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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

Gregory L. Mehlman, on behalf of himself
and the general public,

Plaintiff,

vs.

General Motors LLC, and DOES 1 through
10, inclusive,

Defendants.

Case No. **RG19013705**

**COMPLAINT FOR PUBLIC
INJUNCTIVE RELIEF**

**COMPLAINT FOR VIOLATIONS OF
CALIFORNIA BUSINESS AND
PROFESSIONS CODE
SECTION 17200 et seq.**

FILED
ALAMEDA COUNTY
APR 04 2018
CLERK OF THE SUPERIOR COURT
By Zaher
Deputy

1 Plaintiff Gregory L. Mehlman ("Plaintiff") brings this action against Defendant General
2 Motors LLC ("Defendant" or "GM") for public injunctive relief, pursuant to California's Unfair
3 Competition Law (*Cal. Bus. & Prof. Code* section 17200 *et seq.*), upon information and belief,
4 except as to his own actions, the investigation of his counsel, and the facts that are a matter of
5 public record, as follows:

6 INTRODUCTION

7 1. Forget the engine or the shiny rims. Connected vehicles have become the next
8 big thing for the automotive industry.

9 2. According to a study by McKinsey & Company, by 2020 automakers will be
10 able to make more money selling vehicle data than by selling the cars themselves, and by 2030,
11 the market for in-vehicle connectivity worldwide is expected to reach \$750 *billion*.

12 3. In their desire to monetize vehicle data, car makers, including Defendant General
13 Motors LLC ("GM"), have turned on a powerful spigot of precious personal information
14 without compensating consumers. Consumers deserve, and are legally entitled, to participate in
15 the commercialization of their own car data.

16 4. Further, car makers, including Defendant, have accessed car owners' vehicle
17 information without permission in violation of California's Computer Data Access and Fraud
18 Act, *Cal. Pen. Code* section 502 ("CDAFA").

19 5. By this action, Plaintiff seeks, *inter alia*, to compel Defendant to establish a
20 framework for compensating drivers for Defendant's use of their car data and/or to compensate
21 current and future GM car owners for the use of their car data (for example, by offering buyers
22 financial incentives for the collection and use of vehicle data, lower monthly lease payments or
23 discounted pricing or rebates, direct free features or services, or by otherwise subsidizing the
24 cost of the car).

25 6. Plaintiff, also seeks, *inter alia*, to enjoin Defendant's unauthorized access and
26 use of drivers' vehicle data.

27 7. Car data is worth money. Car manufacturers are not entitled to use it for free and
28 without full and adequate disclosures at the point of sale.

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JURISDICTION AND VENUE

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8. This Court has original jurisdiction over all causes of action asserted herein because Plaintiff's claim arise out of Defendant's conduct within the State of California and Defendant conducts business within the State of California.

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9. Venue is proper in this Court because California Code of Civil Procedure §§395 and 395.5, and case law interpreting those sections, provide that if a foreign business entity fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county in the State that plaintiff desires. On information and belief, Defendant General Motors LLC is a foreign business entity, and has failed to designate a principal place of business in California with the office of the Secretary of State as of the date this Complaint was filed.

PARTIES

10. Plaintiff Gregory L. Mehlman ("Plaintiff") is, and at all times relevant hereto has been, a resident and citizen of the state of California.

11. Plaintiff leased a 2018 Chevrolet Bolt EV from Community Chevrolet Company in Burbank, California, on August 12, 2018.

12. Defendant General Motors LLC is a Delaware limited liability company with its principal place of business located at 300 Renaissance Center, Detroit, Michigan. General Motors LLC is registered to do business in the State of California. The sole member and owner of General Motors LLC is General Motors Holding LLC. General Motors Holding LLC is a Delaware limited liability company with its principal place of business in the State of Michigan. General Motors Holdings LLC's only member is General Motors Company, a Delaware corporation with its principal place of business in the State of Michigan. General Motors Company has 100% ownership interest in General Motors Holding LLC. General Motors LLC, through its various entities, designs, manufactures, markets, distributes, services, repairs, sells, and leases passenger vehicles, nationwide and in California. General Motors LLC's core automobile brands include Chevrolet, Buick, GMC and Cadillac.

1 13. The true names and capacities of Defendants sued in this Complaint as Does 1
2 through 10, inclusive, are currently unknown to Plaintiff, and therefore Plaintiff sues such
3 Defendants by such fictitious names. Plaintiff will amend this Complaint to reflect the true
4 names and capacities of the Defendants designated herein as Does 1 through 10, when they have
5 been ascertained, along with the appropriate charging allegations, as may be necessary.

6 14. Plaintiff is informed and believes, and on that basis alleges, that each of the
7 fictitiously named Defendants was in some manner legally responsible for the actionable and
8 unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to
9 set forth the true names and capacities of said Defendants, along with the appropriate charging
10 allegations, when the same have been ascertained. Each reference in this Complaint to “GM” or
11 “Defendant” is also a reference to all Defendants sued as Does 1 through 10.

12 **PUBLIC INJUNCTIVE RELIEF ALLEGATIONS**

13 15. The UCL provides for public injunctive relief. *McGill v. City Bank, N.A.*, 2 Cal.
14 5th 945, 961 (2017) (“public injunctive relief remains a remedy available to private plaintiffs
15 under the UCL” even when there is an arbitration provision and without complying with the
16 procedural requirements of a class action). Under *McGill*, any consumer who loses money or
17 property as a result of an unfair business practice may seek public injunctive relief to prohibit
18 unlawful acts that threaten future injury to the public without the need to certify a class.

19 16. As further alleged in detail below, Plaintiff, who has lost money or property as a
20 result of Defendant’s unfair business practice, seeks to prohibit ongoing unlawful acts that
21 threaten future injury to the car buying public at large.

22 17. Plaintiff reserves the right to expand, limit, modify, or amend these allegations at
23 any time, based upon, *inter alia*, changing circumstances and/or new facts obtained during
24 discovery.

25 **CAR COMPANIES ARE MONETIZING VEHICLE DATA**

26 18. Nothing is driving the acquisition of car data faster than, well, driving. The
27 average modern-day car can contain 100 million lines of code (more than a space shuttle).
28 Connected vehicles can monitor, collect and transmit information about their external and

1 internal environment. The types of data generated by modern vehicles include sensitive
2 categories like location, biometric and behavioral information.

3 19. And while acquisition of car data used to require physical access to a vehicle,
4 today's cars have built in connectivity that can transmit information outside of the vehicle
5 seamlessly.

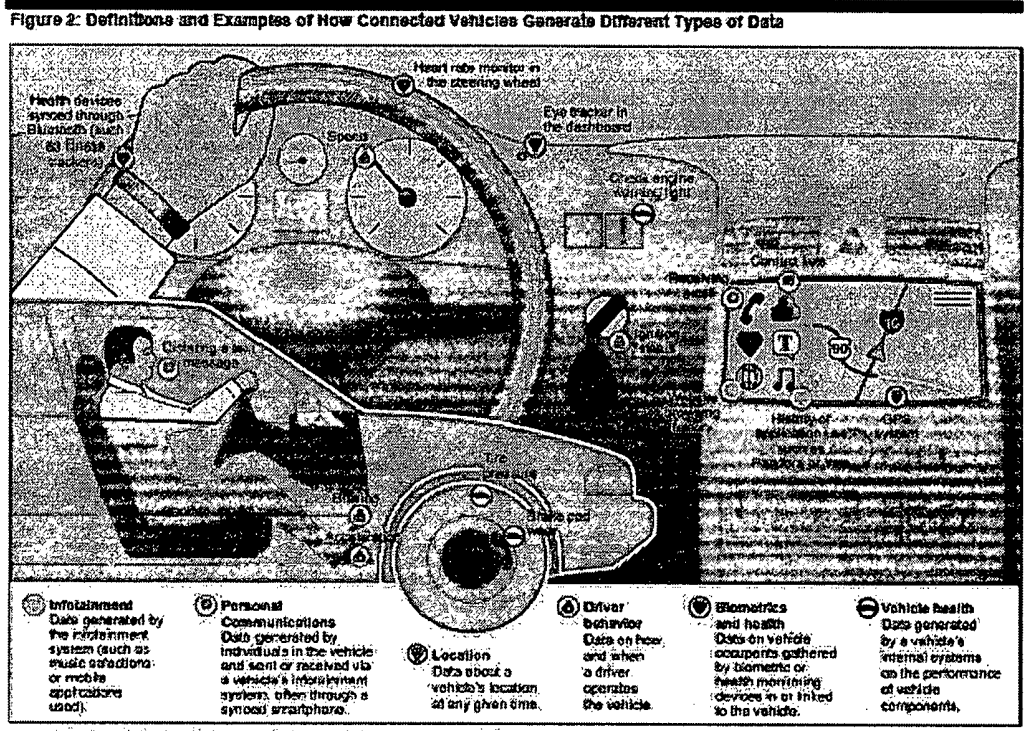
6 20. Modern cars can track your location due to GPS, and your preference in music,
7 due to your satellite radio. Your car also can track how fast you have been traveling and
8 whether it is raining where you are, plus a trove of diagnostic vehicle data.

9 21. Car makers have transformed the automobile from a machine that helps us travel
10 to a sophisticated smartphone on wheels. Just as computers became increasingly connected to
11 the Internet in the 1990s, cars are now becoming connected to networks and devices. As one
12 industry observer has noted, "the car is the browser for the physical world." In 2017, more new
13 cars were added to cellular networks than new cellphones. The technology research firm,
14 Gartner, estimates that by 2021, 98% of all new cars sold in the United States and Europe will
15 have connectivity.

16 22. Car makers are embedding intelligence and sensing capabilities into vehicles
17 using technologies such as low-cost sensors, low power high capacity processors, cloud
18 computing and wired and wireless connectivity. While connecting cars to computers is not new,
19 what has changed is the volume and precision of the data and the information that is being
20 extracted and connected to the Internet. "Before, devices that generate data would stay on the
21 car but there are new ways for that information to be communicated off the vehicle," according
22 to Lauren Smith, policy counsel at the Future of Privacy Forum.

23 23. In addition to onboard diagnostic services, these applications also facilitate
24 transactions with third parties using the vehicle, such as in-car payment services, vehicle
25 recovery systems, roadside assistance and insurance by using data collected by connected cars
26 to offer cheaper insurance to drivers. Vehicles also collect sensitive data about the occupants of
27 the vehicles themselves, such as fingerprint or iris patterns for authentication purposes or
28 information about the occupants' real time location.

24. The following charts from a US Government Accountability Office's ("GAO") Report released in July 2017 entitled "Vehicle Data Privacy: Industry and Federal Efforts Under Way" depicts the types of information being collected by car companies from connected cars.



Sources: British Columbia Freedom of Information and Privacy Association, and GAO, § 124D-17-026.
 Note: This figure summarizes connected vehicle data categories and data elements presented in P. Lawson, B. McPhail, and E. Lawson, *The Connected Car: Who Is in the Driver's Seat? A Study on Privacy and Onboard Vehicle Telematics Technology* (Vancouver, British Columbia: British Columbia Freedom of Information and Privacy Association, 2015).
https://fipa.bc.ca/wordpress/wp-content/uploads/2015/05/GC_report_ite-1v2.pdf.

25. User generated data has value to car companies, and businesses are willing to pay for this data so they can figure out how to best target potential customers based on their habits and preferences.

26. A 2018 report by McKinsey & Company entitled "From Buzz to Bucks- Automotive Players on the Highway to Car Monetization" is devoted entirely to monetizing the data generated by cars. The Report points out that sensors in vehicles "allow the capture of information on nearly every way a driver uses a car, how that car function or malfunctions, and everywhere it goes. Organizations that can leverage this connected technology to develop new, in-vehicle experiences for drivers and passengers could create a significant competitive advantage." The Report notes that "all companies might target value creation through car data

1 monetization” and should “devote adequate management capacity and resources to go from
2 buzz to bucks on the highway to data monetization.”

3 27. Automakers know that the opportunity for in-vehicle connectivity is huge, and
4 they want in. In late 2016, Intel CEO Brian Krzanich stood on stage at the LA Auto Show and
5 proclaimed: “connected car data is the new oil.”

6 28. As another industry professional noted, “the thing that car manufacturers realize
7 now is that they’re not only hardware companies anymore – they’re software companies.”

8 29. Very soon, if not already, a car’s data will become more valuable than the car
9 itself. Indeed, John Ellis, former head of technology at Ford, has written about a “zero dollar
10 car” whereby the information provided by the car is so valuable that it could pay for the car or
11 result in steep discounts to consumers who sign over their vehicle data. Ellis has noted that a
12 car is an incredible tool for data collection. As Ford’s Global Technologist, Ellis assisted Ford
13 in recognizing opportunities to monetize this data.

14 30. Bundling and selling data from connected cars will be a massive new revenue
15 stream for the OEMs on the order of billions of dollars a year. Unlike selling cars, selling data
16 is a high-margin business between 80-90 percent profit. One industry insider has commented,
17 “A big part of the investment is already done. The data bases are built, SIMS and modems are
18 in the cars; they’ve crossed the Rubicon.” Car companies are prepared to sell driver data to the
19 highest bidder, but most drivers don’t know that.

20 31. According to Ryan Calo, an associate professor at the University of Washington,
21 by collecting massive amounts of data, car companies could be setting themselves up for the 21st
22 century’s “ultimate Faustian bargain.” The more data a company collects, the more incentive
23 the company has to monetize that data, according to Calo. Calo added, “Any company that has
24 tons of data about consumers and can control the interaction with them is going to have the
25 capability and incentive to try and use that information to the company’s advantage and possibly
26 to the detriment of consumers. It’s almost unavoidable.”

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1 32. Similarly, Joseph Jerome, policy counsel for the Center for Democracy &
2 Technology has noted, “Cars are generating so much data, and all of it is incredibly valuable.
3 Carmakers are champing at the bit to find ways to monetize it.”

4 33. At a “Monetizing Car Data” conference in Munich in January 2019, Tom
5 Raftery, global vice president at SAP stated, “when you collect data, there are other potential
6 uses for that data.... Ford is hoping that data will be a completely new source of revenue.” As
7 reported, there was widespread agreement that connected cars and the data they generate will
8 open the door to new services and revenue streams.

9 34. Major automakers provide companies, like Otonomo, access to their raw driver
10 data. Otonomo takes that data, analyzes it and then sells that information to third parties,
11 helping automakers commercialize their data. “The automaker gets a revenue share on every
12 piece of data that is consumed,” according to Lisa Joy Rosner, Otonomo’s Chief Marketing
13 Officer.

14 35. “Car makers recognize that they’re fighting a war over customer data. Your
15 driving behavior, location, has monetary value, not unlike your search activity,” said Roger
16 Lancot, who works with automakers on data monetization as a consultant at Strategy Analytics.

17 36. Similarly, Qualcomm has developed an entire business segment devoted to
18 collecting and analyzing automotive data. According to Qualcomm:

19 “[T]he automotive industry is going through an unprecedented transformation.
20 Shared mobility services are changing the definition of car-ownership... At the
21 same time, the car itself is becoming a sensor hub, generating tons of data (e.g.
22 connected car is expected to generate 1.1PB of data per day by 2020). To help
23 the automotive industry in an innovative and cost-effective manner, Qualcomm
24 Technologies has created the Qualcomm drive data platform, which uses
25 cutting edge technology to intelligently collect and analyze data from different
26 vehicle’s sensors to facilitate smarter vehicles that can determine their location,
27 monitor and learn driving patterns, perceive their surroundings and share this
28 perception with the rest of the world reliably and accurately.”

29 37. Other technology companies are also capitalizing on the use of vehicle data. For
30 example, on February 25, 2019 Hewlett Packard Enterprise announced that it was developing a
31 new platform to “help car manufacturers monetize their data” and “extract the full value from
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1 their data” through the use of blockchain technology. The data monetization platform will
2 enable car manufacturers and other partners to trade data with each other to monetize vehicle
3 data. HPE was quick to point out that the platform will integrate a “consent management
4 system and provide an easy to use opt-in and opt-out system for drivers.”

5 38. Moreover, vehicle data monetization is not limited to literally selling data. Car
6 manufacturers are profiting from car data by building partnerships with third party service
7 suppliers and exchanging data with them. For example, if a pizzeria that a driver frequents is
8 provided with data about the driver’s location just as she’s driving by, the driver will get an offer
9 to get a discount on a pizza if she picks it up right then and there, hot and ready to go. This is
10 possible because of the vehicle data the car manufacturer provided, and companies such as
11 pizzerias are willing to pay car manufacturers for that data.

12 39. Similarly, it has been reported that GM plans to introduce a feature that can
13 detect when a vehicle’s fuel tank is low and then offer a coupon on the car’s display for a
14 discount at a nearby gas station. Gas stations will pay GM a fee for directing customers in their
15 direction.

16 40. Indeed, in July 2018, GM created a new position, Chief Data and Analytics
17 Officer, and filled the post with the former chief data officer at Wells Fargo. A GM spokesman
18 noted that GM’s new Chief Data and Analytics Officer “basically is looking at data as a
19 business opportunity.”

20 **DEFENDANT’S USE OF VEHICLE DATA WITHOUT COMPENSATION**

21 41. Based on Defendant’s own online Privacy Statement disclosures, Defendant
22 admits to already using drivers’ data for its own advantage, and Defendant does not compensate
23 drivers for that use.

24 42. Based on Defendant’s own privacy disclosures, Defendant is collecting, and
25 continuing to develop the ability to collect, drivers’ information regarding, *inter alia*, products
26 or services purchased, obtained or considered, or other purchasing histories or tendencies;
27 biometric information; internet or other electronic connectivity information, including browsing
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1 history and search history; geolocation data; audio, electronic, visual, thermal, olfactory and
2 similar information; and vehicle health.

3 43. GM vehicles collect, generate, record or store information in electronic form.
4 GM retrieves that information from the vehicles or from smart devices linked to the vehicles,
5 typically wirelessly.

6 44. GM's Privacy Statement available on GM's website covers "all GM controlled
7 subsidiaries and affiliates" and applies to all GM vehicles. Similarly, GM's online On-Star
8 Privacy Statement states that GM "provides this Privacy Statement to let you know how we
9 collect, use and share your information when you use GM vehicles, products, services, websites,
10 infotainment systems, social media sites and mobile applications for connected vehicles."

11 45. GM's Privacy Statement admits that GM collects, maintains, uses, records, and
12 stores information "about you and your vehicle, such as name, address, email address, phone
13 number, vehicle identification number (VIN) and vehicle performance data through your use of
14 our products or services, and through GM affiliates, dealers, GM licensees for consumer
15 merchandise, GM partners and others who provide information to us." The types of information
16 collected by GM includes: "information about your vehicle (such as license plate number,
17 vehicle identification number (VIN), make, model, model year, selling dealer, servicing dealer,
18 date of purchase or lease, the lease/financing term, service history, mileage, oil/battery status,
19 fuel or charging history, electrical system function, gear status, and diagnostic trouble codes)";
20 "information about your connected devices (such as mobile phone, computer, or tablet) and how
21 you interact with our products, services, apps and websites (such as IP address, browser type,
22 unique device identifier, cookie data, and associated identifying and usage information)";
23 "marketing profile information (such as when you plan to purchase or lease; the vehicle in
24 which you're interested);" photographs and videos; and "demographic information (such as
25 gender, date of birth, marital status and household composition." On information and belief,
26 GM also is collecting geolocation and driver behavior information.

27 46. GM admits to using collected information to "develop new products and
28 services, including connected, autonomous and car-sharing products and services;" for

1 “research, evaluation of use;” and for “marketing and analytics purposes.” These terms are not
2 clearly defined and effectively leave it open to self-interpretation by Defendant, raising further
3 questions about the extent to which Defendant will continue to collect sensitive information.
4 This lack of transparency leaves consumers with little knowledge about how Defendant is
5 actually using their data. Defendant is obscuring the information because it knows that
6 purchasers would not allow such use at all or without adequate compensation if they knew the
7 extent of Defendant’s uses of their vehicle data.

8 47. GM also admits to using and sharing the collected information with, among
9 others, “our services providers who work on our behalf;” “with our business partners for GM
10 marketing activities, business partner marketing activities or both;” and “with third parties for
11 research and development purposes (such as university research institutes for improving
12 highway safety).”

13 48. Similarly, GM’s On-Star Privacy Statement confirms that “when our connected
14 vehicle products and services are active, we may collect information about your vehicle,
15 including diagnostics, use, and vehicle location.” GM’s online On-Star Privacy Statement also
16 admits that GM collects “information about the use of your vehicle, including operational and
17 safety related information: such as GPS location, speed, air bag deployments, crash avoidance
18 alerts, impact data, safety system status, braking and swerving/cornering events, event data
19 recorder (EDR) data, seat belt settings, vehicle direction (heading), camera image and sensor
20 data, voice command information, stability control or anti-lock events, security/theft alerts,
21 infotainment system usage, and WiFi data usage” and “information about your device and how
22 you interact with our products and services, including apps and websites: such as IP address,
23 browser type, unique device identifier, cookie data, associated identifying and usage
24 information from your mobile phone, laptop, or other device.”

25 49. GM’s On-Star Privacy Statement reiterates that GM uses the information to,
26 among other things, “develop new products and services, including autonomous vehicle and car-
27 sharing products and services;” for “research, evaluation of use;” and “to perform marketing,
28 including interest-based marketing and advertising (with necessary consents).”

1 50. GM's On-Star Privacy Statement also admits that GM shares drivers' vehicle
2 information with "business partners and independent third parties" and "service providers."

3 51. A driver's data is a valuable commodity and worth money. Car companies, like
4 Defendant, are not entitled to use that information for free or to give it away. However,
5 nowhere does Defendant offer to compensate vehicle owners for Defendant's use of drivers'
6 own vehicle data. Defendant is using drivers' vehicle data and illegally profiting and benefiting
7 from it without compensating drivers.

8 52. Plaintiff has lost, and continues to lose, the value of his vehicle data as a result of
9 Defendant's conduct. Plaintiff's vehicle data is a valuable commodity, and a market exists for
10 Plaintiff's data. Defendant is using and benefiting from Plaintiff's data, and Plaintiff has lost
11 the value of his data as a result.

12 53. Further, GM's privacy disclosures, which purport to advise prospective owners
13 about GM's vehicle data use and collection, are inadequate and unfair because vehicle owners
14 cannot opt out of vehicle data collection without disabling features on the vehicle or losing
15 connected vehicle functionality. GM's On-Star Privacy Statement states that "some collection
16 and sharing practices are tied to the products and services we offer. To stop the collection or
17 sharing of some information, you may have to decline those products and services or be willing
18 to accept limited functionality."

19 54. A driver should not have to choose between consenting to data collection and
20 losing connected vehicle functionality. Prospective purchasers or lessees should be able to opt
21 *in* (or at least opt out) of a vehicle manufacturer's data collection and use, except possibly as to
22 information reasonably necessary to operate the vehicle and maintain vehicle safety.

23 55. GM's On-Star Privacy Statement also contains a section entitled "Your Choices."
24 However, the only "choices" available pertain to choices about telephone, email, text message
25 and other communications, not data use or collection.

26 56. Moreover, drivers are entitled to control, and have access to, the use of their own
27 vehicle data. However, Defendant's purported disclosures do not provide for drivers to access
28 their own car data at any time in a usable format, delete their data at any time, revise the

1 parameters of their data sharing at any time, and turn off their data at any time (like putting a
2 phone in airplane mode). GM's On-Star Privacy Statement contains a section entitled "Access
3 and Updates to Your Information." However, the information appears to refer only to an
4 owner's personal information, not vehicle data: "You can access your online account to view or
5 update your information in that account. You may also contact us, as provided below, to learn
6 about how to access, review, correct, update, or delete the information about you in our
7 records."#

8 57. Further, Defendant does not provide prospective owners with a written vehicle
9 data and disclosure policy at the time of sale or lease and does not obtain adequate consent or
10 authorization to use or take information or data from owners' car computer systems prior to
11 purchase. At a minimum, there should be an easy to read facts sheet that provides for, *inter*
12 *alia*, opt-in consent to data collection and use, and affirms that the data belongs to the vehicle
13 owner and that Defendant will be collecting data from the purchasers' vehicle; the specific data
14 and data types and categories that will be collected; the purposes for the data is being collected
15 and data why such data is needed; how the data will actually be used; where the data will be
16 stored and for how long; that any data collected will not be monetized or utilized without the
17 vehicle owners' express consent, including that Defendant will not sell purchasers' consumer
18 data to third parties; that vehicle owners can access their data at any time in a usable format,
19 delete their data at any time, revise the parameters of their data sharing at any time, and turn off
20 their data at any time and a description of mechanisms by which drivers can control their own
21 data directly (e.g., via privacy control screens, better use of icons to connote data collection,
22 options to clear on board data) and authorize third parties to access it on their behalf to enable
23 innovative services; that the car's data and privacy systems are being evaluated and audited by
24 independent third parties and updated at least annually; and that vehicle owners will be notified
25 in the event of a data breach.

26 58. Absent any express agreement by vehicle purchasers, Defendant should limit
27 data collection to information reasonably necessary to operate the vehicle and maintain vehicle
28 safety (including enabling real time emergency calls, immediate information that facilitates

1 rescue services and road hazard warnings). To the extent that Defendant is, or plans to,
2 monetize drivers' data through sale to third parties or otherwise, Defendant must expressly
3 disclose the practice and offer prospective vehicle owners the right to opt out of allowing
4 Defendant to profit from their personal car data information and provide compensation to
5 drivers who are willing to share that information, for example, through lower monthly lease
6 payments, lower purchase prices, free features or services.

7 59. Pre-purchase disclosures are particularly important in the vehicle context given
8 that vehicle software choices can be constrained after the point of purchase, as confirmed by
9 Defendant's own privacy policy. Prospective owners or lessees also should not have to seek
10 such information by combing through lengthy privacy policy sections on the Defendants'
11 website. "Consumers shouldn't have to read every detail of a complicated contract when
12 they're being pressured to complete a sale or to dig through their 500 page owner's manual or
13 search the web for privacy information they don't even know may be there," says David
14 Friedman, director of cars and product policy and analysis at Consumers Union.

15 60. Further, not only is Defendant deriving benefit and data from the vehicle and the
16 vehicle's registered owner, Defendant also is accessing and using data and information from the
17 vehicle's other occupants and purporting to make the owner responsible for consenting to such
18 use. Moreover, while Defendant is collecting and using the data without granting the vehicle
19 owner access to his or her own data, Defendant purports to make the vehicle owner responsible
20 for deleting all the information from the vehicle when the vehicle is sold or transferred.

21 61. Under the section entitled "Your Obligations," GM's On-Star Privacy Statement
22 states "the nature of our products and services means that there may be circumstances where
23 you might let someone else use a product or service that we provide to you (for example, you let
24 someone else drive your OnStar equipped vehicle). It is important that if you do let someone
25 else use one of our products or services that you inform them of this Privacy Statement and of
26 the privacy choices that you have made. Further, GM's On-Star Privacy Statement states that
27 "if you sell or otherwise transfer your vehicle, it is your responsibility to delete all information
28 (such as contacts, address look-ups, saved map addresses) from the vehicle's system and contact

1 us to transfer or cancel your account. If you do not delete this information, it may remain on the
2 vehicle's system and may be accessible to future users of the vehicle.”

3 62. Defendant's conduct as alleged herein also violates the CDAFA in that
4 Defendant has, *inter alia*, knowingly and willfully accessed and without permission, or in
5 excess of authorization, used drivers' vehicle data, computer system or computer network and
6 data to devise or execute a scheme or artifice to defraud, deceive or extort or wrongfully control
7 or obtain money, property or data resulting in loss or damage to drivers. Moreover, even if
8 Defendant's access was authorized, Defendant's use of the data (particularly data not related to
9 the maintenance or safety of the vehicle) is not.

10 **GM IS VIOLATING ITS OWN PRIVACY PRINCIPLES**

11 63. In response to privacy concerns raised by Congress and in an attempt to avoid
12 more onerous, official regulation, in 2014, the auto industry, through the Alliance of
13 Automobile Manufacturers, Inc. and the Association of Global Automakers, Inc., developed a
14 set of voluntary privacy principles – the “Consumer Privacy Protection Principles: Privacy
15 Principles for Vehicle Technologies and Services.” The Principles establish a framework for
16 participating automakers to implement when offering innovative vehicle technologies and
17 services. The members adopting the framework commit to seven Principles: Transparency;
18 Choice; Respect for Context; Data Minimization; De-identification and Retention; Data
19 Security, Integrity and Access; and Accountability. These guidelines went into effect in 2016.
20 Defendant GM is a signatory or participating member to the Principles.

21 64. The Principles leave the guidelines for data use, security, accountability and
22 disclosure to the discretion of the manufacturers.

23 65. By their own terms, the Principles were “not intended to replace inconsistent or
24 conflicting applicable laws and regulations where they exist” and expressly provide that the
25 Principles “should be interpreted as subject to and superseded by applicable laws and
26 regulations.”

1 66. In failing to provide a compensation program, in failing to provide the necessary
2 disclosures regarding data collection, and in accessing vehicle data without adequate consent or
3 permission, GM has violated its own Principles.

4 67. For example, the Principles require an owner's "affirmative consent" or "a clear
5 action performed in response to a clear, meaningful and prominent notice disclosing the
6 collection, use, and sharing of Covered Information." The notice must be made in a manner that
7 enables owners to make "informed decisions." The content of the notice must provide for
8 "deletion" of Covered Information, how owners may access the information and the types of
9 entities with which the information may be shared. Based on the foregoing allegations and
10 GM's failure to provide clear, adequate and comprehensive notice, GM has violated its own
11 Transparency Principle.

12 68. GM also fails to disclose the monetary value of the information being collected
13 which prevents drivers' from making informed decisions about the use of their own vehicle
14 data. Prospective vehicle owners might not be so quick to agree to free and unfettered access to
15 data if they knew the value of the data.

16 69. Unfortunately, GM's conduct is consistent with the US Government
17 Accountability Office's ("GAO") Report released in July 2017 entitled "Vehicle Data Privacy:
18 Industry and Federal Efforts Under Way," which found that none of the 13 car makers in the
19 study who collected data from connected vehicles had easy to read privacy notices and that most
20 do not explain data sharing and use policies. According to the Report, "none of the automakers'
21 written notices were in plain language, a lack that could make them difficult for consumers to
22 understand," that "none of the notices was clearly written" and that "most automakers' written
23 privacy notices used vague language." The Report also noted that "most notices did not
24 describe all of the types and purposes of the connected vehicle data that were being collected,
25 but instead used broad language to describe the process." The Report noted that the use of
26 broad language "does not promote transparency." Similarly, with respect to data sharing, the
27 GAO Report noted that "most written notices did not clearly identify data sharing and use
28 practices" and "used vague language."

1 70. The GAO Report also noted that “privacy notices do not guarantee privacy
2 protection” and that some consumers do not take time to read notices, decreasing their ability to
3 provide fully informed consent. Further, the Report quoted four experts who noted that the
4 multiple decisions and large amount of paperwork required for buying a vehicle are factors that
5 make it less likely for a consumer to thoroughly read a privacy notice.

6 71. GM also has violated its Choice Principle, which provides that owners must be
7 offered “certain choices regarding the collection, use and sharing” of information. To the extent
8 that when an owner agrees to use GM’s vehicle’s technologies, services or platforms, the owner
9 automatically consents to all data collection, consumers should not have to choose between
10 consenting to all data collection and not receiving services that they paid for and are entitled to
11 or consenting to data collection for free without knowing how Defendant considers its value.
12 Further, such conduct does not lawfully constitute obtaining owners’ permission to use or access
13 the data.

14 72. Moreover, GM has further violated the provisions for consumer choice in that
15 GM does not provide consumers with the right to choose to prevent collection of consumers’
16 sensitive data in the first place and does not give consumers the choice to remove data that has
17 already been collected.

18 73. The Data Minimization Principle adopted by GM provides that car data may be
19 collected for “legitimate business purposes” and may be retained as long as necessary for
20 “legitimate business purposes.” Similarly, GM’s Privacy Statement states that “we may keep
21 the information we collect for as long as necessary to provide products or services to you” and
22 “to operate our business.”

23 74. The Data Security Principle provides that members commit to reasonable
24 measures to protect collected car data. GM does not sufficiently describe the privacy security
25 policies that come with drivers’ cars such that customers can determine whether the data
26 protection and governance practices are adequate to ensure the safety of the data being
27 collected.

28

1 75. The Integrity and Access Principle commits to providing owners with reasonable
2 means to review and correct information collected. As alleged above, GM does not provide for
3 owners to access their data at any time in a usable format, delete certain data at any time, revise
4 the parameters of their data sharing at any time, and turn off their data at any time (like putting a
5 phone in airplane mode) and a description of mechanisms by which drivers can control their
6 own data directly (e.g., via privacy control screens, better use of icons to connote data
7 collection, options to clear on board data) and/or authorize third parties to access it on their
8 behalf (e.g., to enable innovative services). The Integrity principle also should entitle
9 prospective purchasers or lessees to know the true value that Defendant places on the car that
10 Defendant is using for free.

11 76. GM also has violated the Accountability Principle by failing to provide recourse
12 if the Principles are violated and by failing to properly account for the value of the data that
13 Defendant is using for free.

14 **FIRST CAUSE OF ACTION**

15 **Violation of California Unfair Competition Law**

16 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

17 77. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

18 78. California Business and Professions Code sections 17200 *et seq.* (the “UCL”)
19 prohibits “any unlawful, unfair or fraudulent business act or practice.” Defendant has
20 committed acts of unfair competition proscribed by the UCL, including the acts and practices
21 alleged herein.

22 79. The UCL imposes strict liability. Plaintiff need not prove that Defendant
23 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only
24 that such practices occurred.

25 80. GM is a “person” as defined by Business & Professions Code § 17201.

26 81. As a direct and proximate result of Defendant’s acts and practices in violation of
27 the UCL, Plaintiff has suffered injury in fact and lost money or property as set forth above and
28 will continue to do so.

1 82. A business practice is “unlawful” under the UCL if it is forbidden by law or
2 regulations, including standard of professional conduct.

3 83. The violation of any law or regulation may serve as the predicate for a violation
4 of the “unlawful” prong of the UCL. Defendant’s conduct is unlawful in that it also violates the
5 California Computer Data Access and Fraud Act, Cal. Pen. Code sections 502(c)(1), (2), (3),
6 (6), & (7), which provides for a civil action for violation of its terms, as set forth herein.

7 84. Under California Penal Code § 502c, it is prohibited if any person:

8 (1) Knowingly accesses and without permission alters, damages, deletes, destroys, or
9 otherwise uses any data, computer, computer system, or computer network in order to either (A)
10 devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control
11 or obtain money, property, or data.

12 (2) Knowingly accesses and without permission takes, copies, or makes use of any data
13 from a computer, computer system, or computer network, or takes or copies any supporting
14 documentation, whether existing or residing internal or external to a computer, computer
15 system, or computer network.

16 (3) Knowingly and without permission uses or causes to be used computer services.

17 *****

18 (6) Knowingly and without permission provides or assists in providing a means of
19 accessing a computer, computer system, or computer network in violation of this section.

20 (7) Knowingly and without permission accesses or causes to be accessed any computer,
21 computer system, or computer network.

22 85. The acts and practices of Defendant as described above also constitute “unfair”
23 business acts and practices. A business act or practice is “unfair” under the UCL if the reasons,
24 justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to
25 the alleged victims. Plaintiff has suffered injury in fact and a loss of money or property as a
26 result of Defendant’s unfair business acts and practices as set forth in detail above and will
27 continue to do so.

28

