

**IN THE COURT OF COMMON PLEAS
LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

DONNA SODERS, on behalf of	:	
Herself and all others similarly situated,	:	NO. CI-00-04255
	:	
Plaintiff,	:	
	:	
	:	
v.	:	
	:	
GENERAL MOTORS CORPORATION,	:	
	:	JURY TRIAL DEMANDED
Defendant.	:	
	:	

ANSWER OF DEFENDANT GENERAL MOTORS CORPORATION

Now comes Defendant General Motors Corporation (“GM”), by and through its undersigned counsel, and for its Answer to the Class Action Complaint states, alleges and avers, as follows:

1. GM admits the allegations contained in Paragraph 1 of the Class Action Complaint.
2. GM admits the allegations contained in Paragraph 2 of the Class Action Complaint.
3. GM admits the allegations contained in Paragraph 3 of the Class Action Complaint.
4. In answer to Paragraph 4 of the Class Action Complaint, GM admits that at various times during the 1960’s through the early 1990’s, certain GM dealers independently and voluntarily formed dealer marketing groups which engaged in group marketing activities. Answering further, GM specifically denies that such dealer

marketing groups only engage in local advertising of GM products, as alleged in the balance of Paragraph 4 of the Class Action Complaint.

5. In answer to Paragraph 5 of the Class Action Complaint, GM incorporates the admissions, denials and other responses contained in Paragraph 4, above, of this Answer. Answering further, GM states that dealer marketing groups were funded, in part, by per vehicle assessments such groups imposed upon their dealer members. Answering further, GM states that when requested by a dealer marketing group, GM included on the vehicle invoices of dealer members the per vehicle assessments such dealer marketing groups imposed upon their dealer members. Answering further, GM specifically denies that it established such per vehicle assessments or billed dealers separately from vehicle invoices for those per vehicle assessments, as alleged in the balance of Paragraph 5 of the Class Action Complaint.

6. In answer to Paragraph 6 of the Class Action Complaint, GM incorporates the admissions, denials and other responses contained in Paragraphs 4 and 5, above, of this Answer. Answering further, GM states that for those dealer marketing groups requesting per vehicle assessments to be included on their dealer members' vehicle invoices, GM subsequently disbursed such per vehicle assessments to the applicable dealer marketing groups as affected dealer members paid their vehicle invoices. Answering further, GM is without knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 6 of the Class Action Complaint regarding dealer members' payment of per vehicle assessment directly to applicable dealer marketing groups, and thereafter, denies such allegations.

7. In answer to Paragraph 7 of the Class Action Complaint, GM incorporates the admissions, denials and other responses contained in Paragraphs 4, 5 and 6, above, of this Answer. Answering further, GM states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Class Action Complaint regarding individual arrangements dealer members had with their respective dealer marketing groups with respect to the amount of the per vehicle assessments, and the obligations to such groups of those dealer members to pay some, all or none of such per vehicle assessments, and therefore, denies such allegations.

8. GM denies that in or about the fall of 1988, it decided to change dealer participation in advertising programs from voluntary to mandatory, throughout the country, as alleged in Paragraph 8 of the Class Action Complaint.

9. In answer to Paragraph 9 of the Class Action Complaint, GM incorporates its denials contained in Paragraph 8, above, of this Answer. Answering further, GM states that between September 1988 and September 1990, each of its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck unincorporated operating divisions announced and implemented on a nationwide basis a Marketing Initiative under which such unincorporated operating division provided financial support for the local marketing efforts of dealer marketing associations and/or individual dealers. Answering further, GM specifically denies that it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck or Saturn divisions, at any time, implemented "mandatory dealer participation in advertising programs."

10. GM admits the allegations contained in Paragraph 10 of the Class Action

Complaint.

11. GM admits the allegations contained in Paragraph 11 of the Class Action

Complaint.

12. GM admits the allegations contained in Paragraph 12 of the Class Action

Complaint.

13. GM specifically denies that its Saturn Distribution Division created and/or implemented a Marketing Initiative as alleged in Paragraph 13 of the Class Action

Complaint.

14. In answer to Paragraph 14 of the Class Action Complaint, GM states that to generate the resources for the financial support provided to dealer marketing associations and/or individual dealers under the Marketing Initiatives implemented by the Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac and GMC Truck operating divisions, such unincorporated operating divisions increased the wholesale price for new motor vehicles at the time of implementation of each such Marketing Initiative in the amount of 1% of the manufacturer's suggested retail price ("MSRP") on models and options. Answering further, GM states that for varying amounts of time depending on the operating division, the amount represented by this wholesale price increase was separately itemized on the dealer invoices on a line entitled "GM Marketing Adjustment." Answering further, GM states that since September 1, 1992, vehicle invoices for the Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac and GMC Truck operating divisions did not separately itemize the "GM Marketing Adjustment," but for the time the Marketing Initiatives were in effect, that amount was included in the price of

vehicles sold by those operating divisions and directed to dealer marketing associations and/or individual dealers for use in local marketing activities. Answering further, GM states that the 1% of MSRP price increase did not apply to GM vehicles sold under the GM Employee Purchase Plan, to qualified fleet purchasers, or to government purchasers. Answering further, GM specifically denies that it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck or Saturn operating divisions, have, at any time, added any “mandatory assessment” to the invoice for any vehicle sold to a GM dealer, as alleged in Paragraph 14 of the Class Action Complaint.

15. In answer to Paragraph 15 of the Class Action Complaint, GM states that at all times before, during and after the Marketing Initiatives were in effect, to purchase new motor vehicles from the Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck and Saturn operating divisions, dealers must pay the wholesale price of those new motor vehicles. Answering further, GM specifically denies that it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck, and Saturn operating divisions have, at any time, charged their respective dealers a mandatory 1% assessment, as alleged in Paragraph 15 of the Class Action Complaint.

16. In answer to Paragraph 16 of the Complaint, GM specifically denies that under the Marketing Initiatives, it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac and GMC Truck operating divisions “designated and required” any amounts “to be used for advertising campaigns.” Answering further, GM specifically denies that it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck, and Saturn operating divisions have, at any time, charged their respective dealers a mandatory 1% assessment,

as alleged in Paragraph 16 of the Class Action Complaint. Answering further, GM states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Class Action Complaint regarding the required use by dealer marketing associations of the per vehicle assessments they imposed upon their dealer members for advertising campaigns, and therefore, denies such allegations.

17. In answer to Paragraph 17 of the Class Action Complaint, GM specifically denies that any GM dealer has ever paid a “mandatory 1% assessment” to GM. Answering further, GM states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Class Action Complaint regarding the retail pricing practices of GM dealers toward their retail customers, and therefore, denies such allegations.

18. In answer to Paragraph 18 of the Class Action Complaint, GM states that the Marketing Initiatives were terminated on March 31, 1999, in part, as a result of GM's settlement of class action litigation. Answering further, GM specifically denies that it or its Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC Truck, and Saturn operating divisions have, at any time, charged their respective dealers a mandatory 1% assessment as alleged in Paragraph 18 of the Class Action Complaint.

19. In answer to Paragraph 19 of the Class Action Complaint, GM admits that the Pontiac Dealer Marketing Association Initiative was in effect on December 2, 1997. Answering further, GM states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Class

Action Complaint regarding the vehicle transaction between plaintiff and Jones Pontiac GMC Truck Co., and therefore, denies such allegations.

20. In answer to Paragraph 20 of the Class Action Complaint, GM states that for the time period the Pontiac Dealer Marketing Association Initiative was in effect, the amount formerly designated as the “GM Marketing Adjustment” on Pontiac dealer vehicle invoices was included in the wholesale price of vehicles sold by the Pontiac Motor Division. Answering further, GM states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Class Action Complaint regarding the retail pricing practices of Jones Pontiac GMC Truck Co., with respect to plaintiff, and therefore, denies such allegations.

COUNT I

PENNSYLVANIA BOARD OF VEHICLES ACT

21. Paragraph 21 of the Class Action Complaint calls for a legal conclusion, and as such, no further response from GM is required.

22. In answer to Paragraph 22 of the Class Action Complaint, GM states that 63 P.S. § 818.12 speaks for itself. Answering further, GM states that the allegations contained in Paragraph 22 of the Class Action Complaint call for a legal conclusion, and as such, no further response from GM is required.

23. Paragraph 23 of the Class Action Complaint calls for a legal conclusion, and as such, no further response from GM is required.

24. Paragraph 24 of the Class Action Complaint calls for a legal conclusion,

and as such, no further response from GM is required.

25. GM specifically denies that the Marketing Initiative of GM's Pontiac Division required Jones Pontiac to participate monetarily in an advertising campaign at Jones Pontiac's expense, in violation of the Board of Vehicles Act, through the 1% charge that GM required its dealers to pay for use in the advertising campaigns, as alleged in Paragraph 25 of the Class Action Complaint.

26. In answer to Paragraph 26 of the Class Action Complaint, GM states that 63 P.S. § 818.29 speaks for itself. Answering further, GM states that the allegations contained in Paragraph 26 of the Class Action Complaint call for a legal conclusion, and as such, no further response from GM is required.

27. Paragraph 27 of the Class Action Complaint calls for a legal conclusion, and as such, no further response from GM is required. Answering further, GM states that 63 P.S. §§818.1 et seq was not intended to apply to consumers such as Plaintiff.

28. For its answer to Paragraph 28 of the Class Action Complaint, GM incorporates herein, as if fully rewritten, the admissions, denials, and other responses, contained in Paragraphs 1 through 27, above, of this Answer.

29. In answer to Paragraph 29 of the Class Action Complaint, GM admits that Plaintiff purports to bring this action as a class action on behalf of the class Plaintiff has defined in Paragraph 29 of the Class Action Complaint. Answering further, GM specifically denies that the class defined in Paragraph 29 of the Class Action Complaint is maintainable as a class action.

30. In answer to Paragraph 30 of the Class Action Complaint, GM specifically

denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 30 of the Class Action Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

31. In answer to Paragraph 31 of the Class Action Complaint, GM specifically denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 31 of the Class Action Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

32. In answer to Paragraph 32 of the Class Action Complaint, GM specifically denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 32 of the Class Action Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

33. In answer to Paragraph 33 of the Class Action Complaint, GM specifically denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 33 of the Class Action Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

34. In answer to Paragraph 34 of the Class Action Complaint, GM specifically denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 34 of the Class Action

Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

35. In answer to Paragraph 35 of the Class Action Complaint, GM specifically denies that this action is properly maintainable as a class action. Answering further, GM states that the remaining allegations contained in Paragraph 35 of the Class Action Complaint call for a legal conclusion on an element Plaintiff must prove to maintain this action as a class action and, as such, no further response from GM is required.

WHEREFORE, having fully answered the Class Action Complaint, GM demands that the Class Action Complaint be dismissed, with prejudice.

NEW MATTER

1. GM specifically denies each and every allegation, statement and/or request for relief contained in the Class Action Complaint not otherwise expressly admitted heretofore to be true.
2. The Class Action Complaint fails to state a claim against GM upon which relief can be granted.
3. Plaintiff's claims are not the type of claims which are meant to be redressed by P.S. §§ 818.1, et seq.
4. Plaintiff has failed to join a party indispensable for just adjudication of the claims asserted in the Class Action Complaint.
5. Plaintiff's claims are barred, in whole or in part, by the absence of any duty owed plaintiff by GM.
6. Plaintiff's claims are barred, in whole or in part, by the doctrines of

estoppel, waiver, laches, and release.

7. Plaintiff's claims are barred, in whole or in part, by the applicable statute(s) of limitations.

8. Plaintiff's claims are barred because Plaintiff has suffered no injury or actual damages as a result of the alleged conduct.

9. Alternatively, if the Court determines that Plaintiff is entitled to relief in any form, any such relief constitutes unjust enrichment to Plaintiff.

10. This action is barred, in whole or in part, by the doctrines of res judicata, collateral estoppel and/or prior pending action.

11. The application of 63 P.S. § 818.9(a)(3) in the manner advocated by plaintiff in this action constitutes an unconstitutional deprivation of GM's right of free speech, an unconstitutional deprivation of GM's due process rights and an unreasonable imposition on interstate commerce. Therefore, to interpret 63 P.S. § 818.9(a)(3) as advocated by plaintiff would be unconstitutional under the applicable provisions of the United States and/or Pennsylvania Constitutions.

12. This action is barred, in whole or in part, by plaintiff's failure to exhaust all administrative remedies available under 63 P.S. § 818.1, et seq.

13. Plaintiff lacks standing to assert the claims alleged in the Class Action Complaint.

14. Plaintiff's claims are barred by virtue of the settlement between certain GM Pennsylvania dealers, including Jones Pontiac GMC Truck Co., and GM and by the doctrine of accord and satisfaction.

15. GM reserves the right to assert any and all additional affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery.

WHEREFORE, GM requests that Plaintiff's Complaint be dismissed with prejudice.

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