

CAUSE NO. _____

STATE OF TEXAS,)	
<i>Plaintiff,</i>)	
)	
v.)	IN THE DISTRICT COURT OF
)	
GENERAL MOTORS LLC, <i>and</i>)	MONTGOMERY COUNTY,
ONSTAR LLC,)	TEXAS
)	
)	
)	_____ JUDICIAL DISTRICT
)	
<i>Defendants.</i>)	JURY TRIAL DEMANDED
_____)	

PLAINTIFF’S ORIGINAL PETITION

Plaintiff, STATE OF TEXAS (the “Plaintiff” or “State”), acting by and through the Attorney General of Texas, Ken Paxton, brings this action against Defendants GENERAL MOTORS LLC (“General Motors” or “GM”) and ONSTAR LLC (“OnStar”) for violating the Texas Deceptive Trade Practices—Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41–17.63.

INTRODUCTION

“At General Motors, your privacy is important to us, as is your trust in our products or services.” – General Motors’ Privacy Statement (July 1, 2023)

1. When consumers purchase a vehicle, their primary concern is how effectively it will get them from Point A to Point B. But for years, consumers who purchased GM vehicles also unwittingly opted into an all-seeing surveillance system. General Motors deceptively collected scores of data points from consumers about their driving habits, monetized that data by selling it to other commercial actors, and permitted those actors to use the ill-gotten data to make adverse decisions when dealing with those same consumers. Customers of General Motors thought that when they purchased a vehicle, they were merely acquiring a mode of transportation. But in fact, these consumers were making a decision that would follow them and have consequences in multiple unrelated transactions with unrelated vendors for years to come.

2. Since 2015, General Motors has installed technology in its vehicles that it advertised as improving the safety, functionality, and operability of its vehicles. But this technology can also collect, record, analyze, and transmit highly specific “Driving Data” about a vehicle’s usage. And for years, Defendants General Motors and its subsidiary, OnStar LLC (collectively, “General Motors” or “GM”), have unlawfully collected, used, and sold the Driving Data it obtained through this technology.

3. The Driving Data collected and sold by General Motors included data from over 14 million of its vehicles, and the data of more than 1.8 million Texans. That Driving Data consisted of the date, start time, end time, vehicle speed, driver and passenger seatbelt status, and distance driven each time a customer drove their GM vehicle. The Driving Data also consisted of information about customers’ use of other GM products, including data collected from General Motors’ mobile apps.

4. Moreover, General Motors' unlawful sale of Driving Data was a systemic part of its operations, formalized through agreements with various companies. For example, GM entered into agreements requiring purchasing companies to build a database called a "telematics exchange" to house the purchased Driving Data. Under these agreements, the purchasing companies were to use the Driving Data to calculate a customer "Driving Score" based on risk "factors" developed by General Motors. Purportedly "bad" driving factors included late-night driving, driver and passenger seat belt status, instances of sharp turns, and hard braking, hard acceleration events, and driving over 80 miles per hour.

5. GM's agreements required these same purchasing companies to license access to their respective telematics exchanges to car insurance companies ("Insurers"). After buying a license, an Insurer could access the respective Driving Scores of the more than 16 million customers whose data General Motors sold. Unbeknownst to these customers, Insurers could—and did—use these scores and data to make significant decisions that impacted customers including monthly premium increases, dropped coverage, or coverage denials.

6. General Motors profited handsomely from these agreements. The sale of Driving Data generated multiple new revenue streams for GM. It unlocked millions in lump sum payments, "royalty payments" based on telematics exchange licenses sold to Insurers, and annual guaranteed payments if GM sold the Driving Data of a threshold number of newly sold vehicles.

7. General Motors represented to purchasing companies that its customers had consented to the collection, use, and sale of their Driving Data. However, as detailed in the "Factual Allegations" below, General Motors engaged in a series of misleading and deceptive acts and practices to obtain these customers' "consent" to enroll in OnStar products, including Connected

Vehicle Services, General Motors' mobile apps (myChevrolet, myGMC, myBuick, and myCadillac), and the OnStar Guardian App.

8. GM's practice was to subject consumers who had just completed the time-consuming and stressful process of buying or leasing a vehicle at a dealership to an "onboarding" process. To customers, the onboarding process appeared to be a mandatory pre-requisite to taking ownership of their vehicle; however, it was no more than a deceptively designed sales flow to ensure that customers would sign up for GM's products and unwittingly be enrolled in GM's Driving Data collection scheme. As part of this onboarding process, General Motors electronically presented customers with over fifty pages of disclosures about its OnStar products, which consisted of product descriptions and a confusing series of applicable user terms and privacy notices.

9. GM purported to disclose its privacy practices to consumers, but its disclosures were confusing and highly misleading. The disclosures touted the "customer benefits" of GM's products, and falsely implied that data collected by General Motors would be used for reasons related primarily to improve the safety, functionality, and operability of its vehicles and products by GM and its partners. For example, in one disclosure, General Motors stated that it "may use [customers'] information to develop, enhance, provide, service, maintain, and improve the safety, security, and quality of [its] products, programs, and services, and for product research and marketing[.]" Similarly, another disclosure stated that General Motors would share customers' information with other companies for only certain reasons, such as "to develop, enhance, provide, service, maintain, and improve the safety, security, and quality of [its] products, programs, and services, to respond to [customers'] requests, to allow recipients to use it for marketing, and as required or permitted by law."

10. In actuality, General Motors used its lengthy and detailed disclosures to obfuscate its deceptive and harmful conduct. At no point did General Motors inform customers that its practice was to sell *any* of their data, much less their *Driving Data*; nor did General Motors disclose that it had contracts in place to make its customers' Driving Scores available to other companies; nor did General Motors disclose that it contracted to permit companies to re-sell customers' Driving Scores to Insurers.

11. Moreover, as detailed in the factual allegations below, General Motors incentivized dealership employees, often through commissions, to enroll customers in its Driving Data collection scheme which, on information and belief, resulted in many customers being enrolled without their knowledge or consent. Further, if a customer attempted to decline to enroll, they would be shown various "warning" messages which represented that declining would result in the de-activation of several of their vehicle's safety features.

12. The State of Texas contends that this proceeding is in the public interest and brings this action to end the complained-of harmful and unlawful practices and penalize General Motors for its false, deceptive, and misleading conduct.

JURISDICTION AND VENUE

13. This action is brought by the Texas Attorney General's Office through its Consumer Protection Division in the name of the State of Texas ("Plaintiff" or the "State") and in the public interest, pursuant to the authority granted by Section 17.47 of the Texas Deceptive Trade Practices Act ("DTPA"). The State brings this action on the grounds that General Motors has engaged in "false, deceptive, and misleading acts and practices in the course of trade and commerce" as defined in, and declared unlawful by, Subsections 17.46(a) and (b) of the DTPA, at all times described below.

14. In enforcement actions filed pursuant to Section 17.47 of the DTPA, the Attorney General may seek civil penalties, redress for consumers, and injunctive relief. In addition, the Attorney General may pursue reasonable attorney's fees and litigation expenses in connection with the prosecution of the instant action, in accord with Texas Government Code section 402.006(c).

15. Venue of this suit lies in Montgomery County, Texas, pursuant to Section 17.47(b) of the DTPA because Defendants have done business in Montgomery County and because transactions at issue in this suit have occurred in Montgomery County.

DISCOVERY

16. The discovery in this case should be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4. Restrictions concerning expedited discovery under Texas Rule of Civil Procedure 169 do not apply because the State seeks non-monetary injunctive relief as part of its claims.

17. In addition to injunctive relief, the State claims entitlement to monetary relief in an amount greater than \$1,000,000.00, including civil penalties, reasonable attorney's fees, litigation expenses, restitution, and costs.

DEFENDANTS

18. **Defendant General Motors LLC** ("General Motors" or "GM") is a United States public corporation headquartered in Detroit, Michigan, and incorporated under the laws of Delaware. General Motors is a multinational automotive manufacturer known for owning and manufacturing four automobile brands: Chevrolet, GMC, Cadillac, and Buick. At the time of filing, Defendant's agent for service of process in Texas is the Corporation Services Company, 217 East 7th Street, Austin, TX 78701-4234.

19. **Defendant OnStar LLC** ("OnStar") is a United States corporation headquartered in Detroit, Michigan, and incorporated under the laws of Delaware. OnStar is a subsidiary of

General Motors that provides subscription-based communications, in-vehicle security, emergency services, turn-by-turn navigation, and remote diagnostics systems throughout the United States. At the time of filing, Defendant's agent for service of process in Texas is the Corporation Services Company, 217 East 7th Street, Austin, TX 78701-4234.

TRADE AND COMMERCE

20. At all times described below, Defendants and their agents have engaged in conduct that constitutes "trade" and "commerce" as defined in Section 17.45(6) of the DTPA.

PUBLIC INTEREST

21. The State has reason to believe that General Motors is engaging in or has engaged in the unlawful acts or practices set forth below. In addition, the State has reason to believe that General Motors has caused injury, loss, and damage to the State, and has caused adverse effects to the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General initiates this proceeding in the public interest. *See* DTPA § 17.47.

PRE-SUIT NOTICE

22. The Consumer Protection Division provided General Motors notice of the general nature of unlawful conduct challenged herein at least seven days before filing suit, as may be required by Section 17.47(a) of the DTPA.

FACTS

23. General Motors is one of the largest multinational automotive manufacturing companies in the world. Since 2015, General Motors has sold or leased over 1.5 million vehicles under its four brands (Chevrolet, GMC, Cadillac, and Buick) to customers in the State of Texas. In 2023 alone, General Motors manufactured and delivered over 275,000 vehicles across its four

brands to Texas consumers, operated eighteen facilities in the State of Texas, and maintained a network of over 300 dealerships in the State of Texas, including in Montgomery County. GM's agreements with dealerships authorized those dealerships to advertise, offer, and sell GM's products and services, including its subscription-based products, in accordance with General Motors' requirements and specifications.

24. Beginning in 2005, General Motors began partnering with car insurance carriers ("Insurers") to provide usage-based insurance plans to its customers. Under these original, usage-based plans, customers could receive a discount from their Insurer if they exhibited "good" driving behavior. To show "good" driving behavior, customers would install an Insurer-provided device into their vehicle that monitored their Driving Data.

25. As technology advanced, however, Insurer-provided devices were no longer necessary. Rather, General Motors began manufacturing vehicles equipped with technology known as telematics systems. Using a vehicle's telematics system, General Motors was able to directly obtain the same data from its vehicles that the Insurer-provided devices would have otherwise collected.

26. The telematics system is composed of both hardware and software. The hardware component consists of internal and external cameras, a range of sensors (such as seat and seatbelt sensors), speakers, and microphones. The software component is produced by OnStar and has been installed in almost all vehicles manufactured by General Motors since 2015.

27. General Motors captured Texans' data using GM vehicles' telematics systems, and the mobile apps GM provided to customers. Unlike the original usage-based insurance programs that require customers to install an optional device, and which use Driving Data to reward "good" driving behavior, General Motors used the telematics system to unilaterally collect its customers'

Driving Data, analyze it, and sell it in a manner that, unbeknownst to its customers, *penalized* their “bad” driving behavior.

28. General Motors’ telematics system collects an enormous amount of Driving Data.

Those types of Driving Data collected and sold include:

- (a) synthetic key;
- (b) trip ID;
- (c) element timestamp;
- (d) event code;
- (e) element code;
- (f) element value;
- (g) obsolete GPS data indicator;
- (h) current speed;
- (i) current speed validity indicator;
- (j) GPS direction;
- (k) driver seat belt status;
- (l) GPS estimated horizontal positioning error;
- (m) GPS elevation;
- (n) engine idle run time total supported indicator;
- (o) engine idle run time total;
- (p) engine PTO active run time total;
- (q) engine run total supported indicator;
- (r) engine PTO active total run time supported indicator;
- (s) engine run time total;

- (t) total fuel used;
- (u) GPS time;
- (v) GPS latitude coordinate;
- (w) lifetime energy used;
- (x) GPS longitude coordinate;
- (y) location time offset;
- (z) odometer reading;
- (aa) speed rate of change;
- (bb) speed rate of change positive indicator;
- (cc) vehicle ignition system power mode;
- (dd) driver seatbelt latched;
- (ee) hard acceleration occurs;
- (ff) hard brake occurs;
- (gg) ignition off;
- (hh) ignition on;
- (ii) speed over 80 miles per hour; and
- (jj) speed under 80 miles per hour.

I. General Motors aggressively touted the benefits of its products while obfuscating its privacy practices so it could collect and sell customers' Driving Data.

29. General Motors aggressively strived to enroll customers that purchased a 2015 model year or newer GM vehicle into signing up for GM products including (1) "Connected Vehicle Services," which GM uses as a catch-all term to describe the features it can enable using a vehicle's telematics system; (2) General Motors' mobile apps; and (3) the OnStar Guardian App.

30. The specific features of these products varied but they all had one key feature in common: signing up resulted in customers' unwittingly agreeing to GM's using these products to collect and sell their Driving Data to other companies—including Insurers. Each product is discussed in turn.

a. General Motors aggressively marketed the benefits of its Connected Vehicle Services.

31. General Motors marketed the Connected Vehicle Services as giving customers “better drives,” “better entertainment,” “better safety,” and “better control.” General Motors offered customers the Connected Vehicle Services through several different subscription plans. The subscription plans GM offered have changed over time, but as of 2018 were: (1) Connected Access for no charge; (2) Remote Access for \$14.99 per month; (3) Unlimited Access for \$39.99 per month; (4) Safety & Security for \$24.99 per month; (5) Remote Access + Safety & Security for \$34.99 per month; and (6) Unlimited Access + Safety & Security for \$59.99 per month.

32. The free Connected Access plan included five features (all of which were included with each of the paid subscription plans). The five basic features as described by General Motors were:

- (a) OnStar Smart Driver (“Smart Driver”): “provide[s] [a customer] with insights on [their] driving behavior and can help [them] recognize driving improvement opportunities” and “provides this feedback in the form of an easy-to-read monthly report and a Smart Driver score.”
- (b) OnStar Vehicle Diagnostics (“OVD”): provides customers with “easy-to-use monthly diagnostics reports showing the health of [their] vehicle’s key operating systems.”

- (c) OnStar Dealer Maintenance Notifications: sends a customer's dealership their "vehicle diagnostics reports so [their dealer] can contact [them] to set up a service appointment, if needed."
- (d) OnStar Marketplace: provides customers with "valuable offers on the go to the places [a customer] like[s] to eat, shop and play."
- (e) OnStar In-Vehicle Apps: lets customers "[m]ake the most of [their] drive time by streaming [their] favorite music, sports and entertainment."

b. General Motors also pushed customers to download its free mobile apps, which it then used to collect and sell their Driving Data.

33. General Motors also strived to get as many customers as possible to download one of its brand-specific mobile apps: myChevrolet, myGMC, myBuick, or myCadillac. GM made these apps available at no cost but unbeknownst to customers, GM treated the downloading and enrolling of the app as the customer's "agreement" to the collection and sale of their Driving Data.

34. General Motors advertised the apps as a "mobile command center for your vehicle" that would provide customers with a "user-friendly way to leverage many of the basic and available connectivity and vehicle management features offered through [OnStar]." The mobile apps' features included the ability to track a vehicle's location, check its odometer reading, fuel level, and oil life, lock and unlock its doors, and remotely turn the vehicle on or off.

c. General Motors enticed customers to sign up for OnStar Guardian by highlighting its extra safety features, and then used it to collect and sell more information about its customers.

35. General Motors touted the safety benefits of the OnStar Guardian App to entice customers into signing up. Unbeknownst to customers, however, GM treated a customer's enrollment in this product of the app as the customer's "agreement" to the collection and sale of their Driving Data.

36. General Motors advertised OnStar Guardian as providing “family safety that goes where you go.” By enrolling in this product, customers could access many of the safety features provided through the Connected Vehicle Services even if they were not in or operating their vehicle.

OnStar Services Wherever You Are With the OnStar Guardian app

Thanks to OnStar, you may feel safer in your car. But how about when you or your family are in someone else’s car? Or on your motorcycle? Or at home? Or out for a walk or hike? We’ve got you. The OnStar Guardian® app* gives your family the key safety services of OnStar — Roadside Assistance,* GPS locator service,* emergency help — even crash detection — anywhere you go. You can share the app with up to seven friends or family members.*

Figure 1. General Motors touted the safety features of OnStar Guardian to encourage customers to enroll.

37. The Guardian App also included several additional features, such as the ability to access the sensors in a customer’s phone to monitor if they were in a car crash and the ability to track a person’s location using their phone. Customers could also “share” the OnStar Guardian App with up to seven other people who could then access its features as well.

38. On information and belief, General Motors was able to use the OnStar Guardian App to collect and sell additional data about its customers and anyone with whom their customers shared the OnStar Guardian App.

II. General Motors used several deceptive techniques to ensure customers would enroll in its Connected Vehicle Services.

39. General Motors pushed customers into enrolling in its Connected Vehicle Services through a series of deceptive and misleading practices, including through its aggressive “onboarding” process, all of which impaired customers’ decision making and ensured they would enroll in the Connected Vehicle Services.

a. General Motors used dealership employees to pressure customers into enrolling in the Connected Vehicle Services using GM's onboarding process.

40. General Motors incentivized dealership employees, often through commissions, to use GM's onboarding process to enroll customers in the Connected Vehicle Services before they left the dealership. On information and belief, this commission-based model resulted in many customers being enrolled in the Connected Vehicle Services without their knowledge or consent.

41. For customers that *were* taken through GM's onboarding process, the onboarding process appeared to be a mandatory pre-requisite to taking ownership of their vehicle. However, the onboarding process was no more than a deceptively designed sales flow to ensure that customers would sign up for the Connected Vehicle Services and unwittingly be enrolled in GM's Driving Data collection scheme.

42. To conduct the onboarding process, a dealership employee would log into GM's onboarding system, enter the customer's VIN number, create an OnStar account for the customer or locate the customer's pre-existing account, and then GM's system would list the Connected Vehicle Services subscription plans that the vehicle was eligible for (including the free Connected Access plan).

43. At this point, GM's system instructed the employee to show the screen to the customer, which displayed a message that further made the onboarding process appear mandatory. Specifically, the screen instructed the customer to "complete the next few steps" "before tak[ing] ownership of [their] vehicle," and prompted the customer to select a "Get started" button. On information and belief, neither GM nor dealership employees informed customers that they were not required to complete the onboarding process.

b. General Motors did not give customers a meaningful opportunity to review its deceptive disclosures.

44. After selecting the “Get started” button, General Motors overwhelmed customers with information by providing them a screen containing a 29-page “User Terms for Connected Vehicle Services,” an 18-page “General Motors U.S. Connected Services Privacy Statement,” a link to AT&T’s terms and conditions, a link to AT&T’s network management practices, a vehicle ownership acknowledgment statement, and, finally, an “I accept” and an “I decline” checkbox option, with both options including even more information.



Figure 2. Customers were only shown the first paragraph of the two policies and needed to scroll to review them. But as explained, neither of these policies disclosed the actual nature of GM’s conduct.

45. The substantial information on this screen served to prevent and deter customers from reviewing GM’s disclosures. Moreover, as explained *supra*, even if a customer closely reviewed every word on this screen, the disclosures, and the other linked policies, they still would

have no knowledge of GM’s actual conduct. Specifically, nowhere did the disclosures explain that by selecting the “I accept” option, customers were activating the five basic OnStar features: Smart Driver, Vehicle Diagnostics, Dealer Maintenance Notifications, Marketplace, and In-Vehicle Apps. Nor did these disclosures explain that by activating those features, customers were “agreeing” to GM’s collection and sale of their Driving Data.

c. General Motors presented customers with safety “warning” messages if they tried to decline the Connected Vehicle Services.

46. General Motors also designed the onboarding process to repeatedly display messages meant to deter customers from declining the Connected Vehicle Services. Specifically, any customer that selected the “I decline” option received a “warning” message that misleadingly claimed that declining would result in the deactivation of the Connected Vehicle Services, even though at this point in the onboarding process customers had not yet enrolled in the Connected Vehicle Services.

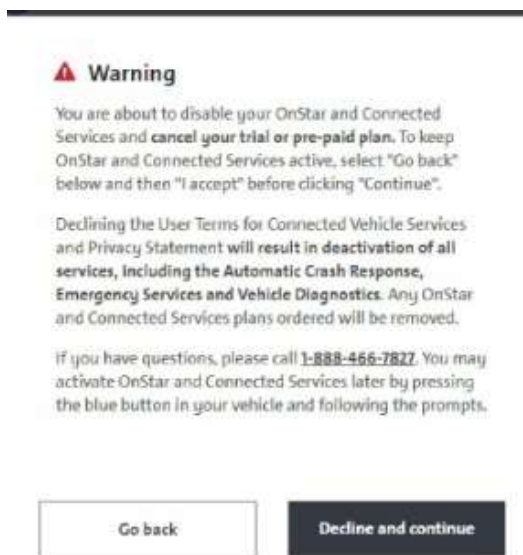


Figure 3. The “warning” message deterred customers from canceling by emphasizing in bold letters that by declining, the customer was deactivating their vehicle’s safety features.

47. The warning message further attempted to dissuade customers from declining the Connected Vehicle Services by emphasizing that safety features, such as “Automatic Crash Response” and “Emergency Services,” would be de-activated if they declined.

48. If GM’s first safety warning did not successfully deter a customer, the customer would be presented with another screen attempting to dissuade them from declining the Connected Vehicle Services. Specifically, GM displayed a message explaining the “consequences” of declining the Connected Vehicle Services and prompted the customer to “go back and accept OnStar terms.”

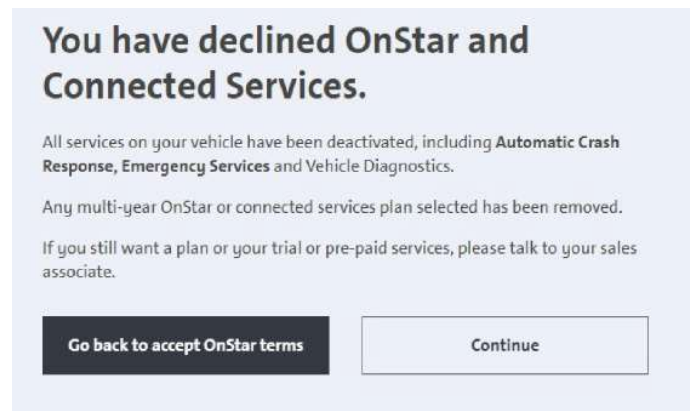


Figure 4. After rejecting the services twice, GM again tried to get customers to reverse their decision.

49. If a customer managed to leave the dealership without enrolling in the Connected Vehicle Services, General Motors would repeatedly email them to sign up for a “trial” period of the Connected Vehicle Services.

50. While General Motors aggressively enrolled as many customers as possible, it simultaneously made it difficult for customers to cancel their Connected Vehicle Services plan. Specifically, while General Motors permitted customers to enroll in the Connected Vehicle Services using a variety of methods, including online, on information and belief, GM only allowed customers to cancel the Connected Vehicle Services by calling.

51. For GM’s mobile apps, like the Connected Vehicle Services, General Motors prompted customers to download its app before they left the dealership as part of GM’s “onboarding” process. If a customer did not download the app at the dealership, on information

and belief, General Motors would repeatedly email customers “reminding” them to download the app.

III. GM’s user terms and privacy notices misled and confused customers about GM’s collection, use, and sale of their Driving Data.

52. General Motors maintained and provided customers with lengthy and detailed disclosures about its products, and provided them to customers during its dealership onboarding process and on its websites and apps. GM’s disclosures generally consisted of “user terms” and “privacy statements,” and as of July 1, 2023, included a 29-page “User Terms for Connected Vehicle Services,” an 18-page “U.S. Connected Services Privacy Statement,” a link to a 46-page AT&T “Consumer Service Agreement,” a link to AT&T’s “Broadband Information” website, and if a customer downloaded the mobile app when prompted or enrolled in OnStar Guardian, an additional 3-page “User Terms for Application Services,” a 6-page “Account Guidelines,” and a 4-page “Privacy Statement for Application Services,” and a 3-page “OnStar Guardian Privacy Statement.” While GM’s disclosures have varied over time, at no point have they materially disclosed anything above and beyond that described below.

53. GM’s various user terms for its products generally included lengthy and dense explanations of the obligations, legal rights, and remedies applicable to GM and its customers, as well as cross-references to GM’s various privacy statements and other applicable user terms. GM’s multiple privacy statements generally included summaries that purported to highlight the “key points” of GM’s collection, use, and “sharing” of customers’ information, and were followed by lengthy explanations of nearly every aspect of GM’s information practices, including a verbose yet vague explanation of GM’s collection, use, and sharing of customers’ data, as well as cross-references to GM’s various user terms and other applicable privacy statements.

54. While the specifics of GM’s various user terms and privacy statements varied, they all shared several things in common—none of them informed customers that GM would *sell* any of their data; nor did they disclose that GM would sell their Driving Data; nor did they disclose that GM would use their Driving Data to profit and receive royalty payments; nor did they disclose that GM contractually required companies to create databases of their Driving Data; nor did they disclose that GM would use the Driving Data to create risk profiles of its customers (i.e., Driving Scores); nor did they disclose that GM would make customers’ Driving Scores available to other companies; nor did they disclose that GM expressly permitted companies to re-sell their Driving Scores to Insurers; nor did they disclose that agreeing to use GM’s products could result in financial harm.

55. Further, GM left customers with the impression that it did not sell their data, and specifically failed to disclose that it was actively engaged in using their Driving Data to generate Driving Scores or that it was selling their Driving Score and Driving Data to several companies, including Insurers whose use of the Driving Data could result in financial harm to customers.

56. GM’s multiple agreements to sell customers’ data since 2015, as detailed *supra*, underscore the false, misleading, and deceptive nature of GM’s conduct.

a. GM’s U.S. Connected Services Privacy Statement contained false and misleading representations and caused confusion regarding GM’s collection, use, and sale of Driving Data.

57. To ensure that customers enrolled in its Driving Data collection scheme, GM’s disclosures misleadingly focused on the “customer benefits” of its products and that its products would give customers “better drives,” “better entertainment,” “better safety,” and “better control.”

58. To further ensure that customers would enroll in its products, GM made a series of misleading statements that the data it collected would be used to improve the safety, functionality, and operability of its vehicles. For example, in the “key points” of its “U.S. Connected Services

Privacy Statement,” General Motors represented that it “may use [customers’] information to develop, enhance, provide, service, maintain, and improve the safety, security, and quality of [its] products, programs, and services, and for product research and marketing[.]”

59. In its next key point, General Motors stated that it would share customers’ information with other companies primarily “to develop, enhance, provide, service, maintain, and improve the safety, security, and quality of [its] products, programs, and services, to respond to [customers’] requests, to allow recipients to use it for marketing, and as required or permitted by law.” With respect to retaining customers’ information, GM also highlighted that it would keep customers’ information only “for as long as necessary to provide products or services to [customers]. . . .”

60. Another section of GM’s U.S. Connected Privacy Statement, titled “How we may share your information,” purports to disclose how GM would share customers’ information. In this section, GM included the universe of the types of parties with whom it may share customers’ information, and included a “Third-Party Business Relationships” subsection that contained a specific example of when it would share *any* information with an Insurer. GM’s example was buried at the end of a parenthetical at the end of a sentence and obliquely indicated that “*usage based insurance providers*” “may” be given GM data, but only if the consumer had “receive[d] a service from them and/or authorized them to request data from GM.” (italics in original).

HOW WE MAY SHARE YOUR INFORMATION

We may share the categories of your information described above as follows:

GM Family of Companies: Within the GM family of companies (*for example, including OnStar*) for the above uses.

Emergency Service Providers: With emergency service providers, such as law enforcement, roadside assistance providers, and ambulance providers, to protect your safety or the safety of others, and to deliver related services (*for example, Stolen Vehicle Assistance Services*).

Third-Party Business Relationships: With business that GM enters into business relationships, such as SiriusXM, in connection with their products and services; research institutes, for research and development purposes (*for example, improving highway safety*); or dealers, fleet, or rental car companies, for service or maintenance of your vehicle. We may also share data with third parties for marketing activities (with necessary consents) or where you have elected to receive a service from them and/or authorized them to request data from GM (*for example, financial organizations who offer financing for the purchase or lease of GM vehicles or usage based insurance providers*).

Service Providers: With our product and service providers who work on our behalf in connection with the uses described in the preceding section, such as dealer managed service providers, wireless service providers (e.g. AT&T), companies that administer our contests and promotions, host and/or operate our websites, send communications, perform data analytics, process, store, or manage credit card, information (we will not otherwise share your credit card information).

Where Required or Permitted by Law: As required or permitted by law, such as in conjunction with a subpoena, government inquiry, litigation, dispute resolution, or similar legal process, when we believe in good faith that disclosure is necessary to protect our rights, your safety, or the safety of others, to detect, investigate and prevent fraud or other illegal activity, or to conduct screening to ensure you are not on any government list of restricted parties.

Business Transfers: With a prospective or completed sale, transfer, or financing of a part of a GM business or its assets.

Figure 5. “Usage based insurance” refers to insurance products offered by Insurers, such as those offered by General Motors’ subsidiary, GM Insurance, that require insureds to install an Insurer-provided device into their vehicle to be eligible for discounts based on “good” driving behavior.

61. While this is the only instance where GM even gestures toward the possibility of sharing *any* information with Insurers – and implies that it is shared only with a consumer’s authorization, it lumps this minimal disclosure in with utterly inapposite and unrelated information, such as that GM has business relationships with “SiriusXM” (a satellite radio company) and that it interacts with “research institutes” to “improv[e] highway safety” (italics omitted), to the point that the disclosure itself is meaningless.

62. The disclosure also contained confusing compound language, such as the notification—combined into a single sentence—that information may be shared “for marketing activities,” “where you have elected to receive a service” from someone, and if you “authorized” someone to receive the data. This compound language fails to give an ordinary consumer reasonable notice about whether all, some, or even any of these conditions are prerequisites to GM’s sharing of the customer’s information with third parties.

63. The only other instance in which GM mentioned “insurance” was in its 29-page User Terms for Connected Vehicle Services to clarify the unremarkable point that General Motors is not an insurance company.

b. GM’s privacy statements for its mobile apps and OnStar Guardian also contained false and misleading representations and caused confusion regarding GM’s collection, use, and sale of Driving Data.

64. GM’s Privacy Statement for Application Services and its OnStar Guardian Privacy Statement failed to disclose that GM was actively engaged in using customers’ data to create Driving Scores and selling those scores and the underlying Driving Data to Insurers, whose use of the data could result in financial harm to its customers.

65. GM’s Privacy Statement for Application Services purports to describe how GM and its affiliates “collect, use, and share information . . . when [a customer] download[s] this application to [their] phone or other Internet-connected device . . . and when [a customer] use[s] the services available through the Application.” Unlike the U.S. Connected Services Privacy Statement, however, the Privacy Statement for Application Services made no mention of “insurance” in its “Sharing of Information” section.

Sharing of Information

We may share information we collect about you as described in the OnStar Privacy Statement. For example, we share information with necessary third parties when you use the Application to make requests for third party or related services available through the Application, such as for dealer maintenance appointments or roadside assistance. We may share the location of your Device in the same manner as we share location and speed of your Vehicle. For example, we may share the location of your Device with:

- third party service providers working on our behalf,
- emergency service providers,
- others when required by law, and
- those you ask us to share this information with.

We may also share the location of your Device when necessary to provide the Application Services to you; to comply with legal obligations; to protect the safety and rights of you and others; for product safety and security purposes; and for the purposes described in the OnStar Privacy Statement.

Figure 6. General Motors listed the types of companies with whom it shared customers’ mobile app information, but made no mention of insurance.

66. The OnStar Guardian Privacy Statement contained a similar “Sharing of Information” section as that in the Privacy Statement for Application Services, and likewise omitted any mention of “insurance.”

Sharing of Information

We share your information as described in the OnStar Privacy Statement. For example, we share information with necessary third parties when you use the Application to make requests for third party or related services available through the Application, such as roadside assistance. We may share your information with:

- third party service providers working on our behalf;
- members and invitees of your “My Family”;
- emergency service providers;
- individuals specified by you when using the Application, such as emergency contacts;
- others when required or permitted by law, and
- those you ask us to share this information with.

We may share the location of your Device when necessary to provide the Application Services to you; to comply with legal obligations; to protect the safety and rights of you and others; for product safety and security purposes; and for the purposes described in the OnStar Privacy Statement.

Figure 7. General Motors listed the types of companies with whom it shared customers’ OnStar Guardian information, but made no mention of insurance.

67. GM’s Privacy Statement for Application Services and the OnStar Guardian Privacy Statement cause further confusion, because each informs consumers that they must also refer to the “OnStar Privacy Statement” because “together [they describe] our privacy practices.” On information and belief, there is no privacy statement titled “OnStar Privacy Statement,” and GM instead maintains a page called “OnStar Privacy Statement” which lists a series of privacy statements.

c. General Motors used Smart Driver to mislead customers about its harmful use and sale of their Driving Data.

68. General Motors also used its descriptions and disclosures associated with the OnStar “Smart Driver” feature to further confuse and mislead consumers, particularly regarding whether their Driving Data would be sold to other companies, provided to Insurers, or used to evaluate their insurance rate based on their Driving Score.

69. As noted *supra*, GM markets Smart Driver to customers as a tool for them to monitor their own driving behavior. Instead of disclosing any of the consequences of a “bad”

Driving Score, General Motors framed Smart Driver—and the score it generated—as a feature that was purely beneficial to customers. According to General Motors, Smart Driver “provides driving feedback that can help[sic] drivers improve their vehicle’s performance, drive more carefully, save on gas and help reduce wear and tear on the vehicle.” General Motors likewise de-emphasized the significance of a bad Driving Score:

What does your score tell you?

In summary, if you have a score of 88, yes, you might consider yourself a B+ driver — well above average. Unlike a permanent high school grade, though, your Smart Driver score isn’t permanent. With the regular feedback and tips for improving your score, you can make your Smart Driver score grow over time. Check how you compare (anonymously) with other Smart Drivers in your monthly report — you could find yourself among the highest-scoring Smart Drivers.

Figure 8. Instead of informing customers of the consequences of failing to improve their Driving Score, General Motors reassured them that their Driving Score was not permanent and could improve over time.

70. According to General Motors, it would “use information [it] collect[ed] about where and how [customers] operate [their] vehicles, such as [a] vehicle’s location, routes driven, driving schedule, fuel or charging levels, fuel economy, battery status, overall vehicle health, and driving behavior, such as hard braking, hard acceleration, tailgating, vehicle speed, late night driving, driver and passenger seatbelt status, and driver attention” to provide customers with insights about their driving behavior.

OnStar Smart Driver†

Improve your ownership experience with access to OnStar Smart Driver.

What is OnStar Smart Driver? OnStar Smart Driver provides you insights on your driving behavior and can help you recognize driving improvement opportunities. You'll earn achievements, get valuable feedback with each trip, and access your driving data. OnStar Smart Driver also gives you the opportunity to use Connected Teen Driver, which helps promote safe driving habits.

We'll use information we collect about where and how you operate your vehicle, such as your vehicle's location, routes driven, driving schedule, fuel or charging levels, fuel economy, battery status, overall vehicle health, and driving behavior, such as hard braking, hard acceleration, tailgating, vehicle speed, late night driving, driver and passenger seatbelt status, and driver attention. Smart Driver "hard braking" and "hard acceleration" events are identified when measured vehicle speed changes rapidly, regardless of the cause of the rapid speed change. We may also use alerts from your vehicle, such as forward collision and traction control.

After enrollment, you can opt out of OnStar Smart Driver at any time by clicking "unenroll" in OnStar Smart Driver in your myGMC mobile app.

Figure 9. Before leaving the dealership, customers were shown this description touting the benefits of Smart Driver and encouraging them to enroll.

IV. For nearly a decade, General Motors compiled and sold customers' Driving Data collected as part of providing its products without their knowledge.

71. In 2015, General Motors entered into the first of many agreements to sell its customers' Driving Data. Over the course of nearly a decade, General Motors continued to sell, re-sell, and have other companies license out access to its customers' Driving Data, oftentimes in a manner it knew would financially harm those customers. On information and belief, General Motors sold over 16 million of its customers' Driving Data to other companies, including the data of 1.8 million Texans.

72. Taking its harmful conduct further, General Motors contractually obligated at least one of the purchasing companies to attempt to purchase the Driving Data of other car manufacturers' customers. In return, General Motors would receive additional profit from the sale of Driving Data from these other car manufacturers. General Motors' mandate was successful, as set forth in greater detail below.

a. GM's 2015 Agreement with Verisk Analytics Inc.

73. General Motors first entered into an agreement with Verisk Analytics Inc. (“Verisk”) to sell its customers’ Driving Data on October 22, 2015 (“Verisk Agreement”). Verisk is a data analytics and risk assessment firm focused on providing insurance companies with “innovative solutions to meet customer needs and drive growth.”

74. Pursuant to the Verisk Agreement, General Motors received an initial multi-million-dollar lump sum payment from Verisk. Going forward, General Motors periodically sent Verisk the additional Driving Data it collected from its customers. Further, General Motors represented to Verisk that it received its customers’ consent to sell their Driving Data.

75. The Verisk Agreement also contractually required Verisk to develop a database, called a “Telematics Data Exchange” (hereinafter, “Verisk Exchange”), to house the Driving Data received from General Motors and use the Driving Data to calculate a “Driving Score” for each of GM’s customers.

76. A customer’s Driving Score was based on a series of “factors” developed by General Motors that were supposedly indicative of “bad” driving behavior and included behavior such as (1) unique identifiers of a trip; (2) trip mileage; (3) hard braking and acceleration events; (4) speed events over 80 miles per hour; and (5) other behavior tracked by OnStar Vehicle Diagnostics (“OVD”). Under the Verisk Agreement, GM provided Verisk with the Driving Data necessary to determine whether a customer exhibited any “bad” driving behaviors.

77. General Motors also sold its customers’ personally identifiable information to Verisk, including their customer ID, name, home address, OVD enrollment date, OVD unenrollment date, VIN, vehicle year, vehicle make, and vehicle model. In combination with the

Driving Data, this personally identifiable information allowed Verisk to create a Driving Score for each of GM's customers.

78. To further monetize the Driving Data, General Motors contractually required Verisk to market and sell licenses to Insurers to access the Verisk Exchange. Based on the revenue generated from Verisk's license sales to Insurers, Verisk paid General Motors ongoing "royalty payments."

79. Upon purchasing a Verisk Exchange license, Insurers could use the Verisk Exchange to search for the Driving Scores of their insureds or potential insureds and then use that information to financially harm General Motors' customers, including by denying prospective insureds coverage, increasing current insureds' monthly premiums, or dropping their current insureds from coverage entirely. Over the life of the Verisk Agreement, Verisk sold Verisk Exchange licenses to nine Insurers, and those Insurers accessed the Driving Scores of hundreds of thousands of GM's customers.

80. General Motors also contractually required Verisk to solicit "other vehicle [manufacturers], telecom carriers, and other third parties possessing Driving Data and other relevant vehicle data" for inclusion in the Verisk Exchange. Verisk succeeded and entered into similar agreements with both American Honda Motor Company on December 7, 2017, and Hyundai Motor America on March 1, 2018.

b. GM's 2018 Agreement with Wejo Limited

81. On December 21, 2018, General Motors entered into an agreement with Wejo Limited ("Wejo"), a British connected car start-up. Like the Verisk Agreement, General Motors sold Wejo the Driving Data so that Wejo could sell licenses for other companies to access the Driving Data. But unlike the Verisk Agreement, the Wejo Agreement authorized Wejo to pursue

potential buyers in other sectors, not just Insurers, and to sell the Driving Data only after receiving approval from GM.

82. Pursuant to the Wejo Agreement, General Motors bought a 35 percent ownership interest in Wejo for \$25 million and agreed to provide Wejo with the 2018 Driving Data of 2.6 million vehicles, valued at \$70 million. Going forward, General Motors continuously sent Wejo newly collected Driving Data. Like the Verisk Agreement, General Motors received ongoing payments from Wejo based on Wejo's license sales. Specifically, under the Wejo Agreement, Wejo had a minimum monthly revenue licensing target of \$3 million per month and Wejo agreed to pay General Motors 70 percent of this revenue. Wejo also agreed to "reimburse" GM if it ever failed to meet its monthly revenue target. This relationship continued until Wejo declared bankruptcy in May 2023.

83. The Driving Data General Motors sold to Wejo varied over time, but generally consisted of Driving Data underlying certain "Element Codes." These were based on factors similar to those developed by General Motors pursuant to the Verisk Agreement: (1) trip start; (2) trip end; (3) hard braking and acceleration events; (4) speed events over 80 miles per hour; and (5) driver seatbelt status change.

84. Over time, General Motors began selling additional types of Driving Data to Wejo. For example, in December 2022 General Motors started providing Wejo with its customers' "Radio Listening Data," which included data such as: (1) ignition state and timestamp (start or end of the trip); (2) AM/FM frequency data; (3) time zone identifiers; (4) radio station call sign; and (5) channel genre.

c. GM's 2019 Agreement with LexisNexis Risk Solutions

85. General Motors entered into a similar agreement with LexisNexis Risk Solutions (“LNRS”) on August 1, 2019 (“LNRS Agreement”), in which LNRS would “market and deliver FCRA and non-FCRA products and solutions to Insurers.”

86. Pursuant to the LNRS Agreement, LNRS paid General Motors an initial multi-million-dollar lump sum in exchange for the Driving Data that GM previously collected in 2017, 2018, and 2019. Going forward, General Motors periodically sent LNRS the additional Driving Data it collected from its customers.

87. General Motors also sought to profit off its ability to “potentially influence” other vehicle manufacturers to sell their respective Driving Data to LNRS. Specifically, LNRS agreed to pay GM additional royalty payments if LNRS successfully contracted with any “target OEMs,” which included American Honda Motor Co., Inc., Hyundai USA, Toyota Motor North America, and Volkswagen Group of America. On information and belief, none of the four “target OEMs” entered into agreements with LNRS (although as explained above, American Honda Motor Company and Hyundai Motor America entered into agreements with Verisk). However, LNRS entered into similar agreements with Mitsubishi Motors North America, Inc. on May 31, 2018, Nissan North America, Inc. on February 28, 2019,¹ Ford Motor Company on August 2, 2021, Subaru of America, Inc. on February 6, 2023, and Kia America, Inc. on October 16, 2023.

88. Like in the Verisk Agreement, the Driving Data sold by General Motors was housed in a database called the “LexisNexis Telematics Exchange” (“LNRS Exchange”), and the Driving Data was used to calculate a “Driving Score” for each of GM’s customers.

¹ This agreement expired in 2023 and, on information and belief, was never renewed.

89. A customer's Driving Score was also based on a series of "Driving Events" that were supposedly indicative of "bad" driving behavior. The Driving Events varied over time but included events such as: (1) ignition on, (2) ignition off, (3) hard brake occurrences, (4) hard acceleration occurrences, (5) time spent driving over 80 miles per hour, (6) time spent driving under 80 miles per hour, and (7) driver seatbelt status. Under the LNRS Agreement, GM provided LNRS with the Driving Data necessary to determine whether a Driving Event occurred in a customer's vehicle.

90. General Motors also sold LNRS its customers' personally identifiable information, including the customer's name, address, phone number, email address, and their vehicle's VIN, make, model, and year. In combination with the Driving Data, this personally identifiable information allowed LNRS to create a Driving Score for each of GM's customers.

91. Similar to the Verisk Agreement, General Motors contractually required LNRS to market and sell licenses to Insurers to access the LNRS Exchange. Based on the revenue generated from the license sales, LNRS paid General Motors ongoing "revenue share" payments.

92. For Insurers that contracted to use the LNRS Exchange, any time an individual made an inquiry about obtaining car insurance, the Insurer receiving the inquiry could search the LNRS Exchange to see if it contained Driving Data about the potential insured. In addition, LNRS agreed to annually pay General Motors a guaranteed minimum payment if GM provided LNRS with the Driving Data of a certain percentage of the vehicles it sold that year.

93. Like the Insurers that purchased licenses to use the Verisk Exchange, Insurers using the LNRS Exchange could search for information about their insureds and increase their insureds' monthly premiums or drop their insureds from coverage entirely.

d. GM's 2024 Agreement with Jacobs Engineering Group Inc.

94. On information and belief, General Motors most recently sold Driving Data to Jacobs Engineering Group Inc. ("Jacobs") on January 3, 2024. Jacobs is a professional services firm that provides engineering, technical, professional, and construction services. Pursuant to the agreement with Jacobs, General Motors authorized Jacobs to use de-identified Driving Data in Jacobs' own products and to license Driving Data to other parties approved by General Motors.

95. Like in the Verisk, LNRS, and Wejo Agreements, General Motors received revenue-sharing payments from Jacobs based on Jacobs' licensing of the Driving Data to third parties.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

96. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition, as if fully set forth herein.

97. The Texas Deceptive Trade Practices Act prohibits false, misleading, or deceptive acts or practices in the conduct of trade and commerce. As alleged herein and detailed above, Defendants have in the course and conduct of trade and commerce engaged in false, misleading, or deceptive acts or practices declared unlawful by and in violation of Section 17.46(a) and (b) of the DTPA.

Count I: Misrepresentations Regarding Its Products

98. Defendants falsely, expressly or by implication, misrepresented the benefits and risks of its products and their related features to consumers. While touting the benefits of its products as providing customers with "better drives," "better entertainment," "better safety," and "better control," Defendants were silent as to risks associated with their information sharing practices. Moreover, Defendants repeatedly sold their data in a manner it knew could financially

harm consumers through higher car insurance premiums, being dropped from coverage, or being denied coverage.

99. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(9), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

Count II: Misrepresentations Concerning the Use of Driving Data

100. Defendants falsely, expressly or by implication, misrepresented how they would use the data collected about their customers, including by making false and misleading statements that customers' information would be used to develop, enhance, provide, service, maintain, and improve the safety, security, and quality of GM's products, programs, and services, and for product research and marketing. In reality, General Motors also self-servingly used the vast amount of data it collected about its customers to derive a profit by repeatedly selling its customers' information to several different companies over the course of nearly a decade.

101. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(9), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

Count III: Misrepresentations Concerning the Sale of Driving Data

102. Defendants falsely, expressly or by implication, misrepresented their practice of sharing and selling customers' information, including by stating they would only "share" customers' information with certain categories of third parties.

103. In fact, Defendants entered into several unrelated agreements explicitly to sell customers' information, none of which involved marketing activities. Defendants never disclosed to customers that their information would be sold for other purposes.

104. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(9), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

Count IV: Misrepresentations Concerning Smart Driver and the Collection of Driving Data

105. Defendants falsely, expressly or by implication, misrepresented the purpose of the collection of data by Smart Driver as being for the customer's benefit, not other companies such as Insurers. Defendants' Smart Driver description stated it would provide customers with insights and feedback into their driving behavior and listed some of the "factors" used to calculate a customer's Driving Score.

106. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(9), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

Count V: Deceptive Techniques Used to Enroll Customers

107. Defendants used several false, misleading, and deceptive techniques to obtain customers' "consent" to Defendants' collection and sale of their data, including through its utilization of an aggressive onboarding program that included misrepresenting to customers that its dealership onboarding process was a pre-requisite to taking ownership of their vehicles.

108. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(9), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

Count VI: Deceptive Representations regarding Privacy Practices

109. Defendants purported to provide consumers with disclosures of their privacy practices, but utilized lengthy and confusing privacy statements that obfuscated Defendants' practices.

110. Defendants falsely, expressly or by implication, represented that customers would be able to exercise control over the sharing of their data with insurance providers when such was not the case.

111. In doing so, Defendants violated Sections 17.46(a), 17.46(b)(12), and 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

TRIAL BY JURY

112. The State demands a jury trial and tenders the appropriate fee with this petition.

PRAYER FOR RELIEF

113. The State of Texas respectfully requests that this Honorable Court impose civil penalties on Defendants pursuant to Section 17.47(c) of the DTPA, which authorizes the Office of the Texas Attorney General's Consumer Protection Division to request a civil penalty to be paid to the State of Texas in an amount of: (1) not more than \$10,000 per violation; and (2) if the act or practice that is subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, an additional amount of not more than \$250,000.

114. The State of Texas further respectfully requests that this Honorable Court issue an order:

- (a) Declaring Defendants' conduct as described herein to be in violation of the DTPA;
- (b) Directing Defendants to delete or otherwise destroy all Driving Data obtained prior to the entry of any judgment by this Court, including any Driving Data in the possession of any third party;
- (c) Directing Defendants to make full restitution to all consumers who suffered a loss as a result of the acts and practices alleged in this Complaint and any other acts and practices proved by the State, pursuant to Section 17.47(d) of the DTPA; and

- (d) Permanently enjoining Defendants, their agents, employees, and all other persons acting on their behalf, directly or indirectly, from violating the DTPA, including by: (1) incorporating, employing, or otherwise using, directly or indirectly, any pattern or design that relates in any way to Driving Data, which causes, or is intended to cause, a consumer to act in a way that they would not absent the pattern or design, including mechanisms to obtain consent from consumers; and (2) collecting and selling Driving Data without providing customers with a clear and conspicuous notice of Defendants' practices and obtaining customers' express, informed consent.

115. The State of Texas further respectfully requests that this Honorable Court award the Office of the Texas Attorney General attorney's fees and costs of court pursuant to Texas Government Code Section 402.006(c), under which attorney's fees and costs of court are recoverable by the Office of the Texas Attorney General.

116. Lastly, the State of Texas respectfully requests that this Honorable Court grant any other general, equitable, and/or further relief this Court deems just and proper.

Respectfully submitted,

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Dated: August 13, 2024

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