

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)
COUNTY OF MARION) CAUSE NO. _____

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
GENERAL MOTORS LLC, and) **JURY TRIAL DEMANDED**
ONSTAR LLC,)
)
Defendants.)

**COMPLAINT FOR INJUNCTION, CIVIL PENALTIES,
RESTITUTION, DISGORGEMENT, COSTS AND OTHER RELIEF**

The State of Indiana (“State”), through Attorney General Theodore E. Rokita, by Deputy Attorneys General Scott L. Barnhart, Jennifer M. Van Dame, and Kelly M. Starling, brings its Complaint against General Motors LLC and OnStar LLC pursuant to the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.* (“DCSA”) for injunctive relief, civil penalties, consumer restitution, disgorgement, costs and other relief.

INTRODUCTION

1. For over two decades, General Motors LLC (“General Motors” or “GM”) and its wholly-owned subsidiary OnStar LLC (“OnStar” and collectively with General Motors “Defendants”) have touted their software-enabled services and subscriptions, including GM’s in-vehicle telematics system OnStar, as improving the safety, functionality and operability of GM vehicles for the ***benefit*** of the consumer. Far from the consumer benefits touted, Defendants have used, and continue to use, the vehicles’ telematics system as a cash cow by

surreptitiously selling consumers' driving behavior and geolocation to third-party data brokers and insurance companies, who then use the information to penalize drivers. In short, Defendants profited from its data mining and data sharing activities to the detriment of the very customers to whom their telematics technology and associated programs were advertised to help.

2. Here's how it worked. Beginning in 2015, GM equipped its vehicles with the OnStar telematics technology. The word "telematics" is a combination of "telecommunication" and "informatics." This technology marries vehicle sensors, cameras, microphones, electronic control units, and gateways, so that the vehicles' systems can communicate with one another, generate and collect data, and then transmit that data to GM.

3. With its vehicles enabled with the connectivity provided through its telematics system, Defendants were able to and did siphon and collect scores of highly specific driving data ("Driving Data") from unsuspecting consumers, which they in turn sold to third-party data brokers. This information was used by these third parties to create data exchanges and develop risk profiles and driving scores on consumers, which they then marketed and sold to third-party insurance companies, who in turn used the information to increase premiums and deny or cancel insurance altogether.

4. The data points collected by Defendants as part of their customers' Driving Data include, among others, the start time, end time, vehicle speed, hard braking events, hard acceleration events, high-speed driving percentage, late-

night driving percentage, and total miles driven.¹ Defendants also collected location data on all drivers who activated the internet connection for their GM vehicle, even if they did not enroll or opt-in to OnStar services,² and information from a consumer's use of one of GM's many mobile apps.³

5. Notably, at no point were customers notified of Defendants' practice of selling customers' Driving Data to data brokers, nor of Defendants' contracts with third parties to create data exchanges, risk profiles, and driving scores on consumers, nor that those third parties would resell consumers' data to insurance companies without their consent and authorization. Instead, Defendants marketed the OnStar products exclusively as beneficial to consumers—a way to save money⁴—and stated that data collection related to those products would be for the safety, functionality, and operability of its vehicles.

6. Notwithstanding its representations, the third-party data brokers were paying Defendants lump sums for the initial transmission of consumers' data

¹ *Introducing the OnStar Smart Driver Feature*, BAKER MOTOR COMPANY, <https://www.bakermotorcompany.com/6762-2/> (last visited Jan. 22, 2025).

² *Automaker Responses to Sen. Markey Letter on Privacy*, GENERAL MOTORS (Dec. 21, 2023), https://www.markey.senate.gov/imo/media/doc/automaker_responses_to_sen_markey_letter_on_privacy - 022824pdf.pdf (answering Question 1 on page 2 of GM's response).

³ ONSTAR, PRIVACY STATEMENT FOR APPLICATION SERVICES 2 (2022), <https://www.onstar.com/content/dam/onstar/na/us/en/index/legal/legal-privacy-statement-jan012011/02-pdfs/Privacy-Statement-for-Application-Services.pdf> (“[T]he types of your information that we may collect include: Account information, vehicle-related information, and driving information, such as the location and speed of your Vehicle based on GPS.”).

⁴ *Introducing the OnStar Smart Driver Feature*, BAKER MOTOR COMPANY, <https://www.bakermotorcompany.com/6762-2/> (last visited Jan. 22, 2025).; see *Reading Into Your Chevrolet, Buick, GMC and Cadillac Smart Driver Score*, ONSTAR (Jan. 28, 2020), <https://www.onstar.ca/en/tips/reading-into-your-smart-driver-score>.

as well as periodic payments for additional data sent over the span of years.⁵ On information and belief, Defendants were also paid by the data exchanges when insurance companies would purchase licenses to access the Driving Data via the exchanges. Thus, Defendants surreptitiously sold the Driving Data they collected from customers to third-party data exchanges for the specific purpose of profiting from their own customers' data.⁶

7. In conjunction with its actions to conceal its activities from consumers, Defendants employed deceptive “dark patterns” and created an enrollment process referred to as the “onboarding” process that maximized the number of customers in the programs and did not allow consumers to fully understand their privacy policies.

8. More specifically, to ensure that consumers would participate in its subscription services and to obfuscate its privacy policies, GM created a complex “onboarding” process, which takes place at the point of sale or lease, to tout GM’s telematics technology and promote the benefits of OnStar services to customers. During this “onboarding” process, GM and OnStar enlist deceptive design practices, referred to as “dark patterns,” that trick or manipulate customers into

⁵ See GENERAL MOTORS, DATA SHARING AGREEMENT (2018), https://www.sec.gov/Archives/edgar/data/1864448/000110465921093068/tm2121431d2_ex10-2.htm.

⁶ *Automaker Responses to Sen. Markey Letter on Privacy*, GENERAL MOTORS (Dec. 21, 2023), https://www.markey.senate.gov/imo/media/doc/automaker_responses_to_sen_markey_letter_on_privacy - 022824pdf.pdf (answering Question (1)(e) with, “For those limited data shares where there is a commercial benefit attributable directly to the data sharing, the impact to GM’s overall 2022 revenue was de minimis.”); see GENERAL MOTORS, DATA SHARING AGREEMENT (2018), https://www.sec.gov/Archives/edgar/data/1864448/000110465921093068/tm2121431d2_ex10-2.htm.

making choices they would not otherwise make by taking advantage of consumers' cognitive biases in order to steer their conduct away from, or delay access to, information needed to make fully informed decisions.⁷

9. This process was designed to conceal that GM and OnStar were selling their customers' Driving Data to third-party data brokers and collaborating with these data brokers to develop risk profiles that were being used to penalize consumers.

10. To put it bluntly, GM and OnStar surreptitiously collected consumers' data and engaged in deceptive and misleading actions, so they could profit from the sale of customers' data at the direct expense of Indiana consumers' privacy rights. Based on current estimates, hundreds of thousands of Hoosiers have been affected by Defendants' deceptive and unfair practices.

11. Defendants' conduct was intentional and systematic. Defendants failed to obtain informed consent from consumers before selling their Driving Data by using devious "dark pattern" design techniques to manipulate and coerce consumers into enrolling in the programs in which their Driving Data was recorded and collected.⁸

12. GM's deceptive conduct directly contradicts the Consumer Privacy Protection Principles of the Alliance for Automotive Innovation—of which GM is

⁷ FED. TRADE COMM'N, BRINGING DARK PATTERNS TO LIGHT (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

⁸ Suzanne Smalley, *Senators to FTC: Car Companies' Data Privacy Practices Must be Investigated*, THE RECORD (July 26, 2024), <https://therecord.media/markey-wyden-ask-ftc-to-probe-car-company-data-practices>.

a “Participating Member.”⁹ In these Privacy Protection Principles, GM affirmed its commitment to provide “clear, meaningful, and prominent notice disclosing the collection, use, and sharing of Covered Information” to allow owners to provide affirmative consent.¹⁰ Under the fundamental principle of transparency, GM committed itself to designing notices to provide owners with clear, meaningful, and prominent information about the collection of Driving Data, “the purposes for which it is collected, and the types of entities with which the information may be shared.”¹¹ Unfortunately, Defendants’ deceptive and unfair marketing and “onboarding” process left customers in the dark regarding the uses of their Driving Data and the third parties to whom it was sold. Not only did GM fail to uphold its promises made under the Consumer Privacy Protection Principles, but it also placed its unsuspecting customers in potential financial harm.

13. The Office of the Indiana Attorney General is authorized to bring actions on behalf of the State of Indiana pursuant to IND. CODE § 4-6-3-2, and is charged with, among other things, enforcing the Indiana Deceptive Consumer Sales Act. IND. CODE §§ 24-5-0.5-4(c), 24-5-0.5-8.

14. The Indiana Deceptive Consumer Sales Act prohibits deceptive, unfair, and abusive business practices, such as those detailed herein.

⁹ *Our Auto Industry Members*, ALLIANCE FOR AUTOMOTIVE INNOVATION, <https://www.autosinnovate.org/about/our-members> (last visited Jan. 22, 2025).

¹⁰ Alliance For Automotive Innovation, Inc., Consumer Privacy Protection Principles 2, 5 (2022), https://www.autosinnovate.org/innovation/Automotive%20Privacy/Consumer_Privacy_Principlesfor_VehicleTechnologies_Services-03-21-19.pdf.

¹¹ *Id.* at 6–7.

15. Accordingly, the State of Indiana, through Attorney General Todd Rokita, brings this consumer protection action against General Motors and OnStar to redress and restrain violations of the Indiana Deceptive Consumer Sales Act, IND. CODE § 24-5-0.5, *et seq.* The State seeks an order permanently enjoining Defendants' conduct challenged herein, imposing civil penalties, and providing all other monetary and equitable relief to which the State is entitled.

PARTIES

16. The Attorney General is authorized to bring this action to enforce the Indiana Deceptive Consumer Sales Act pursuant to IND. CODE §§ 24-5-0.5-4(c), 24-5-0.5-8.

17. Defendant General Motors LLC is a United States limited liability company headquartered in Detroit, Michigan and incorporated under the laws of Delaware. GM is a multinational manufacturer that owns and manufactures four automobile brands: Chevrolet, GMC, Cadillac, and Buick. At the time of filing, GM's agent for service of process in Indiana is Corporation Service Company, 135 North Pennsylvania Street, Suite 1610, Indianapolis, IN 46204.

18. Defendant OnStar LLC is a United States limited liability company headquartered in Detroit, Michigan and incorporated under the laws of Delaware. OnStar is a wholly owned subsidiary of GM 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, OnStar's agent for service of process in Indiana is the Corporation Service Company, 135 North Pennsylvania Street, Suite 1610, Indianapolis, IN 46204.

JURISDICTION AND VENUE

19. IND. CODE § 4-6-3-2 authorizes the Attorney General to bring actions on behalf of the State of Indiana.

20. IND. CODE § 24-5-0.5-4(c) empowers the Attorney General to “bring an action to enjoin a deceptive act” and obtain other relief under Indiana’s Deceptive Consumer Sales Act, IND. CODE § 24-5-0.5, *et seq.*

21. Defendants are subject to the jurisdiction of an Indiana court pursuant to Ind. Trial R. 4.4(A) because the exercise of jurisdiction would not be inconsistent with the United States Constitution, and the action arises from Defendants doing business in Indiana, Defendants causing injury to consumers in Indiana, and Defendants deriving substantial revenue or benefits from goods and services used, consumed, or rendered in Indiana.

22. Defendants engage in consumer transactions in Indiana, as defined by IND. CODE § 24-5-0.5-2, and have purposefully availed themselves of the privilege of doing business in the State of Indiana. Defendants sell GM-branded vehicles and services via employees and dealerships located across the State of Indiana, thereby intentionally directing its resources toward, marketing to, and selling its goods and services to Indiana residents.¹² As evidence of Defendants’ purposeful availment of Indiana and its laws and protections, as of January 1, 2024, GM operated 124 dealerships across the state.¹³ In 2023 alone, GM

¹² *General Motors in Indiana*, GENERAL MOTORS, <https://www.gm.com/company/usa-operations/indiana> (last visited Feb. 4, 2025).

¹³ *Id.*

delivered more than 61,000 vehicles to the State.¹⁴ Additionally, GM has manufacturing facilities in Indiana.¹⁵

23. This action arises from or relates to Defendants' contacts with the State of Indiana. Defendants are deceptively and unfairly collecting, using, selling, and profiting from Indiana residents' Driving Data that is later resold via exchanges to insurers that increase rates based on the Driving Data, thereby causing harm to those very same customers in Indiana. Defendants' unlawful, deceptive, and unfair trade practices induce Indiana residents to transact with Defendants, sometimes at the risk of financial harm to those residents.

24. The State is a governmental organization and thus bears no obligation to post security to obtain injunctive relief . IND. R. CIV. P. 65(C).

25. The State does not plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law.

FACTUAL ALLEGATIONS

I. Defendants' Business and Telematics System.

26. GM is a multinational company, and it is one of the world's largest manufacturers of vehicles. It owns and operates four major brands: Chevrolet, GMC, Cadillac, and Buick.¹⁶ GM reported that in the calendar year 2024, GM sold 2.7 million vehicles in the United States, seeing growth in all four of its major

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *View the Entire Portfolio of GM Brands*, GENERAL MOTORS, <https://www.gm.com/gm-brands>.

brands.¹⁷ In the State of Indiana alone, GM reported it had 124 dealerships and delivered more than 61,000 vehicles in the calendar year 2024.¹⁸

27. GM's agreements with the dealerships in Indiana authorized those dealerships to advertise, offer, and sell GM's products and services, including subscription-based products, in accordance with GM's requirements and specifications.¹⁹

28. As of 2021, GM "offer[ed] OnStar and connected services to more than 22 million connected vehicles globally through subscription-based and complimentary services."²⁰

A. Defendants Unfairly and Deceptively Promoted Their OnStar Telematics System as a Safety Feature That Provides Peace of Mind, When in Truth, Defendants Were Using It to Collect Consumers' Driving Data and Sell It in a Manner That, Unbeknownst to Its Customers, Penalized Them.

29. GM launched OnStar in 1996 as "the industry's first embedded telematics system and comprehensive automatic crash notification and security system," which was offered as "an automotive safety tool—a way for people to get help easily and quickly in an emergency."²¹

¹⁷ See <https://investor.gm.com/news-release/news-release-details/gm-posts-4-sales-growth-2024-market-share-keeps-expanding> (last visited on Jan. 22, 2025).

¹⁸General Motors in Indiana, GENERAL MOTORS, <https://www.gm.com/company/usa-operations/indiana>.

¹⁹ See Jim Koscs, *Why General Motors Dropped Its OnStar Smart Driver Program*, CAPITALONE (July 2, 2024), <https://www.capitalone.com/cars/learn/finding-the-right-car/why-general-motors-dropped-its-onstar-smart-driver-program/3366>.

²⁰ General Motors' 2021 Form 10-K Annual Report at p. 2, available at <https://investor.gm.com/static-files/6ac492ca-6a4f-462e-9de8-0e2a7d471327> (last visited on Jan. 22, 2025).

²¹ Shanna Freeman, *How OnStar Works*, HOW STUFF WORKS, (Feb. 8, 2006), <https://auto.howstuffworks.com/onstar.htm> (last visited on Jan. 22, 2025); *The*

30. The OnStar telematics system is comprised of both hardware and software. The hardware consists of internal and external cameras, sensors (such as seat and seatbelt sensors), speakers, and microphones. The software is produced by OnStar to collect and transfer data on and off a vehicle.²²

31. When GM first launched OnStar, it was a “[d]ealer-installed” optional device.²³ Beginning in 2005, customers were offered usage-based insurance plans where they could receive a discount from their insurance company if they exhibited “good” driving behavior. To show “good” driving behavior, customers would install the add-on, insurer-provided device.

32. In 2010, GM became one of the first companies to connect the internet to a vehicle’s navigation system. With GM’s introduction of in-vehicle internet connectivity, GM gained the ability to instantly transmit driving data from vehicles to GM’s data centers.

33. This driving data (“Driving Data”) includes geolocation, route history, driving schedule, fuel or charging levels, hard braking events, hard acceleration events, tailgating, time spent idle, speeds over 80 miles per hour, vehicle speed, average speed, late night driving, driver attention, and more.

Evolution of OnStar, ONSTAR, <https://www.onstar.com/why-onstar/evolution-of-onstar-innovations> (last visited Jan. 22, 2025).

²² Memorandum from the Alliance for Automotive Innovation entitled “No, Your Car Isn’t Spying...It’s Keeping Your Safe” 1 (Dec. 2023), <https://www.autosinnovate.org/posts/communications/Telematics%20Data%20Meemo%20to%20Interested%20Parties.pdf>.

²³ See *The Evolution of OnStar*, ONSTAR, <https://www.onstar.com/why-onstar/evolution-of-onstar-innovations> (last visited on Jan. 22, 2025).

34. From 2014 to 2015, GM rolled out 4G LTE connectivity for all vehicle models 2015 or newer.²⁴ The 4G rollout made GM the first full-line automaker to implement the feature across its entire vehicle portfolio, representing the “broadest and quickest deployment of the technology in history.”²⁵

35. So, since 2015, OnStar hardware and software have come installed as original, standard equipment in all GM vehicles.²⁶

36. Around that same time, to ensure that customers subscribed to OnStar, and maintained that subscription and data connection, GM introduced an “OnStar Basic Plan” for GM drivers. Although GM typically required drivers to pay for OnStar subscriptions, GM began offering the new OnStar Basic Plan as a free, “complementary” service that was “included” with a vehicle purchase. The OnStar Basic Plan, which allowed drivers to access vehicle diagnostic reports, dealer maintenance notifications, and remote start/control, enabled GM to maintain a data connection with the vehicle for a minimum of five years.²⁷ This free, five-year version of OnStar ensured that vehicles model year 2015 or newer

²⁴ Sean Szymkowski, *GM’s ‘Adjacent Businesses’ Represent \$1.5 Billion Opportunity*, GM AUTHORITY (July 15, 2018) <https://gmauthority.com/blog/2015/04/general-motors-expects-onstar-4g-lte-to-drive-profits-increase-innovation/>; *Exclusive: GM to tap into connectivity, expand car sharing services*, REUTERS (Sept. 29, 2015) <https://www.reuters.com/article/technology/exclusive-gm-to-tap-into-connectivity-expand-car-shring-services-ceo-idUSKCN0RS2K4/>.

²⁵ *Id.*

²⁶ See *The Evolution of OnStar*, ONSTAR, <https://www.onstar.com/why-onstar/evolution-of-onstar-innovations> (last visited on Jan. 22, 2025); *How to Get Started with OnStar*, ONSTAR (Jan. 9, 2019), <https://www.onstar.com/tips/get-started-services> (“If your car is Model Year 2015 or newer, push your blue OnStar button...and get your service started.”).

²⁷ *OnStar Basic Plan Info & Price*, GM AUTHORITY, <https://gmauthority.com/blog/gm/general-motors-technology/onstar/onstar-plans-pricing/onstar-basic-plan-info-price/>.

would continually transmit data to GM during this five-year term. As a Senior Manager at GM stated in a 2017 presentation on the connected car ecosystem: “With every vehicle now coming out of the lot... you’re able to talk to it, whether you have an OnStar subscription or not... two-three years ago, [] this feature was only available if you were a paid subscriber, now this is actually available free of cost to everyone because we want you to connect with us more than ever.... Because of the constant data pipe that we have with these vehicles, our vehicles are constantly sending data to the back-office.”²⁸

37. GM collected this Driving Data at every ignition cycle and transmitted it from vehicles to GM’s servers, much of it “in real time,” using the car’s cellular network.²⁹

38. With a framework in place to maximize mass collection of consumers’ Driving Data, GM launched “OnStar Smart Driver,” which was offered as part of the free OnStar Basic Plan.

39. GM promoted “OnStar Smart Driver” as a new service that “provided customers with information about their driving behavior”:

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. . .³⁰

²⁸ *General Motors Drives Innovation With APIs to Perfect the Connected Car Ecosystem*, at 10:30, ValueOps by Broadcom (Dec. 28, 2016), available at <https://www.youtube.com/watch?v=TGWB1hbHLMw>.

²⁹ GM’s Letter Response to Senate Inquiry (Dec. 21, 2023), available at <https://interactive.wthr.com/pdfs/automakers-response-to-markey.pdf>.

³⁰ See Wyden-Markey Auto Privacy Letter (July 26, 2024), available at https://www.wyden.senate.gov/imo/media/doc/wyden-markey_auto_privacy_letter_to_ftc.pdf.

40. GM framed Smart Driver as a “gamified” way for drivers to improve their driving and reduce depreciation of their vehicles, and promised to provide participants with a driving score to understand how their driving behavior compares to other drivers, monthly summaries, and opportunities to complete specific challenges and earn “achievements” or “badges.”³¹

41. Unbeknownst to consumers, OnStar Smart Driver was a core part of GM’s scheme to collect, share and monetize consumers’ Driving Data.

42. So, in short, over time and with the advancement of its telematics systems, GM and OnStar have been able to directly obtain the same driving behavior data from its own vehicles instead of relying on insurer-provided devices that consumers had to install themselves. Using GM’s pre-installed, in-vehicle telematics equipment, GM used Smart Driver as a means to intercept extensive, highly private Driving Data reflecting consumers’ driving behavior and location.

43. Notwithstanding the foregoing, GM publicly marketed and described Smart Driver in terms that suggested it was a tool purely for the consumers’ benefit. For example, in an archived webpage explaining “How It Works,” GM told consumers that OnStar would “provide you with information on driving events” to allow “you to learn to drive smarter and get more out of your vehicle.”³² Similarly, in an archived version of Smart Driver’s “Help & Support” page, GM told

³¹ See, e.g., *Reading Into Your Chevrolet, Buick, GMC and Cadillac Smart Driver Score*, ONSTAR (Jan. 28, 2020), <https://www.onstar.ca/en/tips/reading-into-your-smart-driver-score> (addressing OnStar Smart Driver’s operation in Canada, which largely mirrors its operation in U.S. vehicles).

³² *Explore the advantages of OnStar Smart Driver*, ONSTAR (as of Sept. 9, 2016), <https://web.archive.org/web/20160909120843/https://www.onstar.com/us/en/services/vehiclemanager/smart-driver.html>.

consumers that Smart Driver would provide them information about their driving behavior “to help maximize their vehicles’ overall performance, reduce vehicle wear and tear, enhance fuel efficiency and help customers become better drivers.”³³

44. Unless customers “separately” activated an “insurance discounts eligibility” feature, GM never disclosed to customers that their Driving Data was being disclosed to insurance companies or any other third party. And, even in those limited circumstances, GM unfairly and deceptively promised that their information would only be shared anonymously, and only by GM.³⁴ GM also promised consumers “Once you enroll, you can separately decide if you would like to anonymously check for insurance discounts,” “giving you a private, risk-free option to find rewards for driving smart;”³⁵ and “OnStar has an optional feature that helps you find . . . saving opportunities without revealing your identity. . . . To enroll in this optional Insurance Discounts Eligibility feature, look for the link on your OnStar Smart Driver activity page online.”

³³ *Reading Into Your OnStar Smart Driver Score*, ONSTAR (Nov. 30, 2016) archived at <https://web.archive.org/web/20170328075702/http://www.experienceonstar.com:80/view/reading-into-your-smart-driver-score>.

³⁴ See *OnStar Help & Support: OnStar Smart Driver*, ONSTAR (as of Dec. 23, 2016), <https://web.archive.org/web/20161223204856/https://www.onstar.com/us/en/help-support/onstar-smart-driver.html>; see also *MyBuick App Helps Enhance Your Driving Skills*, WRIGHT CHEVROLET BUICK GMC, <https://www.wrightchevroletbuickgmc.com/mybuick-app-helps-enhance-driving-skills-blog> (“you can also take advantage of the Insurance Discounts Eligibility program”); *10 Things Every Smart Driver Does*, ONSTAR (June 16, 2016), archived at <https://web.archive.org/web/20160906121028/http://www.experienceonstar.com/view/tips-for-every-smart-driver>.

³⁵ Explore the advantages of Smart Driver, ONSTAR (version as of Sept. 9, 2016), archived at <https://web.archive.org/web/20160909120843/https://www.onstar.com/us/en/services/vehiclemanager/smart-driver.html>.

45. In a January 5, 2015, article titled “OnStar-equipped Cars Can Track Your Driving, Should We Panic About Big Brother?”, it was reported:

OnStar’s most recent press release announces the option to have the programming track your driving habits, and then send you an assessment which you can then forward on to your insurance company (currently only Progressive Insurance), in return for an insurance discount, assuming that your driving report is a positive one.

On first glance, it’s like finding out that your best friend has agreed to give daily reports about your activities to your mom, but the **OnStar rep we spoke with assured us that driver privacy is incredibly important, and that nothing gets recorded or shared without explicit permission from the OnStar subscriber. “All the information is kept anonymously by OnStar, and the driving assessment is sent automatically only to the subscriber, who can then choose to share it with the insurance company,” he told us.**³⁶ (Emphasis added).

46. Thus, GM stressed to consumers that “OnStar is an in-vehicle safety and security system designed to help protect you and your family and provide peace of mind on the road,” and that GM would not use OnStar to overstep into consumers’ private lives without their consent.³⁷

47. GM highlighted this message by touting that its vehicles provide consumers freedom—freedom to move anywhere they want to go at any time. As GM Certified Service used to proudly proclaim in its commercials: “It’s not just a car, it’s your freedom.”³⁸

³⁶ Elana Scherr, *OnStar-equipped Cars Can Track Your Driving, Should We Panic About Big Brother?*, HOT ROD MAGAZINE (Jan. 5, 2015) <https://www.hotrod.com/news/onstar-equipped-cars-can-track-your-driving-should-we-panic-about-big-brother/>.

³⁷ *Help: Chevrolet*, available at <https://www.onstar.com/support/faq/chevrolet>.

³⁸ Mr. Goodwrench Commercial 1989, YOUTUBE, <https://www.youtube.com/watch?v=aXS6x3Gkt0U> (last visited on Jan. 22, 2025). GM Certified Service was previously called Mr. Goodwrench.

48. Defendants misrepresented that any Driving Data collected would be kept completely private and sent “only” to the customer. Further, Defendants concealed that this Driving Data can, and has, been used to create invasive, detailed profiles on both the car and its drivers, providing lucrative profit opportunities for Defendants and any third parties that are provided access to it.³⁹

49. GM’s touting of “freedom”—to go anywhere, at any time, with the ability to control the means of how an individual gets to a particular location—was a farce, and intentionally mislead consumers regarding the nature of Defendants’ activities, the anonymity of a consumers’ Driving Data, and the purposes for which that data was being used and who it was being shared with.

50. As reported by U.S. News in 2024, “the volume of the data collected is staggering. These days, a single car can collect up to 25 gigabytes of data per hour, more space than a two-hour film shot in 4K might occupy on your computer.”⁴⁰

51. Similarly, California Privacy Protection Agency (CPPA) Executive Director Ashkan Soltani recently stated that “[m]odern vehicles are effectively connected computers on wheels.”⁴¹ He explained, “[t]hey’re able to collect a wealth of information via built-in apps, sensors, and cameras, which can monitor people

³⁹ See Matt McFarland, *Your car’s data may soon be more valuable than the car itself*, CNN (Feb. 7, 2017), <https://money.cnn.com/2017/02/07/technology/car-data-value/index.html>.

⁴⁰ Scott Allendevaux, *Yes, Your Car Is Spying On You. Here’s What To Do About It*, U.S. NEWS (July 25, 2024), <https://www.usnews.com/opinion/articles/2024-07-25/yes-your-car-is-spying-on-you-heres-what-to-do-about-it>.

⁴¹ CPPA to Review Privacy Practices of Connected Vehicles and Related Technologies, *available at* <https://cппa.ca.gov/announcements/2023/20230731.html>.

both inside and near the vehicle[.]”⁴² As such, the CCPA cautions that protecting vehicle privacy is “critical” because “these [connected] vehicles often automatically gather consumers’ locations, personal preferences, and details about their daily lives.”⁴³

52. Here, Defendants captured Indiana consumers’ data using GM vehicles’ OnStar telematics system, and the mobile apps that GM provided to consumers (such as myChevrolet, myCadillac, myGMC, and myBuick). Unlike the usage-based insurance programs that required an optional device installed by the customer that used Driving Data to reward “good” driving behavior, Defendants used the telematics system to unilaterally collect their customers’ Driving Data, analyze it, and sell it in a manner that, unknown to the customer, penalized “poor” or “bad” driving behavior.⁴⁴

B. Defendants Used OnStar to Surreptitiously Collect and Profit from Consumers’ Driving Data by Selling That Driving Data to Third-Party Data Brokers.

53. GM used vehicle components to harvest Driving Data by equipping vehicles with components that detect and record substantial amounts of data concerning vehicle operation and driver behavior, and then transmit that information—both while the vehicle is in operation and after a vehicle trip is completed.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ Kashmir Hill, *Automakers Are Sharing Consumers’ Driving Behavior With Insurance Companies*, N.Y. TIMES (Mar. 13, 2024), <https://www.nytimes.com/2024/03/11/technology/carmakers-driver-tracking-insurance.html>.

54. Acknowledging the data processing and transmission capabilities of its vehicles, GM has revealed that its “Vehicle Intelligence Platform,” “powers an electronic system capable of managing up to 4.5 **terabytes** of data processing power per hour,” enabling “more rapid communications within the vehicle itself and to outside sources”⁴⁵

55. “The proliferation of sensors on automobiles – from telematics to fully digitized control consoles – has made them prodigious data-collection hubs.”⁴⁶ GM vehicles are equipped with a “swarm” of sensors throughout. These sensors detect and transmit a host of Driving Data, including vehicle speed, vehicle acceleration and deceleration, collision detection, seatbelt usage, road conditions, information from vehicle cameras, and more.⁴⁷

56. As many as 200-plus sensors are connected to internal processing units in the vehicle (essentially mini-computers referred to as “electronic control units” or “ECUs”).⁴⁸ ECUs are in turn connected to a central processing unit or central gateway.

⁴⁵ GM’s Vehicle Intelligence Platform Enables Adoption of Future Technologies, <https://www.gm.com/stories/digital-vehicle-platform> (emphasis added).

⁴⁶ Frank Bajak, ‘Wiretaps on wheels’: How your car is collecting and selling your personal data,” LOS ANGELES TIMES (Sept. 6, 2023) <https://www.latimes.com/business/story/2023-09-06/carmakers-privacy-data-collection-drivers>.

⁴⁷ Cisco, “The Smart and Connected Vehicle and the Internet of Things,” available at https://www.tf.nist.gov/seminars/WSTS/PDFs/1-0_Cisco_FBonomi_ConnectedVehicles.pdf.

⁴⁸ 5 Ways Your Car Has Become A Computer on Wheels, IEEE TRANSMITTER, (Feb. 28, 2024) <https://transmitter.ieee.org/5-ways-your-car-has-become-a-computer-on-wheels/>.

57. Gateways allow different systems to “speak” to each other. As illustrated below, they “connect different [ECUs], translating data from one protocol to another before forwarding it on” to another ECU. As depicted below, gateways send data to a vehicle’s telematics control unit.⁴⁹ The telematics control unit (“TCU”) sends Driving Data out of the vehicle:

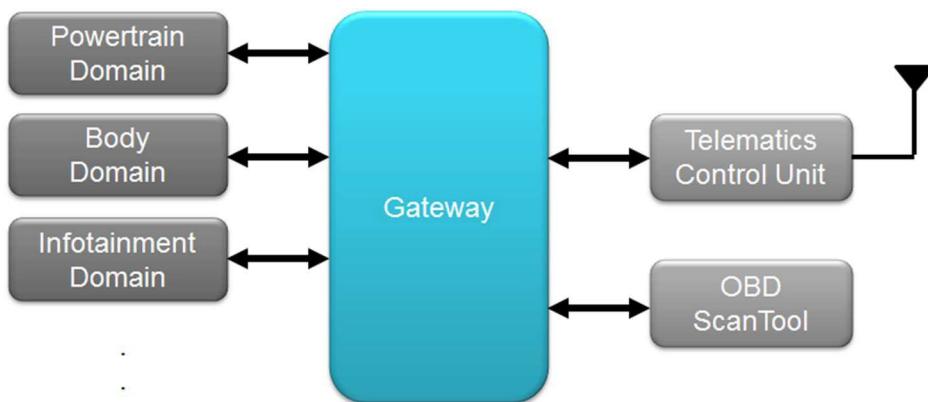


Figure 1: A Typical Vehicle Network Configuration, not specific to GM vehicles

58. In GM vehicles equipped with OnStar, raw data detected by vehicle sensors is processed by vehicle ECUs and transmitted through gateways to the TCU.

59. The following image depicts the TCU (labeled “OnStar”) installed in a GM vehicle’s internal electronic communications network, allowing the TCU to

⁴⁹*Automotive Gateways: the Bridge between Communication Domains*, TEXAS INSTRUMENTS, available at https://www.ti.com/lit/ta/sszt949/ssz949.pdf?ts=1737035939379&ref_url=https%253A%252F%252Fwww.google.com%252F.

receive Driving Data from various vehicle control systems and transmit Driving Data out of the vehicle.⁵⁰

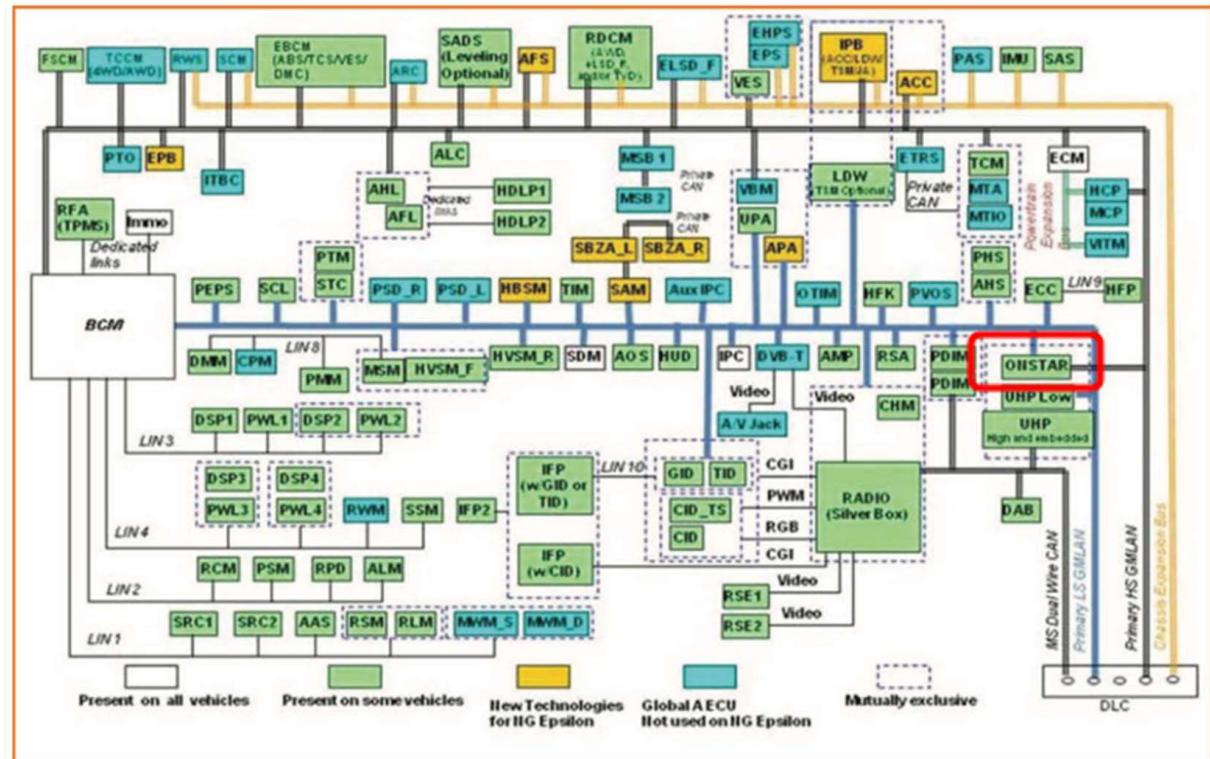


Figure 2

60. GM uses the TCU to transmit detailed driving behavior and geolocation information to itself both during routine vehicle operation and upon the completion of vehicle trips, all unbeknownst to drivers.

61. Specifically, the TCU transmits the detailed driving behavior and geolocation data received from GPS satellites to GM/OnStar through the vehicle's cellular network connection.

⁵⁰ Automatic Transmission Rebuilders Association, "A Closer Look at Vehicle Data Communications," available at https://atracom.blob.core.windows.net/gears/2010/2010-04/2010_4_22.pdf.

62. As explained by GM, the OnStar “service” works by “leverag[ing] cellular networks for connectivity”⁵¹ and GM “partners with multiple wireless carriers to provide coverage across the nation.”⁵²

63. Upon information and belief, GM, through the TCU, transmits certain Driving Data to itself in real time, including data regarding vehicle location and speed.

64. Upon information and belief, GM, through the TCU, accesses stored Driving Data and transmits it to itself after each trip or on other periodic bases, including average speed during a trip and number of miles driven during a trip.

65. Some or all of the Driving Data harvested by GM from vehicle components through the TCU, whether harvested in real-time or by accessing temporarily stored information, is tied to individual drivers and vehicles, and is not anonymized.

66. Even Driving Data that would appear to be anonymized is still connected to GPS geolocation data and/or to the vehicle and is thus easily linked to individuals.

67. In 2015, General Motors entered into an agreement with Verisk Analytics that was publicly described as giving “[c]onsenting connected-car owners . . . the option to contribute their driving data and seamlessly take advantage of insurers’ usage-based insurance (UBI) programs designed to reward

⁵¹ See 3G Network Sunset FAQ, available at <https://www.onstar.com/support/faq/3g-networksunset>.

⁵² See Help: OnStar Coverage, available at <https://www.onstar.com/support/faq/coverage>.

them for how they drive.”⁵³ However, first with Verisk and continuing for nearly a decade, General Motors has sold, re-sold, and had other companies license out access to its customers’ Driving Data, oftentimes in a manner it knew would financially harm those customers, a practice that Senators Wyden and Markey condemned in 2024 as a “flagrant abuse of[] customers’ privacy.”⁵⁴

1. General Motors’ Agreement with Third-Party Data Broker Verisk Analytics.

68. In 2015, General Motors entered into an agreement with Verisk Analytics (“Verisk”) to sell its customers’ Driving Data.⁵⁵ Verisk is a data analytics and risk assessment firm that focuses on providing insurance companies with “industry-leading brands” to help “customers protect people, property, and financial assets.”⁵⁶

69. Pursuant to the Verisk relationship, GM sold Driving Data collected from GM’s customers to Verisk and represented to Verisk that the data was collected and sold with customers’ consent.⁵⁷ According to Verisk, GM was successful in getting at least 85 percent of new-car buyers to sign up for the program, allowing Verisk to collect data from “about 900,000 participating

⁵³ *Verisk Insurance Solutions Announces GM as Inaugural Auto Manufacturer to Join Telematics Data Exchange*, VERISK (Sept. 2, 2015), <https://www.verisk.com/company/newsroom/verisk-insurance-solutions-announces-gm-as-inaugural-auto-manufacturer-to-join-telematics-data-exchange/>.

⁵⁴ Wyden-Markey Auto Privacy Letter (July 26, 2024), available at <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

vehicles covering more than 3 billion trip miles” in 2016 alone.⁵⁸ Verisk claimed that the data collection was “poised for continued significant growth, adding about 5,000 to 6,000 vehicles and 2.5 million miles a day.”⁵⁹

70. Pursuant to the Verisk agreement with GM, Verisk established a database referred to as the “Verisk Telematics Data Exchange” (hereinafter, “Verisk Exchange”), to house the Driving Data received from GM⁶⁰ and use the Driving Data to calculate a “Driving Score” for each of the GM customers.⁶¹

71. A customer’s Driving Score was based on a series of factors developed by GM that were supposedly indicative of “bad” driving behavior and included behavior such as (1) speed, (2) acceleration, (3) braking, and (4) other “driver behavior.”⁶² Under the Verisk agreement, GM provided Verisk with the Driving Data necessary to determine whether a customer exhibited any “bad” driving behaviors. GM provided sufficient personally identifiable information to Verisk to allow Verisk to link the Driving Data to the driver and license this data to insurance companies for analysis in making decisions regarding coverage and premium amounts.⁶³

⁵⁸ VERISK ANALYTICS, INSIGHT: 2016 ANNUAL REPORT 8 (2017), https://www.annualreports.com/HostedData/AnnualReportArchive/v/NASDAQ_VRSK_2016.pdf.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Kashmir Hill, *Automakers Are Sharing Consumers’ Driving Behavior With Insurance Companies*, N.Y. TIMES (Mar. 13, 2024), <https://www.nytimes.com/2024/03/11/technology/carmakers-driver-tracking-insurance.html> (“Verisk provides insurers with trip data and a risk score”).

⁶² VERISK ANALYTICS, INSIGHT: 2016 ANNUAL REPORT 8 (2017), https://www.annualreports.com/HostedData/AnnualReportArchive/v/NASDAQ_VRSK_2016.pdf.

⁶³ *Id.*

72. Upon purchasing the rights to access the Verisk Exchange, insurance companies could use it to search for the Driving Score of their insureds or potential insureds⁶⁴ 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.⁶⁵ This is all despite GM's repeated claims that the Verisk Exchange "will give customers a clear choice to seamlessly share their driving data with the insurance company of their choosing, and obtain financial benefits tied to good driving"⁶⁶ without any mention of the potential financial harm it could cause those same customers.

2. General Motors' Agreement with Third-Party Data Broker Wejo Limited.

73. On December 21, 2018, General Motors entered into an agreement with Wejo Limited ("Wejo"), a British connected car start-up.⁶⁷ Similar to its

⁶⁴ *Verisk Insurance Solutions Expands Relationship with Duck Creek Technologies by Providing Access to Verisk Data Exchange*, VERISK (Dec. 21, 2016), <https://www.verisk.com/company/newsroom/verisk-insurance-solutions-expands-relationship-with-duck-creek-technologies-by-providing-access-to-verisk-data-exchange/>; Kashmir Hill, *Automakers Are Sharing Consumers' Driving Behavior With Insurance Companies*, N.Y. TIMES (Mar. 13, 2024), <https://www.nytimes.com/2024/03/11/technology/carmakers-driver-tracking-insurance.html>.

⁶⁵ Kashmir Hill, *Automakers Are Sharing Consumers' Driving Behavior With Insurance Companies*, N.Y. TIMES (Mar. 13, 2024), <https://www.nytimes.com/2024/03/11/technology/carmakers-driver-tracking-insurance.html>.

⁶⁶ *Verisk Insurance Solutions Announces GM as Inaugural Auto Manufacturer to Join Telematics Data Exchange*, VERISK (Sept. 2, 2015), <https://www.verisk.com/company/newsroom/verisk-insurance-solutions-announces-gm-as-inaugural-auto-manufacturer-to-join-telematics-data-exchange/>.

⁶⁷ GENERAL MOTORS, DATA SHARING AGREEMENT 1 (2018), https://www.sec.gov/Archives/edgar/data/1864448/000110465921093068/tm2121431d2_ex10-2.htm.

arrangement with Verisk, General Motors sold Wejo its Driving Data so that Wejo, as defined as the “Purpose” of the agreement, could sell licenses for other companies to access the Driving Data.⁶⁸

74. Pursuant to the Wejo agreement, GM sold and delivered its Driving Data to Wejo.⁶⁹ As compensation for the Driving Data provided, GM received a certain portion of the “gross revenue received by Wejo from Wejo’s licensing or other use of the Data and Derived Data Insights.”⁷⁰ Payments were to be sent to GM within 30 days following the end of the month during the agreement term, and Wejo was obligated to pay any unpaid revenue owed for any prior month, or any other amounts owed GM under the agreement.⁷¹

75. Under its agreement with Wejo, GM bought a 35% 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.⁷²

⁶⁸ See *id.* (allowing wejo Limited to sell licenses to Third Party Licensees).

⁶⁹ *Id.*

⁷⁰ *Id.* at 3, subsection 4.

⁷¹ *Id.* at 4, subsection 4(d).

⁷² See Mark Kleinman, *General Motors revs up UK ‘connected car’ start-up Wejo*, SKY NEWS (Feb. 12, 2019), <https://news.sky.com/story/amp/general-motors-revs-up-uk-connected-car-start-up-wejo-11635625> (“GM’s investment includes an ‘in-kind’ consideration worth more than \$70m to supply data from millions of the car-maker’s vehicles for wejo to manage for seven years...The value of this data to industries like traffic and mapping, urban mobility, insurance, parking and geolocation is potentially enormous”); Christopher Marchant, *GM acquires 35% stake in UK connected car company*, MOTOR FINANCE ONLINE (Feb. 13, 2019), <https://www.motorfinanceonline.com/news/gm-acquires-35-stake-in-uk-connected-car-company/?cf-view>; Anthony Alaniz, *General Motors Invests \$25M In Wejo, A Connected-Car Data Start-Up*, GM AUTHORITY (Feb. 13, 2019), <https://gmauthority.com/blog/2019/02/general-motors-invests-25m-in-wejo-a-connected-car-data-start-up/> (“The deal with General Motors will also give wejo access to a tremendous amount of data from the Detroit automaker, further improving wejo’s services”).

76. Per their agreement, GM continuously sent Wejo newly collected Driving Data. The specific Driving Data varied over time, but generally included: trip start, trip end, hard braking and acceleration events, speed events over 80 miles per hour, and driver seatbelt status change. Over time, GM sold additional types of Driving Data to Wejo. For example, in December 2022, GM 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; (3) time zone identifiers; (4) radio station call sign; and (5) channel genre.

77. In 2023, around the time that Wejo went bankrupt, a former Wejo employee told Prolific North:

Wejo was processing 50 million car journeys per day, which was mostly all GM data. This data would include PII data such as VIN numbers and location data. The data of millions of GM customers has been left on a cloud environment that is not being managed or maintained due to the administrator laying off all staff including key functions such as data science, privacy and security.⁷³

78. GM sold Wejo its customers' Driving Data so that Wejo could sell licenses to other companies for access to the data. Under the agreement, GM authorized Wejo to pursue potential buyers for the Driving Data in other sectors, not just insurers.

⁷³ Chris Newbould, *'Millions' of GM customers' data potentially compromised as Wejo Group lays off all global employees. Meanwhile, P45s sent to the wrong people*, PROLIFIC NORTH (July 30, 2023), <https://www.prolificnorth.co.uk/news/millions-of-gm-customers-data-potentially-compromised-as-wejo-group-lays-off-all-global-employees-meanwhile-p45s-sent-to-the-wrong-people/>.

79. In an archived version of Wejo's website, it marketed connected car data to various industries, stating: "Drilling into previously inaccessible sources of data, businesses around the world are now able to transform their business strategies and improve efficiency by leveraging rich and unique data from millions of connected vehicles. Underpin new propositions, improve competitiveness and drive innovation with connected vehicle data."⁷⁴

80. One of Wejo's buyers was Inrix, a US-based mobility data and software provider. According to a former Wejo employee:⁷⁵ "INRIX was the company we were selling US data to: Fully bespoke, three separate data streams, for \$600K a year." "That was costing us \$400K a year to deliver, and we were sharing about 60 per cent of that revenue with GM. We were literally paying GM and AWS for INRIX to take the data."

81. In May 2022, when GM reportedly "lost faith in Wejo," GM signed a direct partnership with Inrix.⁷⁶

82. Upon information and belief, GM 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 GM 70% of this revenue. Wejo also agreed to "reimburse" GM if it ever failed to meet its monthly revenue target.

⁷⁴ *For Business*, WEJO (version as of Aug. 14, 2022), archived at <https://web.archive.org/web/20220814175513/https://www.wejo.com/for-business>.

⁷⁵ Chris Newbould, "*It was absolutely mental*": *Beleaguered Wejo sold GM vehicle data 'at a loss,'* PROLIFIC NORTH (June 19, 2023), <https://www.prolificnorth.co.uk/news/it-was-absolutely-mental-beleaguered-wejo-sold-gm-vehicle-data-loss/>.

⁷⁶ *See id.*

3. General Motors' Agreement with Third-Party Data Broker LexisNexis Risk Solutions.

83. General Motors entered into a similar agreement with LexisNexis Risk Solutions (“LexisNexis”) in 2019, under which GM agreed to provide “consumer-approved connected car data”⁷⁷ to LexisNexis via its database—the LexisNexis Telematics Exchange.

84. The purpose of the LexisNexis Telematics Exchange was to create driver profiles for each of GM’s customers and to “deliver driving behavior information to the insurance industry.”⁷⁸

85. According to LexisNexis, as of 2022, the LexisNexis Telematics Exchange had grown dramatically, with 42% of the U.S. auto insurance market, including 5 of the top 10 insurers, “contracting to access our Exchange.”⁷⁹ LexisNexis further disclosed that as of 2022 it had received “data from over 10 million vehicles, 252 billion driving miles and/or the equivalent of 19.5 million years of vehicle logging.”⁸⁰

86. By June 2021, LexisNexis Connected Car data scientist Lisa Greenberg stated that LexisNexis was the operator of “one of the largest

⁷⁷ *LexisNexis Risk Solutions Selected by GM as Preferred Insurance Data Partner*, LEXISNEXIS RISK SOLUTIONS (Aug. 21, 2019), <https://risk.lexisnexis.com/about-us/press-room/press-release/20190821-gm-partnership>.

⁷⁸ See *id.*; see also John Chalfant, *OnDemand Access to Consumer-Driven Telematics*, LEXISNEXIS (Dec. 8, 2020), <https://blogs.lexisnexis.com/insurance-insights/2020/12/on-demand-access-to-consumer-driven-telematics-data/>.

⁷⁹ See *LexisNexis Telematics Exchange Celebrates 5-Year Anniversary*, LEXISNEXIS (June 28, 2022), starting at 3:26, <https://risk.lexisnexis.com/about-us/press-room/press-release/20220628-telematics-exchange-5-year-anniversary>.

⁸⁰ See *id.*

telematics exchanges, with insights into one in fifteen U.S. households and growing,” and projected that by 2025 one in three vehicles on the road would be able to transmit telematics data.⁸¹

87. Upon information and belief, similar to the arrangements with Verisk and Wejo, GM received a multi-million-dollar lump sum for the initial transmission of its consumers’ Driving Data, plus ongoing payments from LexisNexis based on LexisNexis’s license sales to insurers.

88. On information and belief, similar to the arrangement with Verisk and Wejo, insurers that purchased licenses to use the LexisNexis Exchange could search for information about their insureds derived from the Driving Data and increase their insureds’ monthly premiums or drop their insureds from coverage entirely based upon that information.

4. General Motor’s Agreements with Other Data Third-Party Analytics Companies.

89. Upon information and belief, GM also entered into numerous other agreements to sell and make available its consumers’ Driving Data with third parties, including Flespi,⁸² Caruso,⁸³ and Otonomo.⁸⁴

90. In 2024, GM sold Driving Data to Jacobs Engineering Group, Inc. (“Jacobs”) for use in Jacobs’ own products and to license Driving Data to other

⁸¹ Lisa Greenberg, *Presentation: Driving Data Science for Automakers and Insurers*, LEXISNEXIS RISK SOLUTIONS (June 3, 2021), available at <https://vimeo.com/558702815>.

⁸² Blog, FLESPI, available at <https://flespi.com/blog?tag=usecases>.

⁸³ Frederic Bruneteau, *Why do we need vehicle data hubs*, PTOLEMUS (Apr. 5, 2020), <https://www.ptolemus.com/insight/why-do-we-need-vehicledata-hubs/>.

⁸⁴ Egli Juliussen, *Connected Cars: Show Me The Money*, EE TIMES (Feb. 25, 2021), <https://www.eetimes.com/connected-cars-show-me-the-money/>.

parties approved by GM. According to the Texas Attorney General, GM authorized Jacobs to use “de-identified” data, although it is not known what data elements Jacob has, and whether such information can truly be de-identified.

91. Upon information and belief, GM provided consumers’ Driving Data to GM Maxis,⁸⁵ its predictive analytics platform that generates insights into core business strategies, including anticipating market demand for autonomous vehicles. Maxis—shorthand for maximizing insights—analyzes more than 30 billion records (1.5 petabytes) per day. The data comes from internal sources such as applications and internet of things (IoT) sensors from connected cars, as well as external sources from partners and other market forces that make up GM’s supply chain. GM estimated the financial benefit from Maxis to be \$100 million in 2017 and expected that to double or triple in 2018 and beyond.⁸⁶

92. In oversight calls with Senator Wyden’s staff in 2021 and 2024, GM officials confirmed that it was also providing bulk, de-identified location data from GM cars to unnamed commercial partners, without consumers’ informed consent, for years:

In addition to sharing data on drivers enrolled in its Smart Driver program to Verisk, GM also confirmed to Senator Wyden’s staff that it shared location data on all drivers who activated the internet connection for their GM car, even if they did not enroll in Smart Driver. These disclosures of location data—to other, unnamed parties—have been going on for years.

In a May 13, 2021 oversight call with Senator Wyden’s staff which has not previously been made public, GM officials confirmed that the company was providing bulk, de-identified location data from GM

⁸⁵ Clint Boulton, *At GM, self-service analytics drives business results*, CIO (July 17, 2018), <https://www.cio.com/article/221940/at-gm-self-service-analytics-drives-business-results.html>.

⁸⁶ See *id.*

cars to an unnamed commercial partner, which GM officials would not identify and referred to as 'Company A.' During that oversight call, GM confirmed it did not seek informed consent from consumers for sharing this data. Company officials told Senator Wyden's staff that the only way consumers could opt out of the data sharing was by disabling the car's internet connection entirely.

In a follow-up phone call three years later, on May 16, 2024, GM confirmed that it stopped sharing location data with Company A in May 2023. GM continues to refuse to identify this partner; however, Sky News reported in 2019 that GM provided an 'in kind' investment of driver data to a British data broker named Wejo, alongside a cash investment in the company. Wejo shut down operations in May 2023, the same month and year that GM told Senator Wyden's office that it stopped providing location data to its unnamed partner.

During that May 16, 2024, follow-up call, GM officials also revealed that the automaker is now sharing customer location data with a different company, which they also refused to identify.⁸⁷

93. In short, as the New York Times reported in 2024, "[i]f you drive a car made by General Motors and it has an internet location, your car's movements and exact location are being collected and shared anonymously with a data broker."⁸⁸ This is an extreme violation of consumers' privacy. "[L]ocation data is extremely valuable and can reveal so many things about you, such as where you travel, including where you live, where you work, where you spend your nights. It can reveal your political affiliation, your religious affiliation, your sexual orientation, and so on."⁸⁹ This violation of privacy is not cured by illusory claims

⁸⁷ Wyden-Markey Auto Privacy Letter (July 26, 2024), available at <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>.

⁸⁸ Kashmir Hill, *Automakers Sold Driver Data for Pennies, Senators Say*, N.Y. TIMES (July 26, 2024), <https://www.nytimes.com/2024/07/26/technology/driver-data-sold-for-pennies.html?smid=tw-nytimes&smtyp=cur>.

⁸⁹ FED. TRADE COMM'N, BRINGING DARK PATTERNS TO LIGHT (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

that data is anonymized because highly personal data like location cannot truly be anonymized. Simply put, if a data set shows the precise location of a consumer’s car every night, the school where the car stops every morning, and the office where the car is parked every day, it is unnecessary for that data set to include a name or license plate for it to be connected to a specific individual.

II. General Motors Utilized Aggressive, Unfair and Deceptive Enrollment Policies and Practices to Hide Its Data Collection Practices from Consumers.

94. Since at least 2015, General Motors enlisted aggressive enrollment practices on customers purchasing a GM vehicle for the purpose of signing them up for GM products including: (1) “Connected Vehicle Services,” a term used for a vehicle’s telematics system; (2) GM’s mobile apps; and (3) the OnStar Guardian App.⁹⁰

95. This enrollment scheme resulted in signing up customers who unwittingly agreed to GM using these products to collect and sell their Driving Data to other companies, including insurance companies.

A. General Motors Aggressively Focused Only on the Potential Benefits of Its Connected Vehicle Services.

96. General Motors marketed its Connected Vehicle Services as giving customers “better drives,” better entertainment,” “better safety,” and “better control.”⁹¹ General Motors offered customers these Connected Vehicle Services

⁹⁰ Jim Koscs, *Why General Motors Dropped Its OnStar Smart Driver Program*, CAPITALONE (July 2, 2024), <https://www.capitalone.com/cars/learn/finding-the-right-car/why-general-motors-dropped-its-onstar-smart-driver-program/3366> (discussing sales incentives to sign up).

⁹¹ *OnStar Benefits That Keep You Safe & Secure*, ONSTAR, <https://www.onstar.com/why-onstar> (last visited on Jan. 22, 2025).

through a myriad of subscription plan options, which included both free and paid subscriptions.

97. All GM Connected Vehicle Service plans included the five features that were included in the free “Connected Access” plan, which were: (1) OnStar Smart Driver, (2) OnStar Vehicle Diagnostics (“OVD”), (3) OnStar Dealer Maintenance Notifications, (4) OnStar Marketplace, and (5) OnStar In-Vehicle App. Thus, each of the plans captured vehicle data and diagnostics.⁹²

98. General Motors couches its collection, storage, use, and sale of Driving Data as a means of realizing “our vision of a world with zero crashes, zero emissions, and zero congestion” through its provision of “critical safety services,” “convenience features,” and GM’s collection of “vehicle diagnostic and operational information.”⁹³

99. GM never once mentioned that the data it collects through its Connected Vehicle Services could have any negative effect on consumers.

B. General Motors Pushed Customers to Download Its Free Mobile Apps, Which It Then Used to Collect and Sell Consumers’ Driving Data.

100. General Motors pushed to have as many customers as possible download its brand-specific mobile apps: myChevrolet, myGMC, myBuick, or myCadillac. It made these apps free to download, but unknown to consumers who

⁹² *OnStar Plans & Pricing*, ONSTAR, https://www.onstar.com/content/dam/onstar/na/us/en/index/pricing/02-pdfs/0053_PlansPricing_USE_1PG-OTSLayout.pdf (last visited on Jan. 22, 2025).

⁹³ *Automaker Responses to Sen. Markey Letter on Privacy*, GENERAL MOTORS (Dec. 21, 2023), https://www.markey.senate.gov/imo/media/doc/automaker_responses_to_sen_markey_letter_on_privacy - 022824pdf.pdf (providing information on page 1 of GM’s response).

downloaded an app, GM treated the download and enrollment in the app as the customer’s “acceptance” to the collection and sale of the consumer’s Driving Data to third parties.

101. General Motors advertised the apps as a “mobile command center for your vehicle”⁹⁴ that provided customers with a “user-friendly way to leverage many of the basic and available connectivity and vehicle management features offered through [OnStar].”⁹⁵ The mobile apps allowed the user to track a vehicle’s location, check its odometer reading, fuel level, and oil life, lock and unlock doors, and remotely turn on or off the vehicle.⁹⁶

C. General Motors Enticed Customers to Sign Up for the OnStar Guardian App by Highlighting Extra Safety Features but Then Used the App to Collect and Sell More Information About Its Customers.

102. General Motors represented to the public the safety benefits of the OnStar Guardian App to encourage customers to sign up. However, unknown to the customers, GM and OnStar treated enrollment in the Guardian App as the customer’s “agreement” to the collection and sale of the customers’ Driving Data.

103. General Motors and OnStar marketed the Guardian App as a way to give “your family the key safety services of OnStar” even when the customer or a

⁹⁴ *Updated My Chevy App*, CHEVROLET, <https://www.chevrolet.com/connectivity-and-technology/my-chevrolet-app> (last visited on Jan. 22, 2025).

⁹⁵ *MyGMC App: Six Ways to Stay Connected with Your GMC*, GMC, <https://www.gmc.com/gmc-life/technology/stay-connected-with-the-mygmc-mobile-app> (last visited on Jan. 22, 2025).

⁹⁶ *MyGMC App: Six Ways to Stay Connected with Your GMC*, GMC, <https://www.gmc.com/gmc-life/technology/stay-connected-with-the-mygmc-mobile-app> (last visited on Jan. 22, 2025); *Updated My Chevy App*, CHEVROLET, <https://www.chevrolet.com/connectivity-and-technology/my-chevrolet-app> (last visited on Jan. 22, 2025).

customer's family member is in someone else's care, at home, or out somewhere else.⁹⁷ General Motors and OnStar promoted the Guardian App to include substantive safety services, which included location alerts, custom boundary settings, and additional safety features such as roadside assistance, mobile crash response, and emergency services.⁹⁸

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 3

104. On information and belief, General Motors and OnStar used the OnStar Guardian App to collect and sell additional data about their customers and anyone with whom the customers shared the OnStar Guardian App.

III. Defendants Used Dark Patterns and Other Unfair and Deceptive Techniques to Coerce Consumers to Sign Up for Their Services and Prevent Consumers from Fully Understanding Defendants' Privacy Policies and Practices.

105. General Motors pushed customers into enrolling in its Connected Vehicle Services through a series of unfair and deceptive practices, which included use of "dark patterns" and a deceptive "onboarding" process.

⁹⁷ *OnStar Guardian App*, ONSTAR, <https://www.onstar.com/plans/guardian-app> (last visited on Jan. 22, 2025).

⁹⁸ *Id.*

106. In a July 2024 letter urging the FTC to investigate GM, Senators Wyden and Markey revealed that GM not only “failed to obtain informed consent from consumers before sharing their data,” but also “used manipulative design techniques, known as dark patterns, to coerce consumers into enrolling in its Smart Driver program.”⁹⁹

107. “Dark patterns” is a term “used to describe design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm.”¹⁰⁰

108. “Tricking consumers into sharing data” is, according to the FTC, a “common dark pattern tactic.”¹⁰¹ As a 2022 FTC Staff Report explained: “These dark patterns are often presented as giving consumers choices about privacy settings or sharing data but are designed to intentionally steer consumers toward the option that gives away the most personal information.”¹⁰² Common examples of “tricking consumers into sharing data” include: (1) “asking users to give consent but not informing them in a clear, understandable way what they are agreeing to share,” (2) “telling users the site is collecting their information for one purpose but then sharing it with others or using it for other purposes,” and (3) “including

⁹⁹ Wyden-Markey Auto Privacy Letter (July 26, 2024), available at <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>.

¹⁰⁰ FED. TRADE COMM’N, BRINGING DARK PATTERNS TO LIGHT (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

¹⁰¹ *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers*, FED. TRADE COMM’N (Sept. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers>.

¹⁰² *Id.*

default settings that maximize data collection and making it difficult for users to find and change them.”¹⁰³

109. As the FTC explained: “[u]nfair commercial practices” like dark patterns “are rarely presented in isolation. . . . The combination of several dark patterns is even more effective at influencing consumers’ choices, and complicates enforcement, which is often based on a practice-by-practice investigation.”¹⁰⁴

A. GM Incentivized Dealership Employees by Paying Bonuses to Employees Who Signed Consumers Up for OnStar While Penalizing Those Employees Who Failed to Do So.

110. General Motors’ conduct and its policies regarding dealership employees were designed to impair customers’ decision making to ensure they would enroll in the Connected Vehicle Services.

111. For example, at the point of sale or lease, GM mandated that its dealers activate OnStar for consumers. To incentivize dealers to abide by this mandate, GM paid bonuses to dealership salespersons who enrolled customers in OnStar before they left the dealership, while at the same time, penalizing the salesperson with a charge-back if he or she did not comply.¹⁰⁵

112. GM conditioned dealership employees’ pay on completing the “onboarding” process with the customer and convincing the customer to activate OnStar (and, as a result, the data connection between GM and the vehicle). As a

¹⁰³ FED. TRADE COMM’N, BRINGING DARK PATTERNS TO LIGHT (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ Jim Koscs, *Why General Motors Dropped Its OnStar Smart Driver Program*, CAPITALONE (July 2, 2024), <https://www.capitalone.com/cars/learn/finding-the-right-car/why-general-motors-dropped-its-onstar-smart-driver-program/3366>.

result, dealership employees were incentivized to sign up as many customers as possible, clicking through screens and agreements without obtaining customer consent, and rushing through the process so that consumers were unable to review any terms that might be applicable to the program.¹⁰⁶ As a result, consumers were enrolled in OnStar, and Smart Driver, without their knowledge or consent.

113. As the *New York Times* first exposed in April 2024, for many consumers, the dealers never took consumers through the online enrollment process (where consumers would have been presented with the OnStar Terms, discussed below) and instead filled out the online enrollment for the customers, without their knowledge or consent, because of the financial implications for dealers if customers “declined” those services:

According to G.M., our car was enrolled in Smart Driver when we bought it at a Chevrolet dealership in New York. . . . To find out how it happened, I called our dealership, a franchise of General Motors, and talked to the salesman who had sold us the car. He confirmed that he had enrolled us for OnStar, noting that his pay is docked if he fails to do so. He said that was a mandate from G.M., which sends the dealership a report card each month tracking the percentage of sign-ups. G.M. doesn’t just want dealers selling cars; it wants them selling connected cars. . . . Our salesman described the enrollment as a three-stage process that he does every day. He selects yes to enroll a customer in OnStar, then yes for the customer to receive text messages, and then no to an insurance product that G.M. offers and that monitors how you drive your car. (This sounds similar to Smart Driver, but it is different.) He does this so often, he said, that it has become automatic—yes, yes, no—and that he always chooses no for the last one because that monitoring would be a nuisance for customers. . . . At my request [GM] provided the series of screens that dealers are instructed to show customers during the enrollment for OnStar and Smart Driver. . . . The flow of screens was almost exactly as my salesman described, except for the second one about receiving

¹⁰⁶ See Kashmir Hill, *How G.M. Tricked Millions of Drivers Into Being Spied On (Including Me)*, N.Y. TIMES (Apr. 23, 2024), <https://www.nytimes.com/2024/04/23/technology/general-motors-spying-driverdata-consent.html>.

messages, which he said he always hits “yes” on. That screen wasn’t just about accepting messages from G.M.: it also opted us into OnStar Smart Driver. It’s a screen that my husband and I do not recall seeing—presumably because our salesman filled it out for us as part of his standard procedure.¹⁰⁷

114. As a result, GM car buyers across the nation have reported that their Driving Data was collected by Defendants and their associated data brokers even though they had never even heard of Smart Driver.

115. Investigative reporting by GM-Trucks.com in 2024 confirmed that “many GM vehicle owners have opted into Smart Driver without their consent.”¹⁰⁸ In fact, one editor explained that his personal vehicles had the “Allow OnStar Smart Driver” toggle “enabled” “despite never opting to the feature.”¹⁰⁹ According to the editor:

When I opened the myGMC and myChevrolet app this week, I found not only was I enrolled in Smart Driver under my business account, which has active OnStar subscriptions in place, but also in my personal account, which does not have an OnStar Subscription active. All three of my vehicles, which I’ve never enrolled into OnStar Smart Driver, had the feature enabled. What the heck? Turns out I’m not alone. A quick look online shows we’re not the only GM vehicle owner that’s found the feature randomly enabled. There’s even discussion on if vehicles are transmitting data when Smart Driver is not enabled. Your vehicle may be sending driving information when Smart Driver is turned off or even when you don’t have an active OnStar Account subscription.¹¹⁰

¹⁰⁷ See *id.* (“At no point had these drivers been explicitly informed that this would happen, not even in the fine print, they said. New reporting reveals the cause: a misleading screen that these people would have briefly seen when they bought their cars—if their salesperson showed it to them.”).

¹⁰⁸ Zane Merva, *In Stunning Reversal, GM Stops Sharing Vehicle Driving Data With Brokers*, GM-TRUCKS.COM (Mar. 22, 2024), <https://www.gm-trucks.com/in-stunning-reversal-gm-stops-sharing-vehicle-driving-data-with-brokers/>.

¹⁰⁹ Zane Merva, *Not So Smart Driver—Our Chevrolet, Buick, and GMC Vehicles Are Snitching To Our Insurance and Yours Is Too*, GM-TRUCKS.COM (Mar. 22, 2024), <https://www.gm-trucks.com/onstar-smart-driver-chevrolet-buick-gmc-insurance/>.

¹¹⁰ *Id.*

116. GM-Trucks.com warned: “It’s important to note—even if you don’t have an active OnStar Subscription or Account—Smart Driver may still be enabled!”¹¹¹ Similar accounts can be found elsewhere online:

- “GM auto enrolled me in Smart Driver program. . . .”¹¹²
- “I just found out yesterday by wife’s ct6 was enrolled. Never agreed to that. We signed up over onstar call after getting vehicle and I would remember if they wanted to track driving habits.”¹¹³
- “Verisk obtained Driving Behavior Data History information without legal consent from any owner of my vehicle. I also expressly forbade XXXX and the XXXX dealer in writing from sharing my information with 3rd parties other than for vehicle registration and tax reporting purpose on a cash vehicle purchase.”¹¹⁴
- “Was surprised to find that my 2023 EV 2LT is enrolled in Smart Driver and that LexisNexis has a few hundred pages of my driving. I haven’t touched the app since I left the dealer with the car in April of last year, and I certainly didn’t sign up for it back then. I called Onstar, gave them an earful, had them unenroll me, and then pulled the fuse F02. I can confirm that on the 2023 EV, the microphone for calls still works. This is the first GM car I’ve owned, and it’s looking to be the last as well.”¹¹⁵
- “After reading this post, I also discovered that On Star Smart Driver had been automatically activated. I turned that option off.”¹¹⁶

¹¹¹ Zane Merva, *How to Opt Out of General Motors Data Collection, OnStar Smart Driver and Request Collected Driving Data*, GM-TRUCKS.COM (Mar. 22, 2024), <https://www.gm-trucks.com/how-to-opt-out-of-general-motors-data-collection-onstar-smart-driver-and-request-collected-driving-data/>.

¹¹² *GM auto enrolled me in Smart Driver program*, REDDIT.COM, https://www.reddit.com/r/Cadillac/comments/1bdde80/gm_auto_enrolled_me_in_smart_driver_program/.

¹¹³ *Id.*

¹¹⁴ CONSUMER FINANCIAL PROTECTION BUREAU, Complaint No. 8794494 (Apr. 18, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8794494>.

¹¹⁵ *My experience disabling onstar in my 2023 Bolt EUV*, REDDIT.COM, https://www.reddit.com/r/BoltEV/comments/1bhsqx0/my_experience_disabling_onstar_in_my_2023_bolt_euv/.

¹¹⁶ *Opt out of OnStar Smart Driver*, REDDIT.COM, https://www.reddit.com/r/chevycolorado/comments/1bdtksd/opt_out_of_onstar_smart_driver/.

- “Thanks. Bottom of the page. No stats displayed but I was still opted in. Screw them, I refused to use them for my vehicle WiFi, went with my cell provider. Kiss my @ss OnStar.”¹¹⁷

B. Defendants Created an Unfair and Deceptive Onboarding Process to Confuse and Mislead Consumers So They Could Establish and Maintain an Uninterrupted Collection Stream.

117. During the enrollment process, Defendants used various deceptive, unfair, and abusive enrollment practices to induce consumers to activate OnStar in their vehicles, including convincing them that OnStar “comes with” their purchase of the vehicle and an enrollment process that was designed to intentionally obscure its data collection and sharing practices.

118. Starting in 2015 GM instituted a “free” Basic Plan for all OnStar vehicles model year 2014 or newer that lasted five years. In 2018, GM rebranded the free OnStar Basic Plan as the “Connected Access Plan”, available for vehicles model year 2018 or newer. As part of the rebrand, GM added Smart Driver to the plan and doubled the lifespan of the free plan—and GM’s data connection to the vehicle—from five years to ten years.¹¹⁸

119. GM confused and misled consumers by representing that “OnStar Smart Driver” was “Included With Vehicle Purchase.”¹¹⁹ In conjunction with this representation, GM offered, at the time of purchase, “free trials” of the premium, paid plans. Once these free trials (commonly 1 month, 3 months, or 6 months)

¹¹⁷ *Id.*

¹¹⁸ *OnStar Basic Plan Info & Price*, GM AUTHORITY, <https://gmauthority.com/blog/gm/general-motors-technology/onstar/onstar-plans-pricing/onstar-basic-plan-info-price/>.

¹¹⁹ *Plans Pricing Modernized*, ONSTAR.COM, archived at https://web.archive.org/web/20230104180930mp_/https://www.onstar.com/content/dam/onstar/na/us/en/index/pricing/02-pdfs/planspricing-modernized-v8.pdf.

expired, and unbeknownst to consumers, GM would then automatically enroll those consumers in the “free” Basic Plan or Connected Access Plan, and thus continue to collect their Driving Data for the remainder of the five- or ten-year period without their knowledge or consent.¹²⁰

120. In conjunction with the foregoing, GM mandated an “onboarding” process, the aim of which was to get an acknowledged version of the OnStar Terms and Smart Driver Opt-In (called the “OnStar Online Enrollment”).

121. The “onboarding” process had two steps: (1) the dealer had to submit a completed “OnStar Online Enrollment” for each customer through the dealer portal; and (2) the dealer had to initiate a “Blue Button Welcome Call” with the customer and an OnStar advisor inside the vehicle.

122. To initiate the “onboarding” process, the dealership employee would create an OnStar account for the customer or locate the customer’s existing account. The dealership employee would then walk the customer through the multi-step “onboarding” process, which included presentment of the Connected Vehicle Services plans for which that vehicle was eligible.

123. For those customers who were taken through the “onboarding” process, GM induced customers to believe that the online onboarding process was mandatory before taking possession of their vehicle. For example, the computer screen shown to customers (if it was even shown to customers) displayed a message instructing the reader to “complete the next few steps” “before tak[ing]

¹²⁰ See, e.g., <https://web.archive.org/web/20181110051236/https://www.chevrolet.com/electric/volt-plug-in-hybrid>.

ownership of [their] vehicle,” and coerced the customer to select a “Get started” button. On information and belief, at no point did the dealership employee disclose to the customer that they were not required to complete the onboarding process or that selection of one of the plans would result in Defendants collecting, using, and sharing the consumer’s Driving Data for Defendants’ own benefit and to the potential detriment of the customer.

124. Once a consumer selects the “Get Started” button, General Motors overwhelms the customer with information by providing him or her with a difficult-to-read (by design) document spanning over 50 pages, including: the OnStar Terms (the 36-page User Terms, and 18-page 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:

view. You must continue to share your screen with your customer, so they can review the information below and ensure its accuracy.

1 Order Terms 2 Enrollment Preferences 3 Customer Trial Review 4 Enrollment Services

2024 GMC Sierra Crew Cab RY
VIN: 1GTFUCEKTR235694

Devin Demo
demos4@hypersail.com

⚠ The customer must personally review and accept (or decline) the terms below. **This action is legally binding and cannot be done by dealer personnel.**

User Terms for Connected Vehicle Services and Privacy Statement (collectively "OnStar®Terms")

In order to start your OnStar and Connected Services trial or pre-paid plan, you'll need to accept the following terms.

User Terms for Connected Vehicle Services **Print**

When You accept the User Terms during our sign-up process or when You access or use the Services, You agree to the following:

- You will only use the Services when it is safe to do so, and You will only use them in compliance with the law and these User Terms.
- If after you accept these User Terms, You no longer own the Vehicle, You will ensure that they only use the Services when it is safe to do so, and in compliance with the law and these User Terms.
- We may suspend or discontinue your access to some or all of the Services.
- We may remotely access, deliver, install, update, or change the software used to deliver the Services or used by your Vehicle systems without additional notice or consent.
- You will notify us when You want to cancel your Services or when You plan to sell or dispose of your Vehicle.

Privacy Statement **Print**

GENERAL MOTORS U.S. CONNECTED SERVICES PRIVACY STATEMENT
Last Updated: July 1, 2023

The General Motors family of companies (including General Motors Holdings LLC, General Motors LLC, OnStar LLC ("OnStar"), and each of their affiliates) (collectively, "GM" or "we" or "our" or "us") provides this U.S. Connected Services Privacy Statement ("Privacy Statement") to address the personal information we collect and how we use and share that information when you use our connected services products, such as products and services offered through our vehicles, mobile applications, call centers, and vehicle infotainment systems (collectively, the "Connected Services"). This Privacy Statement does not apply to products or services offered by GM Financial Company, Inc., which does not incorporate this Privacy Statement. For example, General Motors Financial Company may offer products or services under a separate privacy statement.

I acknowledge that I am the owner of this vehicle and am aware of and agree to receive the connected services that are included with my vehicle, which collect and use data generated from the vehicle as explained in the User Terms for Connected Vehicle Services and Privacy Statement (collectively "OnStar Terms").

I accept:
I have read and agree to the OnStar Terms and, if AT&T services are available with this vehicle, the AT&T terms and conditions (including arbitration clause) and privacy policy for this vehicle available at www.att.com/USTermsandConditions. I am aware AT&T's network management practices are available at att.com/BroadbandInfo.

I decline:
I do NOT agree to OnStar Terms, or, as applicable, the AT&T terms and conditions and privacy policy for this vehicle and understand that my OnStar and, as applicable, AT&T services will be DEACTIVATED.

Continue

Figure 4¹²¹

¹²¹ Appendix A: Documents from General Motors, GENERAL MOTORS (July 26, 2024), https://www.wyden.senate.gov/imo/media/doc/wyden-markey_auto_privacy_letter_to_ftc.pdf.

125. As seen in Figure 4, customers were only shown the first paragraph of the User Terms, and the first paragraph of the Privacy Statement. These paragraphs were displayed in disproportionate and ill-fitted text boxes. If a customer desired to actually read the 50-pages of terms, the customer had to scroll both horizontally and vertically to review the content.

126. GM had no legitimate business purpose for restricting the size of the “box” in which the terms would appear; instead, the size of the boxes, the substantial information on the screen, and the cryptic nature of the terms themselves served to prevent and deter customers from reviewing GM’s disclosures constituting more “dark patterns” to prevent consumers from understanding GM’s terms.

127. However, even if a customer closely read every word on the screen, the disclosures, and the other linked policies, they still would have no knowledge of GM’s actual conduct because nowhere did the disclosures explain that by selecting “I accept,” customers were “agreeing” to GM’s collection and sale of their Driving Data to, and/or in collaboration with, third-party data brokers, who in turn would develop driving risk profiles or driving scores to market and sell to third-party insurance companies.

128. GM also designed the “onboarding” process to repeatedly display messages meant to deter customers from declining OnStar. Specifically, any customer that selected the “I decline” option received a “warning” message that misleadingly claimed that declining would “cancel your trial or pre-paid plan” and “result in deactivation of all services,” including such safety features as “Automatic Crash Response” and “Emergency Services.”

129. If GM’s first safety warning did not successfully deter a customer, GM took the customer to another screen warning that declining OnStar meant that “All services on your vehicle have been deactivated” and telling the customer to “Go back to accept OnStar terms:”

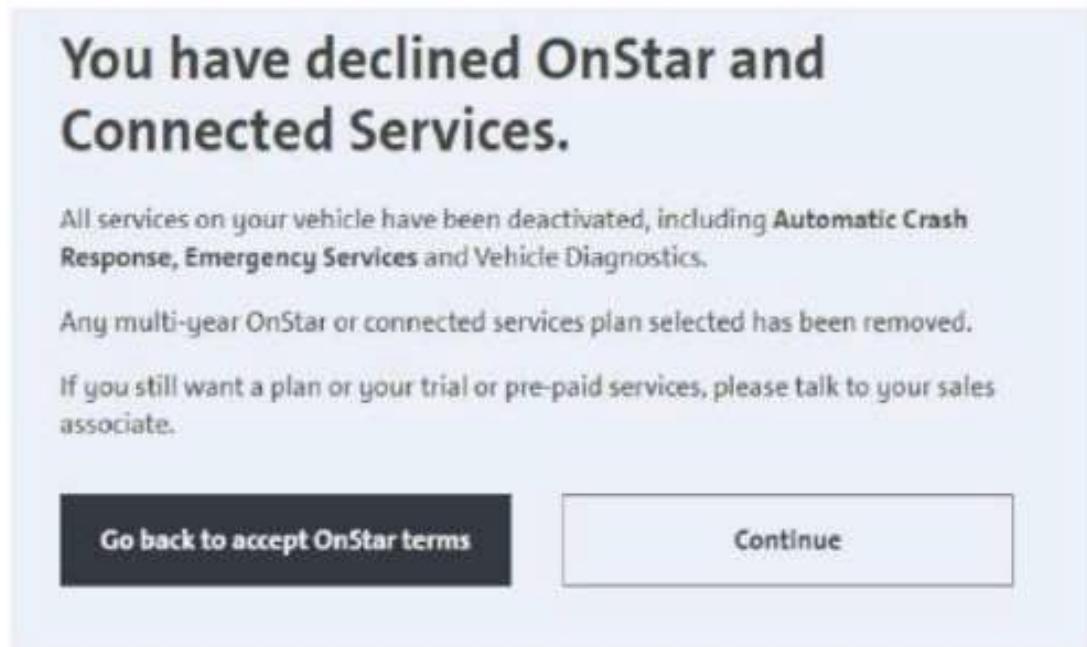


Figure 5

130. If a customer accepted the OnStar Terms and then clicked “Continue,” they were directed to a second, even lengthier screen titled “Enrollment Preferences.” The “Enrollment Preferences” screen displayed three separate boxes in a vertical line. The first box was titled “One-click Enroll into OnStar Smart Driver and Notifications,” the second box was titled “Text Messages,” and the third box was titled “OnStar Insurance Driving Program.”

131. In the “One-click Enroll into OnStar Smart Driver and Notifications,” GM intentionally, deceptively, and unfairly combined the opt-in for Smart Driver with consent to receive important emails notifying the driver when their car’s theft alarm goes off, and to receive safety reports identifying vehicle

problems and necessary repairs. Disguised as an efficient way to enroll customers in multiple options at once, the “One-click Enroll” was a deceptive design choice, intended to force customers to enroll in Smart Driver without disclosing GM’s scheme to collect and sell customers’ Driving Data. Specifically, GM forced customers to technically “opt in” to Smart Driver, an unrelated program, or else GM would not allow them to receive notifications about low tire pressure, oil change needs, potential maintenance and performance issues, service notifications from their dealer, theft alarm notifications if their alarm is triggered, or notifications that their WiFi data was running out.

132. Upon information and belief, diagnostics reports, alerts, dealer maintenance notifications, and similar functions were already standard features of OnStar for which customers did not need to “opt in”—GM included them in the opt-in as a false choice to coerce consumers to also opt-in to Smart Driver.

133. Further, this “Smart Driver” opt-in provides no detail or explanation regarding the types of notifications consumers should expect to receive about Smart Driver. Even though the “Notifications” section promises that GM will send drivers “up-to-date information on your driving skills,” the “Details” section noticeably omits any mention of what those notifications will be, despite providing “Details” for every other item listed in the “Notifications” section.

134. In any event, this opt-in does not ask for consumers’ consent to share Driving Data with third parties, nor does it even disclose third-party sharing.

135. In the “onboarding” process, GM represented that consumers could “opt out” of OnStar Smart Driver “at any time by clicking ‘unenroll’ in OnStar Smart Driver” in their mobile app. GM did not disclose, however, that consumers

could also “opt out” via the website nor that they could not cancel their service online—another deceptive dark pattern to further complicate opting out by encouraging customers to use a different method than they used to enroll in order to cancel.

136. Notably, opting out of Smart Driver did not cancel a customers’ OnStar subscription, nor did it turn off OnStar’s software processes for recording and transmitting Driving Data.¹²²

137. Beginning in 2022, GM forced consumers to subscribe to OnStar. For example, in June of 2022, GM began including 3-year pre-paid OnStar services as standard mandatory “options” in Buicks, Cadillacs, and GMCS for \$1,500, which was included in the Manufacturer’s Suggested Retail Price (MSRP); drivers did not actually have a choice as to whether their vehicle would have OnStar services.¹²³

138. Likewise, in July 2022, GM announced that a 3-year OnStar & Connected Services Plan was mandatory for purchases of new Buick, Cadillac, and GMC models, and \$1,500 would be built into the price of the car “whether the

¹²² See Wyden-Markey Auto Privacy Letter (July 26, 2024), available at <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>.

¹²³ See Jamie L. LaReau, GM calls \$1,500 Onstar plan optional—but new car buyers are being forced into it, DETROIT FREE PRESS (Aug. 9, 2022), available at <https://web.archive.org/web/20240402004133/https://www.freep.com/story/money/cars/general-motors/2022/08/09/gm-onstar-connected-services-plan-costoption/10246244002/>; see also Jamie L. LaReau, GM faces 2nd lawsuit over driver data collection without consent, DETROIT FREE PRESS (Mar. 29, 2024), available at <https://web.archive.org/web/20240416034400/https://www.freep.com/story/money/cars/general-motors/2024/03/29/gm-lawsuit-driver-data-collection-without-consent/73143189007/>.

customer activates OnStar” or not.¹²⁴ GM spokesperson Kelly Cusinato told the *Detroit Free Press* that the OnStar upgrade “is not removable as it is delivered from the factory with it included” and if the customer declined to activate OnStar, they would still be charged \$1,500.¹²⁵

139. One GM dealer revealed consumers’ confusion, stating “We’ve had people very confused about it asking why they have to pay \$1,500 for something that says it’s an option.” “We say, ‘We’re sorry, but we don’t price the cars.’ We wish they would put it as part of the car, having an option being standard is a problem for us. Don’t put something as an option that’s not an option.”¹²⁶

140. In September 2022, GM announced that all 2023-model-year Chevy vehicles would come with a “Remote Access Plan” and that GM had included the cost, \$300, into the MSRP.¹²⁷

141. These unfair and deceptive marketing tactics were intended to confuse and mislead consumers, thereby allowing GM to maintain a data connection with their vehicles so that GM could collect and harvest consumers’ private information and profit heftily therefrom.

¹²⁴ Jamie L. LaReau, *GM calls \$1,500 Onstar plan optional—but new car buyers are being forced into it*, DETROIT FREE PRESS (Aug. 9, 2022), available at <https://web.archive.org/web/20240402004133/https://www.freep.com/story/money/cars/general-motors/2022/08/09/gm-onstar-connected-services-plan-cost-option/10246244002/>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Jonathan Lopez, *Chevy Vehicles Get Standard Remote Access Plan, \$300 Price Increase*, GM AUTHORITY (Sept. 2, 2022), <https://gmauthority.com/blog/2022/09/chevy-vehicles-get-standard-remoteaccess-plan-300-price-increase/>.

IV. General Motors’ User Terms and Privacy Notices Do Not Authorize Defendants’ Sale of Consumers’ Driving Data to Third-Party Data Brokers.

142. GM contends that it disclosed and consumers consented to Defendants’ collection and sale of their Driving Data.¹²⁸ However, a document titled “OnStar Terms” does not exist. Instead, GM relies on an amalgamation of two documents on two different websites, neither of which have OnStar in the title—specifically, a 34-page “User Terms for Connected Vehicle Services” (the “User Terms”) and a 9-page “U.S. Connected Services Privacy Statement” (the “Privacy Statement”).

143. These multi-platform, cross-referential set of agreements are virtually impossible for a reasonable consumer to comprehend. At all relevant times, GM knew that these documents rendered its data privacy controls difficult to find and even more difficult to understand. Because of this, starting in mid-2024, GM “rework[ed] its privacy practices and controls to make them easier to find and understand.”¹²⁹ GM reorganized its privacy statement to “ma[k]e the sections on connected data easier to find” and provide “clear explanations” on how it handles data like “geolocation, driving behavior, and camera information.”¹³⁰ GM had also “rewritten” parts of the privacy statement “with simpler, more

¹²⁸ *Automaker Responses to Sen. Markey Letter on Privacy*, GENERAL MOTORS (Dec. 21, 2023), https://www.markey.senate.gov/imo/media/doc/automaker_responses_to_sen_markey_letter_on_privacy - 022824pdf.pdf (answering Question 2 on page 5 of GM’s response).

¹²⁹ *An update on our Privacy Statement*, GM NEWS (Sept. 25, 2024), <https://news.gm.com/home.detail.html/Pages/news/us/en/2024/sep/0925-privacy.html>

¹³⁰ *Id.*

consistent language.”¹³¹ GM further announced it had added new sections explaining tools for customers to “limit access” or delete their data.¹³² GM, working with the Future of Privacy Forum, represented that these changes were intended to help drivers make “thoughtful decisions” about uses of their personal information.¹³³

144. Regardless, at all relevant times, none of the documents that comprise the “OnStar Terms” 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 work with third parties to create risk profiles or driving scores of its customers based on the Driving Data collected and shared by GM; nor did they disclose that GM would make customers’ driving scores available to other companies or permit those 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.

145. Instead, General Motors left customers with the impression that it did not sell their data, and it failed to notify customers that it was actively engaged in using their Driving Data to generate driving scores or that it and its collaborating data-brokers were selling their driving scores and Driving Data to

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; see also GM’s ‘crappy’ privacy statement is getting some changes after backlash and a lawsuit, QUARTZ (Sept. 29, 2024), <https://qz.com/gm-privacy-concern-sale-consumer-data-insurance-broker-1851657340>.

several companies, including insurance companies, that could potentially result in financial harm to customers.

A. The OnStar Terms Do Not Disclose or Authorize Defendants' Sale of Consumers' Driving Data to Third-Party Data Brokers.

146. To entice customers to enroll in its Driving Data collection scheme, GM trumpets over and over about the benefits of using its services. Specifically, it states that GM collects “information about you and the world around you that we need to power the products and services we offer, to improve your experience in your vehicle, and to advance future technologies.”¹³⁴ General Motors also states, “we use this Personal Information to deliver products and services, keep vehicles and roadways safe, and innovate and evolve our vehicles for the next generation.”¹³⁵

147. Nowhere does GM disclose to drivers that their Driving Data will be sold to third-party data brokers, or that their Driving Data would then be used to create risk profiles and “scores” for drivers, or that these third parties would then re-sell consumers’ Driving Data and driving scores.

148. First, the User Terms do not cover or purport to address GM and third parties’ surreptitious collection and sale of Driving Data. According to the User Terms, “[t]hey apply to *your* use of the connected vehicle services we make

¹³⁴ GENERAL MOTORS, U.S. CONSUMER PRIVACY STATEMENT 1 (2024), https://www.gm.com/content/dam/company/docs/us/en/gmcom/privacy-statement/GM_US_Consumer_Privacy_Statement.pdf.

¹³⁵ *Id.*

available to You[.]”¹³⁶ Nothing in the User Terms refers to GM’s use of connected vehicle services. Indeed, the User Terms do not address GM’s data sharing practices, other than to reference the “Privacy Statement.”

149. The Privacy Statement also does not disclose GM’s collection and sale of Driving Data to Verisk, Wejo, LexisNexis, or any other third parties. In one section, titled “How we may share your information,” GM states that it “may share” information with certain “Third-Party Business Relationships.” “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.” In 2018, GM quietly amended this Privacy Statement to add the “/or,” without explanation, suggesting an attempt to further conceal the nature of GM’s Driving Data-sharing practices. Regardless, consumers did not consent to have GM collect their Driving Data for purposes of providing it to Verisk, Wejo, LexisNexis, or any other third-party data-broker and never elected to receive any relevant service from these entities. Moreover, GM’s consumers did not authorize these third-party data brokers to request their Driving Data from GM.

150. Thus, even if GM drivers consented to the User Terms and Privacy Statement, they unequivocally did not consent to the collection of their Driving Data. GM has conceded as much. For example, in its Smart Driver FAQ page, as of September 25, 2023, GM included the follow Q&A, which seemingly concedes

¹³⁶ User Terms for Connected Vehicle Services, May 1, 2018, https://www.onstar.com/content/dam/onstar/tcps/html/us/20180501_5192022/terms_conditions.html (Emphasis added).

that the OnStar Terms were not sufficient to get consumers’ “express consent” to “collect driving behavior data”:¹³⁷

Why do Members have to enroll separately in Smart Driver from their basic OnStar services?

We do not collect driving behavior data on our Members unless they consent to us doing so.

How does OnStar protect Members’ personally identifiable information from being shared?

OnStar takes the security of its Members’ data very seriously. We use technical, administrative and physical safeguards designed to help protect Members’ information from loss, misuse and unauthorized access, disclosure, alteration, destruction or theft. OnStar doesn’t share personally identifiable information with an insurance company without your express consent.

151. After the *New York Times* reported in 2024 that GM was in fact sharing customer data without consumers’ consent, GM removed the statement that “OnStar doesn’t share personally identifiable information with an insurance company without your express consent” from its website.

152. In short, GM expressly represented that it would not collect Driving Data at all unless consumers enrolled separately in Smart Driver. Even if a consumer enrolled in Smart Driver, GM also represented that it would use technical, administrative, and physical safeguards to protect consumers’ Driving

¹³⁷ Help: Smart Driver, OnStar, available at <https://web.archive.org/web/20230925021817/https://www.onstar.com/support/faq/smart-driver> (archived Sept. 25, 2023).

Data and specifically represented that it would not share personally identifiable information without consumers' consent.

153. GM also knows that a consumer's consent to the OnStar Terms did not constitute consent to the sharing of their Driving Data with Verisk, Wejo, LexisNexis, or other third-party data brokers.

154. In 2015, back when GM first announced its partnership with Verisk, GM was clear that the OnStar Terms did not cover and did not seek its customers' informed consent for GM's sharing of Driving Data with Verisk and insurers. According to a report by *Repairer Driven News*, GM stated that it would issue a "separate terms of use" to address that offering:

General Motors will let OnStar users opt-in to share driving data with insurance risk data provider Verisk Analytics . . . according to Deana Alicea, GM connected customer experience spokeswoman . . .

GM customers' privacy. . . . GM will be clear with customers about what data is being released under the new partnership, Alicea said. OnStar customers will have to opt-in to a separate terms of use beyond the standard OnStar terms before GM will share anything with Verisk.

"Our customers are first and foremost," she said.

She said the Verisk terms of use will be specific, and not include generic concepts which could be interpreted as permission for insurers or Verisk to collect anything you did with OnStar or your vehicle.

"You know exactly what you're opting in to," she said.¹³⁸

¹³⁸ *With eye toward usage-based insurance, GM to allow OnStar users to share data with Verisk*, REPAIRER DRIVEN NEWS (Sept. 4, 2015) (emphasis added), <https://www.repairerdrivennews.com/2015/09/04/with-eye-towards-usage-based-insurance-gm-to-allow-onstar-users-to-share-data-with-verisk/>.

155. But contrary to GM’s representations, GM never issued a “Verisk terms of use” nor did GM issue terms specific to Wejo or LexisNexis. And while GM’s disclosures have varied over time, at no point have they materially diverged from those discussed herein. Thus, GM knew from its initial roll out of OnStar that its Driving Data collection and sharing arrangements with third parties did not implicate, arise out of, or relate to the OnStar Terms.

156. According to GM, drivers of GM vehicles could “sign up” for Smart Driver at the dealership, through their mobile app, or online. Although GM discontinued Smart Driver earlier this year, rendering the “sign up” process no longer easily accessible, GM provided Senators Markey and Wyden with a copy of a “Smart Driver and Notifications Opt-In” that GM apparently contends would have been presented to consumers as part of the car buying process. But like the User Terms and Privacy Policy, the language in the “Opt In” does not seek consumers’ consent for GM to collect and share their Driving Data with third parties like Verisk and LexisNexis:

One-click Enroll into OnStar Smart Driver and Notifications

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.

Notifications

Figure 6

B. Defendants' Privacy Statements for Its Mobile Apps and OnStar Guardian Also Do Not Disclose or Authorize Defendants' Sale of Consumers' Driving Data to Third-Party Data Brokers.

157. General Motors' Privacy Statement for Application Services and its OnStar Guardian Privacy Statement also failed to notify customers that GM actively engaged in using customers' data to create driving scores and sold those scores along with the underlying Driving Data to insurers, whose use of the data sold by GM could result in financial harm to GM's customers.

158. General Motors' Privacy Statement for Application Services, that was last updated in May 2, 2022, and is listed under "Previous Statements" on OnStar's privacy page, purports to describe how GM and its affiliates "collect, use, and share information (including the location of your...vehicle...and how your

Vehicle is used) when you download this software application...to your phone or other Internet-connected device.”¹³⁹ This Privacy Statement for Application Services makes no mention of “insurance” in its section entitled “Sharing of Information.”¹⁴⁰ Instead, this section has a catch-all for “the purposes described in the OnStar Privacy Statement” thereby referring customers back to the lengthy U.S. Consumer Privacy Statement to parse and understand.¹⁴¹

159. Similarly, the OnStar Guardian Privacy Statement has a “Sharing of Information” section, and it likewise omits any reference or mention to “insurance” and directs the reader back to the lengthy U.S. Consumer Privacy Statement.

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

¹³⁹ ONSTAR, PRIVACY STATEMENT FOR APPLICATION SERVICES 1 (2022), <https://www.onstar.com/content/dam/onstar/na/us/en/index/legal/legal-privacy-statement-jan012011/02-pdfs/Privacy-Statement-for-Application-Services.pdf>.

¹⁴⁰ *Id.* at 2–3.

¹⁴¹ *Id.* at 3.

160. General Motors' Privacy Statement for Application Services and the OnStar Guardian Privacy Statement cause further confusion due to the cross references with other privacy documents. On information and belief, there is no "OnStar Privacy Statement," and a customer is directed to the U.S. Consumer Privacy Statement when it goes to onstar.com/privacy, but the Privacy Statement for OnStar Guardian and "Previous Privacy Statements" are presented at the bottom of the webpage (below the entire U.S. Consumer Privacy Statement).¹⁴²

C. General Motors Used Smart Driver to Mislead Customers About Its Harmful Use and Sale of Their Driving Data to Third-Party Data Brokers.

161. General Motors also used its descriptions and disclosures associated with the 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.

162. Despite GM ending its free "Smart Driver" program in April 2024, since at least 2017 until its cessation in 2024, General Motors marketed the "Smart Driver" program as a way of "making it possible for drivers to increase their skills on the road." It was said to "maximiz[e] their vehicle's overall performance, while reducing the rate of wear and tear" and it would "help owners save money and

¹⁴² After entering www.onstar.com/privacy into the search bar, a user is redirected to https://www.gm.com/privacy-statement?evar25=onstar_legal_privacy where the U.S. Consumer Privacy Statement is located.

drive responsibly.”¹⁴³ This feature was advertised to the customer as purely beneficial.

163. General Motors likewise de-emphasized the significance of a “bad” driving score and reassured consumers that their driving score was not permanent and could improve over time:

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*¹⁴⁴

164. During the deceptive “onboarding” process to enroll customers in GM’s Connected Vehicle Services, GM did not disclose any potential harm that could be caused by a customer’s use of the “Smart Driver” program. Instead, GM told customers they could “earn achievements, get valuable feedback with each trip, and access your driving data.” GM told customers it would “use information...about where and how you operate your vehicle,” but GM never told customers that it would profit from the sale of that Driving Data or that Driving

¹⁴³ *Introducing the OnStar Smart Driver Feature*, BAKER MOTOR COMPANY, <https://www.bakermotorcompany.com/6762-2/> (last visited on Jan. 22, 2025).

¹⁴⁴ *Reading Into Your Chevrolet, Buick, GMC and Cadillac Smart Driver Score*, ONSTAR (Jan. 28, 2020), <https://www.onstar.ca/en/tips/reading-into-your-smart-driver-score>.

Data could end up in the hands of insurers who could raise rates or cancel policies.¹⁴⁵

Enrollment Preferences
(Smart Driver and Notifications opt-in)

One-click Enroll into OnStar Smart Driver and Notifications

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*¹⁴⁶

¹⁴⁵ Appendix A: Documents from General Motors, GENERAL MOTORS (July 26, 2024), <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>; Kashmir Hill, *Automakers Are Sharing Consumers' Driving Behavior With Insurance Companies*, N.Y. TIMES (Mar. 13, 2024), <https://www.nytimes.com/2024/03/11/technology/carmakers-driver-tracking-insurance.html>.

¹⁴⁶ Appendix A: Documents from General Motors, GENERAL MOTORS (July 26, 2024), <https://www.wyden.senate.gov/imo/media/doc/wyden-markey%20auto%20privacy%20letter%20to%20ftc.pdf>.

CLAIMS

COUNT I Indiana Deceptive Consumer Sales Act, IND. CODE § 24-5-0.5-3(a)

165. The State repeats and incorporates by reference each allegation contained in the preceding paragraphs.

166. Indiana's Deceptive Consumer Sales Act provides that a "supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction." IND. CODE § 24-5-0.5-3(a).

167. Defendants are "suppliers" within the meaning of IND. CODE § 24-5-0.5-2(a)(3).

168. In supplying consumers with GM vehicles equipped with OnStar telematic systems, including the ongoing subscription and data connection, Defendants were and remain involved in "consumer transactions" of goods and services in Indiana, within the meaning of IND. CODE § 24-5-0.5-2(a)(1).

169. Defendants "regularly engage[] in or solicit[] consumer transactions" in the State of Indiana, IND. CODE § 24-5-0.5-2(a)(3)(A), through the "sale, lease, . . . or other disposition of an item of personal property, . . . a service, or an intangible" to persons "for purposes that are primarily personal, familial, . . . or household, or a solicitation to supply any of these things." *Id.* § 24-5-0.5-2(a)(1).

170. Defendants knowingly engaged in the conduct detailed above and challenged by this action.

171. Defendants' conduct complained of herein violates the Indiana Deceptive Consumer Sales Act. As alleged herein, Defendants have regularly engaged in unfair, abusive, and/or deceptive acts, omissions, and/or practices

affecting Indiana consumers by collecting, storing, using, and/or selling consumers' Driving Data without their consent.

172. Defendants engaged in unfair, abusive, and/or deceptive acts, omissions, and/or practices when they knowingly used "dark patterns," a complicated "onboarding" process, and lengthy, cross-referencing privacy statements to deceive and mislead consumers and create a complicated process thereby denying consumers the ability to truly consent to the collection, storage, use, and sale of their Driving Data. Defendants, at all times relevant to this matter, advertised their products and services as a benefit to consumers without any mention of the sale of Driving Data for Defendants' profit or that such sale could cause financial harm to consumers.

173. Defendants engaged in unfair, abusive, and/or deceptive acts, omissions, and/or practices when they knowingly: (a) misled consumers through use of "dark patterns" and a complicated "onboarding" process regarding the collection, retention, use and/or sale of consumers' Driving Data without their consent; (b) conditioned or appeared to condition the sale of GM vehicles and services on consumers' completion of the "onboarding" process, enrollment in Defendants' subscription plans, and/or consent to Defendants' collection, retention, use and/or sale of their Driving Data when those were neither mandatory nor needed to provide the basic functionality of the GM vehicle, product or service; (c) enlisted design practices that trick or manipulate customers into making choices they would not otherwise make by taking advantage of consumers' cognitive biases in order to steer their conduct away from, or delay access to, information needed to make fully informed decisions; (d) used customer

interfaces that repeatedly prompt consumers who previously declined Defendants' products to accept, enroll, and/or opt-in to those products; and (e) provided incomplete or misleading information about the extent and true nature of Defendants' data collection and sharing practices.

174. Defendants engaged in unfair, abusive, and/or deceptive acts, omissions, and/or practices when they knowingly created an "onboarding" process that hid the complicated nature of tracking the privacy protections across multiple lengthy privacy statements thereby obscuring Defendants' real data practices.

175. Defendants engaged in unfair, abusive, and/or deceptive acts, omissions, and/or practices when they knowingly obscured Defendants' real data practices and mislead consumers by telling them their Driving Data would only be used in conjunction with "General Motors Insurance" and failed to put consumers on notice that their information would be sold and shared with third-party insurers. Defendants hid that a consumer's Driving Data could be used to create financial harm to that same consumer.

176. Pursuant to IND. CODE § 24-5-0.5-4(c), the State is entitled to a permanent injunction prohibiting Defendants from continuing to engage in these deceptive business practices.

177. Defendants committed the acts, omissions, and/or practices alleged above knowingly, and therefore committed knowing violations of the Indiana Deceptive Consumer Sales Act. Thus, pursuant to IND. CODE § 24-5-0.5-4(g), the State is entitled to civil penalties not to exceed \$5,000 for each and every violation of the Indiana Deceptive Consumer Sales Act.

178. The acts alleged herein are incurable deceptive acts that Defendants committed as part of a scheme, artifice, or device with intent to defraud or mislead. Thus, pursuant to IND. CODE § 24-5-0.5-8, the State is entitled to additional civil penalties not to exceed \$500 for each and every incurable violation of the Indiana Deceptive Consumer Sales Act.

COUNT II
Indiana Deceptive Consumer Sales Act,
IND. CODE § 24-5-0.5-3(b)(1)

179. The State repeats and incorporates by reference each allegation contained in the preceding paragraphs.

180. Defendants, through their acts, omissions, and/or practices related to the collection, retention, use, and sale of consumers' Driving Data, represented that their products and/or services had performance, characteristics, uses, and/or benefits they did not have, which Defendants knew or reasonably should have known they did not have, in violation of IND. CODE § 24-5-0.5-3(b)(1).

181. Defendants' unfair, abusive, and/or deceptive acts, omissions, and/or practices include, but are not limited to, the following: (a) Defendants misrepresenting the products and services as a self-assessment tool for consumers' own assessment of their driving habits, when in fact the products and services were part of Defendants' scheme to collect, share and monetize consumers' Driving Data for Defendants' own benefit; (b) Defendants misrepresenting that Driving Data was collected to improve the safety, functionality and operability of GM vehicles for the benefit of the consumer, when in fact Defendants self-servingly used a vast amount of the Driving Data it collected to derive a profit by repeatedly selling it to third parties; (c) Defendants misrepresenting that they would only

share Driving Data in certain circumstances, when in fact Defendants entered into various agreements to sell Driving Data for other undisclosed purposes; (d) conditioning or appearing to condition the sale of GM vehicles and services on consumers' completion of the onboarding process, enrollment in Defendants' subscription plans, and/or consent to Defendants' collection, retention, use and/or sale of their Driving Data when those were neither mandatory nor needed to provide the basic functionality of the GM vehicle, product or service; and (e) providing misleading information about the extent and true nature of Defendants' data collection and sharing practices.

182. Pursuant to IND. CODE § 24-5-0.5-4(c), the State is entitled to a permanent injunction prohibiting Defendants from continuing to engage in these deceptive business practices.

183. Defendants committed the acts, omissions, and/or practices alleged above knowingly, and therefore committed knowing violations of the Indiana Deceptive Consumer Sales Act. Thus, pursuant to IND. CODE § 24-5-0.5-4(g), the State is entitled to civil penalties not to exceed \$5,000 for each and every violation of the Indiana Deceptive Consumer Sales Act.

184. The acts alleged herein are incurable deceptive acts that Defendants committed as part of a scheme, artifice, or device with intent to defraud or mislead. Thus, pursuant to IND. CODE § 24-5-0.5-8, the State is entitled to additional civil penalties not to exceed \$500 for each and every incurable violation of the Indiana Deceptive Consumer Sales Act.

JURY DEMAND

185. The State demands a trial by jury.

PRAYER FOR RELIEF

186. Based on the unlawful acts described herein, the State of Indiana is entitled to an Order from this Court:

- a. Declaring Defendants' actions unlawful, unfair, abusive, and deceptive to Indiana consumers under IND. CODE § 24-5-0.5, *et seq.*;
- b. Permanently enjoining Defendants from continuing to treat Indiana consumers unlawfully, unfairly, abusively, and deceptively in the ways described herein;
- c. Ordering Defendants to disgorge all money and benefits obtained from its unlawful, unfair, abusive, and deceptive conduct described herein;
- d. Awarding the State civil penalties for each and every violation of the Indiana Deceptive Consumer Sales Act complained of herein as permitted by statute pursuant to IND. CODE § 24-5-0.5-4(g) and IND. CODE § 24-5-0.5-8;
- e. Awarding all other monetary and equitable relief deemed proper by the Court;
- f. Awarding the State its expenses for expert witnesses and other reasonable costs incurred in investigating and pursuing this action, including reasonable attorneys' fees, pursuant to IND. CODE § 24-5-0.5-4(c)(4),
- g. Awarding post-judgment interest at the highest lawful rates; and,
- h. Granting such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

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