellwether states through class certification, summary judgment, and trial.

Plaintiffs believe that discovery is likely to show the existence of a single Valve Train Defect that affects multiple components of the valve train system, including lifters, rocker arms and valve springs. However, given the Court's direction to propose efficient ways to conduct discovery, Plaintiffs propose that full

discovery proceed on the lifters only, including its closely connected components which are the engine block in which the lifters sit, the valve lifter oil manifold which directs the lifters to de-activate, the pushrods which touch the lifters, and the camshaft which often is damaged by lifter failure (collectively, the “lifter components”). These lifter components are clearly identifiable and defects in them can manifest as symptoms like those experienced by the named Plaintiffs. In fact, as shown in the FAC, nearly every Plaintiff experienced a malfunction of their lifters. While full discovery on the lifter components is ongoing, the Parties will only proceed on limited, narrow discovery related to the rocker arms and valve springs and other related components of the valve train.¹ However, if a search for responsive documents related to the lifter components results in the identification of documents related to both the lifter components and other valve train components, including rocker arms and valve springs, those documents should be produced and not withheld on the basis of any relevancy objection. Plaintiffs refer to this proposal (full discovery on lifter components and narrow, limited discovery on the other valve

¹ The narrow, limited discovery on the rocker arms and valve springs and other valve train components shall consist of the production of: (1) the vehicle package for each Plaintiff’s Class Vehicle; (2) the Technical Service Bulletins (TSBs) identified in the FAC; and (3) to the extent the TSBs identified in the FAC resulted from an investigation conducted by GM, GM’s investigation file associated with each TSB; (4) any communications with a government agency, such as NHTSA, related to the valve train system; (5) the technical drawings and specifications of the valve train system and its components; (6) Safety & Field Action Reports related to the valve train system; (7) and a Rule 30(b)(6) deposition of GM as it concerns the valve train system.

train components) as “Focused Discovery.” Plaintiffs propose that after the Focused Discovery takes place, the Court and the Parties participate in a status conference to discuss (with the benefit of prior discovery and expert analysis) whether any of the Plaintiffs or Plaintiffs’ claims should be severed.

The implementation of a bellwether process would also support efficiency and manageability of this case. While the Parties would be allowed to conduct discovery on all Plaintiffs and claims included in the case, the class certification and summary judgment briefing could be limited to a small number of Plaintiffs, states, and claims agreed to by the Parties, and ordered by the Court. A decision on that subset would likely be informative as to the remaining states.

Defendant’s proposal of doing “phase discovery,” which would essentially prevent Plaintiffs from obtaining the critical information in the possession of GM (including any ESI documents or communications from FCA employees), will not only fail to address the Court’s concern, but it will also unnecessarily delay the case. GM’s proposal suggests that the Court make a determination on severability and the root cause of the defect before Plaintiffs have had a chance to analyze GM’s internal documents, conduct depositions of GM employees, or provide expert analysis as to the precise nature of the Defect. This is not an efficient path forward.

B. Defendant's Statement

GM denies the allegations in Plaintiffs' SAC and specifically denies that the putative class vehicles have a singular "valve train defect," as Plaintiffs allege. GM also disputes that Plaintiffs in this case have viable claims or are entitled to any damages from GM.

As set forth in GM's motion to dismiss, the FAC makes clear that what Plaintiffs allege is actually, at most, a series of separate issues, some of which affect only a small subset of Plaintiffs' proposed class, not a singular "defect." Given that the SAC is substantially similar to the FAC with the exception of a few additional Plaintiffs and claims, the SAC does not correct this issue. Moreover, it is not clear from the allegations in Plaintiffs' FAC or SAC which issue (if any) each Plaintiff has allegedly experienced or which Plaintiffs (if any) have standing to assert claims relating to each issue. And GM shares the Court's concern "that discovery will be unmanageable if Plaintiffs litigate a general valve-train defect in one case." ECF No. 44, PageID.5432.

Plaintiffs have proposed what they call "focused discovery," which they initially describe as "full discovery on the lifters only," but then state it would include other "closely connected components," including (but not necessarily limited to) the engine block, the valve lifter oil manifold, the pushrods, and the camshaft. Although Plaintiffs call these parts the "lifter components," in actuality

they are separate parts of a vehicle’s internal combustion engine—not “components” of the lifters. Similarly, Plaintiffs propose that GM would produce “any communications with a government agency ... related to the valve train system,” technical drawings and specifications “of the valve train system and its components,” safety and field action reports “related to the valve train system,” and a Fed. R. Civ. P. 30(b)(6) deponent to testify about the “valve train system.” Thus, while Plaintiffs call their proposal “focused discovery,” it appears that in actuality they are seeking discovery on the entire “valve train system”—the precise concern the Court raised in its order on GM’s motion to dismiss. And because Plaintiffs envision extensive discovery of ESI, including custodial e-mail searches during this initial phase of discovery, Plaintiffs’ proposal does not adequately address the Court’s and GM’s concerns about the manageability of discovery and the extensive burdens that it would entail.²

² Plaintiffs have also proposed a “bellwether” process in which “the class certification and summary judgment briefing could be limited to a small number of Plaintiffs, states, and claims,” even though “the Parties would be allowed to conduct discovery on all Plaintiffs and claims included in the case.” But utilizing a bellwether process does not address the Court’s (and GM’s) fundamental concern about litigating claims relating to different issues in the same case, nor would it make discovery any more manageable. Indeed, as another judge in this district has previously recognized, “it would be irrational to order a bellwether proceeding if discovery ... for all other Plaintiffs were to continue at the same time.” *Grundy v. FCA US LLC*, No. 2:20-cv-11231, 2021 WL 5485821, at *2 (E.D. Mich. Nov. 22, 2021). Moreover, the “bellwether” process Plaintiffs have proposed appears to be primarily intended to short-circuit their path to class certification, which is inconsistent with the requirements of Fed. R. Civ. P. 23 and would be unfair to GM. *See id.* (rejecting bellwether proposal in class action with 24 plaintiffs in part because

To address the Court’s concerns about the manageability of discovery, GM proposes that fact discovery proceed in two phases, as set forth in more detail below. Under GM’s proposal, Phase 1 of fact discovery is intended to determine whether the claims of the various named Plaintiffs are properly joined. With that in mind, the focus of Phase 1 will be on identifying the basis for each Plaintiff’s claim, including which specific alleged defect each of the named Plaintiffs has experienced and whether that alleged defect is sufficiently distinct from the problems alleged by the other named Plaintiffs to make joinder improper. The specific discovery to be undertaken by the Parties in this phase is detailed below in section IV.C.4. At the conclusion of Phase 1, the Parties will meet and confer about which Plaintiffs and claims are properly joined in this case. If the Parties are unable to reach agreement, they will submit briefs to the Court to determine this issue. Phase 2 will focus on additional discovery from GM on the specific alleged defect(s) that the Plaintiffs who remain in the case have allegedly experienced and any additional discovery from the remaining Plaintiffs that is not completed in Phase 1.

“fairness” would require resolution of the claims brought by non-bellwether plaintiffs and observing that “[b]ellwether procedures are better suited for much larger classes and more uncertain fact and legal issues,” whereas “Rule 23 class action procedures are well suited to ferret out the merits of the relatively low number of claims here”).

III. PRETRIAL SCHEDULE

A. Plaintiff's Proposed Schedule.

EVENT	DEADLINE
Initial disclosures	14 days following the Scheduling Conference
Substantial completion of production of documents on Focused Discovery	July 31, 2023
Status Conference on Focused Discovery and Severability ³	December 2023
Substantial completion of production of documents on remaining discovery ⁴	February 29, 2024
Submissions on selections of bellwether states for class certification and summary judgment purposes	March 29, 2024
Plaintiffs' initial disclosure of class certification expert reports	April 30, 2024
Defendant's disclosure of class certification expert reports	June 11, 2024
Plaintiffs' rebuttal expert reports under Fed. R. Civ. P. 26(a)(2)(D)(ii) (if any)	July 9, 2024
Plaintiffs' motion for class certification	July 30, 2024
<ul style="list-style-type: none"> • Defendant's opposition to motion for class certification; • Any motion(s) to exclude class certification experts 	September 10, 2024

³ Plaintiffs would propose that the Parties submit a joint (or competing) submission in advance of the status conference as to whether severing any Plaintiffs or claims is necessary based on the discovery and expert analysis conducted as of that date.

⁴ The nature of this deadline is subject to change depending on the outcome of the status conference.

EVENT	DEADLINE
<ul style="list-style-type: none"> Plaintiffs' reply in support of their motion for class certification; Opposition(s) to motion(s) to exclude class certification experts 	October 8, 2024
<ul style="list-style-type: none"> Replies in support of motion(s) to exclude class certification experts 	October 29, 2024
Fact Discovery cutoff	November 29, 2024
Expert Discovery cutoff	December 31, 2024
Remaining schedule	Plaintiffs agree with GM that the remaining schedule should be determined after the Court issues a decision on class certification and after a status conference for the Parties and the Court to confer on a schedule, including dispositive motion deadlines, deadlines for <i>Daubert</i> motions related to merits issues, and the scope and length of trial.

B. GM's Proposed Schedule

EVENT	<u>DEADLINE</u>
Start of discovery	Upon entry of the Scheduling Order by the Court
Deadline for Parties to Serve Limited Initial Disclosures (<i>see, infra</i> , sec. IV.B.2)	14 days after entry of the Scheduling Order by the Court

End of Phase 1 of Fact Discovery ⁵	September 29, 2023
Deadline for Parties to Submit Joint Status Report to Court Following Conclusion of Phase 1 of Fact Discovery	October 20, 2023
Mediation Deadline	November 17, 2023
End of Phase 2 of Fact Discovery ⁶	TBD (6 months after Court's ruling on proper scope of case following conclusion of Phase 1 of fact discovery)
Deadline for Plaintiffs to Identify Experts and Serve Expert Reports in Support of Class Certification	TBD (2 months after end of Phase 2 of fact discovery)
Deadline for GM to Identify Experts and Serve Expert Reports in Opposition to Class Certification	TBD (2 months after Plaintiffs' expert disclosures)
Close of Expert Discovery Relating to Class Certification	TBD (2 months after GM's expert disclosures)
Deadline for Plaintiffs to file Motion for Class Certification	TBD (6 weeks after close of expert discovery relating to class certification)

⁵ Plaintiffs have proposed a deadline for substantial completion of document production on “focused discovery” of July 31, 2023. GM believes that it is premature to set a deadline for substantial completion of document production, given that the Parties have not yet served requests for production. Moreover, given the breadth of discovery that Plaintiffs have proposed during what they call “focused discovery,” GM does not believe that a July 31, 2023 deadline for substantial completion of document production is realistic.

⁶ GM believes that fact discovery should end before briefing on class certification takes place, as it would not promote an efficient resolution of this case for fact discovery to continue while class certification briefing is ongoing. To the extent the Parties desire to conduct additional discovery following the Court's ruling on Plaintiffs' motion for class certification, the Parties can address that issue during the status conference that follows the Court's ruling on class certification.

<p>Deadline for:</p> <ul style="list-style-type: none"> • GM’s Opposition to Plaintiffs’ Motion for Class Certification • GM’s <i>Daubert</i> Motion(s) re: Plaintiffs’ Class Certification Experts 	<p>TBD (6 weeks after deadline for Plaintiffs to file motion for class certification)</p>
<p>Deadline for:</p> <ul style="list-style-type: none"> • Plaintiffs’ Reply Brief in Support of Class Certification • Plaintiffs’ Opposition to GM’s <i>Daubert</i> Motion(s) re: Plaintiffs’ Class Certification Experts • Plaintiffs’ <i>Daubert</i> Motion(s) re: GM’s Class Certification Experts 	<p>TBD (4 weeks after deadline for GM’s opposition to Plaintiffs’ motion for class certification)</p>
<p>Deadline for:</p> <ul style="list-style-type: none"> • GM’s Reply Briefs in Support of <i>Daubert</i> Motions re: Plaintiffs’ Class Certification Experts • GM’s Oppositions to Plaintiffs’ <i>Daubert</i> Motions re: GM’s Class Certification Experts 	<p>TBD (3 weeks after deadline for Plaintiffs’ reply brief in support of class certification)</p>
<p>Deadline for:</p> <ul style="list-style-type: none"> • Plaintiffs’ Reply Briefs in Support of <i>Daubert</i> Motions re: GM’s Class Certification Experts 	<p>TBD (3 weeks after deadline for GM’s oppositions to Plaintiffs’ <i>Daubert</i> motions re: GM’s class certification experts)</p>
<p>Hearing on Plaintiffs’ Motion for Class Certification/Parties’ <i>Daubert</i> Motions re: Class Certification Experts</p>	<p>TBD</p>

Remaining schedule	To be determined after the Court issues a decision on class certification. GM proposes that the Court set a status conference soon after the decision is rendered on class certification so the Parties and the Court can confer on a schedule, including dispositive motion deadlines, deadlines for <i>Daubert</i> motion related to merits issues, and the scope and length of trial.
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IV. DISCOVERY PLAN

A. Service

The Parties agree that all discovery requests and written responses and objections shall be served by email and that, for purposes of calculating the deadline to respond, email service will be treated the same as hand-delivery. Any discovery request, response to discovery, pleading or other document that is not required to be electronically filed with the Court shall be served on all other Parties by email. Notwithstanding the foregoing, to the extent service by email is impractical, the Parties agree to serve the discovery request, response to discovery, pleading or other document by file-transfer-protocol (FTP) or other secure electronic means.

B. Rule 26(a)(1) Initial Disclosures

1. Plaintiffs' Position.

The Parties will exchange their Rule 26(a)(1) initial disclosures as to the Focused Discovery within fourteen (14) days after the Court's scheduled Rule 16

Conference. Any delay in exchanging initial disclosures will only hamper the progress of this case and inhibits the exchange of information discovery is meant to accomplish.

2. Defendant's Position.

GM is willing to serve initial disclosures within 14 days of the entry of a Scheduling Order, but requests that such disclosures be limited to the subject of whether the claims of each Plaintiff are properly joined in the same case, consistent with GM's proposed Phase 1 of fact discovery detailed in this report. That is, GM proposes that initial disclosures be limited to the names of "each individual likely to have discoverable information" and the categories of "documents, electronically stored information, and tangible things that [GM] has in its possession, custody, or control" that are relevant to determining whether the alleged issues that are the subject of Plaintiffs' complaint are a singular "valve train defect" or are distinct issues. Given the significant questions about the proper scope of this case, GM believes that initial disclosures as to the full scope of the allegations in Plaintiffs' SAC would be premature.

C. Subjects on Which Discovery May Be Needed and Timing/Phasing of Discovery

In accordance with Rule 26(f)(3)(B), the Parties have conferred regarding the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on

particular issues. The Parties' respective positions on these issues are set forth in this report.

In terms of the discovery that each side believes it needs, the Parties' proposals on these issues are set forth below. Each side reserves all their arguments regarding relevance, proportionality, burden, privilege, admissibility, and all other objections with respect to the other side's proposal.

3. Plaintiffs

Subject to any future case developments, Plaintiffs plan to conduct discovery regarding, *inter alia*, (a) GM's design, testing, manufacturing, advertising, marketing, and research and development regarding the Class Vehicles and their valve train systems; (b) warranty issues pertaining to the alleged defect; (c) repair costs; (d) investigations into the defect; (e) representations made to consumers, manufacturers, and the government regarding the Class Vehicles; and (f) GM's knowledge of the alleged defect and its manifestation in the field in Class Vehicles and non-currently-named Class Vehicles, as well as GM's records and internal investigation documents and communications related thereto. Plaintiffs anticipate the need to seek discovery from third party suppliers as well.

As explained above, Plaintiffs propose that the initial period of time in discovery be considered "Focused Discovery," wherein Plaintiffs will seek full discovery on the lifter components of the valve train systems and limited discovery

on the rocker arms and valve springs and other related components of the valve train. This limited discovery on the other components of the valve train system (which Plaintiffs currently believe are related to the same defect as the lifter components) will be limited to: (1) the vehicle package for each Plaintiff's Class Vehicle; (2) the Technical Service Bulletins (TSBs) identified in the FAC; and (3) to the extent the TSBs identified in the FAC resulted from an investigation conducted by GM, GM's investigation file associated with each TSB; (4) any communications with a government agency, such as NHTSA, related to the valve train system; (5) the technical drawings and specifications of the valve train system; (6) and a Rule 30(b)(6) deposition of GM as it concerns the valve train system. The Court, with the input of the Parties, will determine at the proposed status conference at the midpoint of discovery, whether full discovery should proceed on the remaining components or whether any claims should be severed.

4. Defendant

GM anticipates seeking discovery on at least the following issues: (a) Plaintiffs' alleged defect theory/theories; (b) the use, operation, maintenance, and ownership history of Plaintiffs' vehicles, including all drivers of the vehicles; (c) Plaintiffs' familiarity with the warranty/warranties applicable to their vehicles; (d) other issues concerning Plaintiffs' vehicles, including circumstances surrounding purchase or lease, how they are maintained, where they are driven, and the like; (e)

expert discovery; (f) third-party discovery, including discovery of persons or entities to whom Plaintiffs' vehicles were brought for inspection and/or servicing, including third party repair shops; (g) inspections of Plaintiffs' vehicles, including the engines/valve train systems; (h) other relevant facts relating to Rule 23 factors (such as alleged out-of-pocket expenses Plaintiffs incurred); and, potentially, (i) discovery from a limited number of unnamed class members. GM reserves the right to seek discovery on additional issues as the case progresses.

As noted above, GM believes that fact discovery should proceed in two phases. Phase 1 will focus on identifying the basis for each Plaintiff's claim and which specific alleged defect each of the named Plaintiffs has experienced and on limited discovery from GM showing that the issues alleged in Plaintiffs' FAC are, in fact, distinct issues.

To streamline this process, GM proposes that Plaintiffs agree to produce the following categories of documents in Phase 1:

(1) Documents relating to each Plaintiff's purchase and/or sale of his/her Class Vehicle, including the purchase agreement and any advertisements/representations which the Plaintiff considered or relied on in deciding to purchase the Class Vehicle;

(2) Service records and repair orders reflecting any complaints about or repairs made to each Plaintiff's Class Vehicle;

(3) Documents reflecting any diagnosis or analysis of any valve train issue each Plaintiff allegedly experienced with his/her Class Vehicle;

(4) Documents reflecting communications between any Plaintiff and/or GM, any GM authorized dealer, or any third-party concerning each Plaintiff's Class Vehicle and/or the valve train issue each Plaintiff allegedly experienced; and

(5) Documents supporting any Plaintiff's claimed damages, including but not limited to out-of-pocket expenses.

Similarly, GM will agree to produce the following categories of documents in Phase 1:

(1) The vehicle package for each Plaintiff's Class Vehicle;

(2) Documents reflecting communications between Plaintiffs and GM relating to each Plaintiff's Class Vehicle;

(3) The Technical Service Bulletins (TSBs) identified in the SAC;

(4) To the extent the TSBs identified in the SAC resulted from an investigation conducted by GM, GM's investigation file associated with each TSB; and

(5) To the extent GM communicated with NHTSA about the TSBs identified in the SAC, GM's communications with NHTSA concerning each TSB.

During Phase 1, neither Plaintiffs nor GM will be required to conduct custodial searches of electronically stored information such as e-mails. Instead,

document production will be limited to the topics described above, unless otherwise agreed to by the parties or ordered by the Court.

In addition to the document production described above, each Plaintiff will agree to make his/her Class Vehicle available for inspection during Phase 1, pursuant to the terms of an inspection protocol to be negotiated by the Parties and entered by the Court. Additionally, GM shall be entitled to depose each of the named Plaintiffs, and Plaintiffs shall be entitled to conduct a Fed. R. Civ. P. 30(b)(6) deposition of GM on topics that are within the scope described above (*i.e.* topics that are relevant to whether the issues that are alleged in the SAC are a singular “Valve Train Defect,” as Plaintiffs allege, or are distinct issues).

Following Phase 1, the Parties will meet and confer on which Plaintiffs and claims are properly joined in this case. If the Parties are unable to agree, they will submit this issue to the Court for determination.

Phase 2 of fact discovery will focus on additional discovery from GM on the specific alleged defect(s) that the Plaintiffs who remain in the case have allegedly experienced, and any additional discovery from the remaining Plaintiffs that is not completed in Phase 1. During Phase 2, the Parties will meet and confer regarding the discovery of additional electronically stored information, including the possibility of using search terms and custodians to identify responsive documents.

Following the conclusion of the two phases of fact discovery described above, GM proposes that the Parties will engage in expert discovery, followed by class certification briefing.

D. Documents and Electronically Stored Information (“ESI”)

1. Plaintiffs’ Position.

Plaintiffs believe that an ESI Protocol should be negotiated and entered in the near future, as is common in other automotive defect class actions in this District. There is no reason to delay this submission and the entry of the Protocol will ensure that no future document productions are withheld or delayed on the lack of a Protocol. Plaintiffs ask that the Court set a deadline of March 31, 2023 for the submission of a joint (or competing) ESI Protocol.

2. Defendant’s Position.

Given the limited scope of discovery in GM’s proposed Phase 1 of discovery, GM does not believe that entry of an ESI protocol is necessary at this time. GM proposes that the parties meet and confer concerning an ESI protocol at the beginning of GM’s proposed Phase 2 of discovery.

E. Claims of Privilege and Work Product Protection

With regard to Rule 26(f)(3)(D)’s requirement that the Parties discuss claims of privilege or work product protection, the Parties agree that any party that withholds or redacts a document, in whole or in part, based on a claim of privilege

or work product protection, will follow an agreed procedure. The Parties agree to submit a joint proposed Protective Order/Rule 502(d) to the Court as soon as is practicable and highlight any outstanding disputes there may be in that regard for the Court's review.

F. Changes to Limitations on Discovery

The Parties agree that, without the need for a Court order, they may negotiate and agree to reasonable extensions of discovery-related deadlines, so long as such extensions do not alter any deadlines set by any scheduling order entered by the Court. Except as set forth in this report, the parties do not believe that any additional limitations on discovery are necessary at this time.

V. DISCOVERY DISPUTES

The Parties anticipate that discovery disputes will arise, but will work in good faith to resolve them to avoid the need for judicial intervention. At present, the Parties have no discovery-related disputes other than as set forth in this report.

VI. ANTICIPATED MOTIONS (INCLUDING DISPOSITIVE MOTIONS)

As set forth above, the Parties anticipate filing motions for the entry of a Protective Order/Rule 502(d) Order and an ESI Protocol, though the Parties disagree as to the timing of an ESI protocol as set forth above.

Plaintiffs anticipate filing a motion for class certification, *Daubert* motions related to Defendant's proffered experts, and may file motions for summary judgment on select issues.

GM anticipates filing motions for summary judgment as to all or some Plaintiffs and claims and *Daubert* motions related to Plaintiffs' proffered experts. GM reserves the right to file additional motions as necessary as the case progresses.

VII. SUBJECT MATTER JURISDICTION

Plaintiffs assert that this Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 & 1332.

VIII. RELATIONSHIP TO OTHER CASES

The Parties are not aware of any other similar or related cases.

IX. AMENDMENTS TO PLEADINGS

Plaintiffs filed the SAC on March 9, 2023 (ECF No. 48). The deadline for GM to answer the SAC is set forth in the Court's February 1, 2023 Stipulated Order Setting Deadlines Associated with Plaintiffs' Second Amended Class Action Complaint (ECF No. 46). At this time, the Parties do not anticipate further amendments to the pleadings.

X. SETTLEMENT AND ADR

A. Plaintiffs' Position.

Plaintiffs are willing to engage in settlement discussions or mediation if Defendant is willing to provide meaningful, classwide relief with significant relevant discovery provided in advance of that mediation. If that type of relief is not being offered, Plaintiffs do not believe a mediation would be worthwhile or effective.

B. Defendant's Position.

Given that Plaintiffs' claims are premised on the existence of a singular "valve train defect," which GM contends does not exist, exploring settlement at this stage would not be productive. However, GM believes that it would be worthwhile to explore the possibility of settlement once the Parties have completed the limited discovery contemplated by GM's proposed Phase 1. GM believes that this limited discovery will show that the issues alleged in the SAC are not properly joined in the same case and that narrowing the scope of this case may provide a framework within which the parties can discuss a potential resolution. Accordingly, GM has proposed a mediation deadline following the conclusion of GM's proposed Phase 1 of fact discovery.

XI. PROGRESS OF DISCOVERY

The Parties intend to negotiate confidentiality, ESI, and privilege protocols, as well as a protocol for the inspection of the named Plaintiffs' vehicles. The Parties

intend to meet and confer further to discuss sources of ESI and search and deposition protocols. As set forth above, however, the Parties disagree as to timing of the entry of an ESI protocol and whether custodial searches of ESI are appropriate during the initial phase of fact discovery.

XII. CONSENT TO MAGISTRATE

Pursuant to Paragraph 9 of this Court's Sample Order to Attend Scheduling Conference and Notice of Requirements for Submission of Discovery Plan, the Parties do not consent to the jurisdiction of a United States Magistrate Judge as provided in 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73.

XIII. ESTIMATED TRIAL LENGTH

A. Plaintiffs' Position.

Although this case is in its early stages, the Parties estimate (subject to future revision as discovery proceeds) that the trial will last approximately three weeks.

B. Defendant's Position.

Given the significant questions regarding the proper scope of this case, it is premature to estimate the length of trial at this time.

Dated: April 4, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2023, I caused a true and correct copy of the foregoing to be filed and served electronically via the ECF system, which served all counsel of record.

/s/ Dennis A. Lienhardt
Dennis A. Lienhardt (P81118)