

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

GERI SIANO CARRIUOLO, on her own behalf
and on behalf of all others similarly situated

vs.

GENERAL MOTORS COMPANY,

Defendant.

CLASS ACTION COMPLAINT

1. Geri Siano Carriuolo (the “Plaintiff”), on her own behalf and on behalf of the Class (defined below), brings this complaint against General Motors Company (“GM”). Plaintiff respectfully alleges the following.

2. This is an action arising out of GM’s false and deceptive representations made to purchasers of motor vehicles, including Plaintiff. Specifically, GM represented on standardized “Monroney” stickers affixed to vehicles for sale that certain of its vehicles had achieved the highest safety ratings available in certain categories by the National Highway Traffic Safety Administration (“NHTSA”), when the vehicles had in fact not received any such ratings.

3. Plaintiff purchased a 2014 Cadillac CTS Sedan. The car she purchased had affixed to it a Monroney sticker representing that the automobile had achieved 5-star ratings—the highest NHTSA rating available—in three different categories: Frontal Crash Driver, Frontal Crash Passenger, and Rollover. Four-and-a-half months after Plaintiff’s purchase, GM informed Plaintiff that the information provided on the Monroney sticker affixed to the automobile Plaintiff purchased was false, and that the 2014 Cadillac CTS Sedan had received **no** NHTSA safety ratings.

4. Through its false representations, described more fully herein, GM has violated

the Florida Deceptive and Unfair Trade Practice Act (“FDUTPA”) and has been unjustly enriched. Plaintiff and the Class were damaged because the automobiles they purchase did not contain the safety ratings that were represented, making the automobiles less valuable than the automobiles would have been had GM’s representations been true.

PARTIES

5. Plaintiff Geri Siano Carriuolo is an individual consumer residing Plantation, Florida. On or about December 29, 2013, Plaintiff purchased a new 2014 Cadillac CTS Sedan from Ed Morse Sawgrass Auto Mall—a Florida automobile dealership.

6. Defendant General Motors Company is a corporation organized under Delaware law and is headquartered in Detroit, Michigan. Cadillac is a division of defendant GM. GM manufactures Cadillac automobiles, including the 2014 Cadillac CTS Sedan. GM does business throughout the state of Florida.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d) and 1453, because (1) this action is a “class action,” which contains class allegations and expressly seeks certification of a proposed class of individuals; (2) the putative class consists of at least hundreds of proposed class members; (3) the citizenship of at least one class member is different from GM’s citizenship; and (4) the aggregate amount in controversy by the claims of Plaintiff and the putative Class exceeds \$5,000,000, exclusive of interest and costs.

8. This Court also has personal jurisdiction over GM because GM does business in Florida and the actions that are the subject of this complaint took place in substantial part in Florida.

9. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because GM is subject to personal jurisdiction in this District and a substantial portion of the conduct complained of herein occurred in this District.

FACTUAL ALLEGATIONS

10. On or about December 29, 2013, Plaintiff purchased a 2014 Cadillac CTS Sedan from Ed Morse Sawgrass Auto Mall in Sunrise, Florida.

11. Affixed to the 2014 Cadillac CTS Sedan was a so-called “Monroney sticker” containing information about the vehicle.

12. Monroney stickers present information about vehicles in a standardized form and using standardized measures to enable consumers to directly compare vehicle features, including gas mileage, equipment, and safety ratings and information. The Monroney stickers are designed to facilitate comparison shopping.

13. The Monroney sticker contains a section entitled “Government 5- Star Safety Ratings.” The sticker explains that “Star ratings range from 1 to 5 stars (★ ★ ★ ★ ★) with 5 being the highest.” The sticker cites the “Source” of these ratings as the “National Highway Traffic Safety Administration (NHTSA).”

14. The Monroney sticker affixed to the 2014 Cadillac CTS Sedan that Plaintiff purchased on December 29, 2013 indicated that the 2014 Cadillac CTS Sedan has received three NHTSA safety ratings. Specifically, the sticker indicated the 2014 Cadillac CTS Sedan had received five stars—“ ★ ★ ★ ★ ★ ”—for three different categories—Frontal Crash Driver, Frontal Crash Passenger, and Rollover.

15. The sticker explains that the “Frontal Crash” Driver “Star ratings [are] based on the risk of injury in a frontal impact.”

16. The sticker further explains that the “Frontal Crash” Passenger “Star ratings [are] based on the risk of injury in a frontal impact.”

17. The sticker further explains that “Rollover...Star ratings [are] based on the risk of rollover in a single-vehicle crash.”

18. As explained below, the 2014 Cadillac CTS Sedan had not received any five-star ratings for any NHTSA safety category. The automobile, in fact, has never been tested by the NHTSA for any such safety ratings.

19. Plaintiff purchased the 2014 Cadillac STS Sedan on December 29, 2013.

20. Shortly after May 16, 2014, Plaintiff received a letter of that date from Jim Moloney, the General Director, Customer & Relationship Services of GM. The letter stated:

The purpose of this letter is to advise you about an inadvertent error on your vehicle’s window label with respect to the National Highway Traffic Safety Administration’s (NHTSA) safety ratings for your vehicle. Not all vehicles are tested by NHTSA every model year. When a vehicle is tested, however, star ratings are issued by NHTSA for frontal crash, side crash, rollover, and overall vehicle performance. All of these ratings are then placed on the window label. While Cadillac always strives for excellence in safety and quality, **as of the date of this letter, the 2014 CTS Sedan has not been tested or rated by NHTSA as to its vehicle crash performance. Therefore, the vehicle does not have any star ratings form NHTSA in any category.**

The window label on your vehicle correctly indicated that its overall vehicle and side crash performance were not rated. However, due to an inadvertent computer programming error, **the label also indicated that your vehicle achieved a 5-star rating for frontal crash and rollover performance. This is not correct.** Enclosed is a corrected window label accurately reflecting that **your vehicle has no NHTSA star ratings.**

21. As the letter indicates, the letter enclosed a replacement Monroney sticker that represents that the 2014 Cadillac CTS Sedan has received no NHTSA star ratings.

CLASS REPRESENTATION ALLEGATIONS

22. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this complaint on behalf of all persons within the State of Florida who purchased vehicles from GM

that contained false and deceptive information concerning the NHTSA safety ratings for the vehicle (the “Class”).

23. Upon completion of discovery with respect to the scope of the Class, the Plaintiff reserves the right to amend the Class definitions.

24. Numerosity: Based upon the size of GM’s operations in Florida and the information GM has provided to Plaintiff in its May 16, 2014 letter, Plaintiff believes that the Class consists of at least thousands of individuals in Florida who purchased GM vehicles that had affixed to them a deceptive Monroney sticker.

25. Commonality: Plaintiff’s claims raise questions of law and fact that are common to each member of the Class that predominate over any questions affecting any individual members including, inter alia, the following:

- a. Whether GM made false representations to the Class concerning NHTSA safety ratings assigned to GM automobiles; and
- b. Whether GM violated FDUTPA by making false and deceptive representations concerning NHTSA safety ratings assigned to such automobiles.
- c. Whether GM was unjustly enriched through its false and deceptive representations concerning NHTSA safety ratings assigned to such automobiles.

26. Typicality: The claims of Plaintiff are typical of the claims of each member of the Class in that Plaintiff alleges a common course of conduct by GM toward each member of the Class—specifically, GM directed false representations to each member of the Class. Plaintiff and the other members of the Class seek identical remedies under identical legal theories. There is no antagonism or material factual variation between Plaintiff’s claims and those of the Class.

27. Adequacy: Plaintiff is a Florida resident who will fairly and adequately protect and represent the interest of each member of the Class. Additionally, Plaintiff is fully cognizant of her responsibilities as a class representative and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the GM, few, if any, members of the Class would seek legal redress individually for the wrongs complained of here. The maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all members of the Class.

FIRST CLAIM FOR RELIEF

Violations of Florida Deceptive and Unfair Trade Practice Act

(Against GM on behalf of the Class)

29. Plaintiff incorporates paragraphs 1-28 by reference.
30. Plaintiff brings this claim against GM on behalf of herself and the Class.
31. GM is engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and is therefore subject to the provisions contained in §501.201 et seq., Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).
32. Plaintiff and the members of the Class are "consumer(s)" as defined by §501.203(7), Florida Statutes, and as such are entitled to the protection of FDUTPA.

33. In selling automobiles in Florida, GM was required to be honest in its dealings and not engage in any actions that had the effect of deceiving purchasers of automobiles.

34. By reason of the conduct alleged herein, GM engaged in unfair and deceptive business practices in violation of FDUTPA, Fl. St. §§501.201, et seq. Specifically, GM violated FDUTPA by affixing materially false Monroney stickers to GM automobiles sold in Florida. The Monroney stickers were materially false because they falsely stated that certain automobiles, including the 2014 Cadillac CTS Sedan, had achieved certain NHTSA safety ratings when the automobiles had, in fact, never received such ratings.

35. As a result of GM'S violations of FDUTPA, Plaintiff and the members of the Class have been aggrieved and are, thus, entitled to damages under FDUTPA.

36. As redress for GM's repeated violations of these consumer protection statutes, Plaintiff and the members of the Class are entitled to, inter alia, damages and declaratory relief.

WHEREFORE, Plaintiff respectfully requests this Court enter an Order granting the following relief:

a. award Plaintiff and the members of the Class damages pursuant to §501.211(2), Florida Statutes;

b. enter a declaratory judgment to the effect that GM has engaged in unfair, unconscionable, and deceptive business practices, in violation of FDUTPA as set forth in §501.211(1), Florida Statutes;

c. award Plaintiff her reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

SECOND CLAIM FOR RELIEF

Unjust Enrichment

(Against GM on behalf of the Class)

37. Plaintiff incorporates paragraphs 1-36 by reference.

38. Plaintiff, on behalf of herself and the members of the Class, assert a common law claim for unjust enrichment against GM.

39. GM received and retained wrongful benefits as a result of the purchases made by Plaintiff and members of the Class and, in so doing, GM has disregarded the rights of Plaintiff and members of the Class.

40. By means of GM's wrongful conduct alleged herein, GM made false and deceptive representations to Plaintiff and members of the Class; thus, GM's acceptance and retention of benefits under circumstances that make it inequitable for them to retain such benefits.

41. As a result of the GM's wrongful conduct as alleged herein, it has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

42. GM's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

43. Under the common law doctrine of unjust enrichment, it is inequitable for GM to be permitted to retain the benefits it received, without justification, from its deceptive practices. GM's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment. The financial benefits derived by GM rightfully belong to Plaintiff and the members of the Class.

44. Plaintiff and members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of the Plaintiff and the Class on account of GM's unjust enrichment and compel GM to disgorge in a common fund for the benefit of Plaintiff and the members of the Class all wrongful or inequitable proceeds it received. A constructive trust should be imposed upon all wrongful or inequitable sums received by GM traceable to Plaintiff and the members of the Class. Further, this Court should award attorneys' fees to Plaintiff pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of the members of the Class, respectfully requests:

- A. That that the Court certify this action as a class action pursuant to Federal Rule of Civil Procedure 23 and appoint Plaintiff as the representative of the Class and her counsel as counsel for the Class;
- B. that this Court enter judgment awarding actual and statutory liquidated damages to Plaintiff and the Members of the Class;
- C. that the Court award attorneys' fees, expenses, and the costs of this suit, together with prejudgment and post-judgment interest at the maximum rate allowed by law;
- D. that the Court declare that the conduct of the Defendants violated and continues to violate the FDUTPA;
- E. that this Court award such other and further relief as it may deem just and appropriate.

Dated: June 20, 2014

By his attorneys,

/s/ Jeffrey M. Liggio

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