

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FELDER’S COLLISION PARTS, INC.)	CASE NO. 12-646-JJB
)	
VERSUS)	
)	JUDGE BRADY
)	
GENERAL MOTORS COMPANY, ALL)	MAGISTRATE RIEDLINGER
STAR ADVERTISING AGENCY, INC.,)	
ALL STAR CHEVROLET NORTH, L.L.C.,)	JURY TRIAL REQUESTED
ALL STAR CHEVROLET, INC., & JOHN)	
DOE DEFENDANTS 1-25)	
_____)	

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiff, Felder’s Collision Parts, Inc. (“Felder’s”), by and through its attorneys, brings this First Amended and Supplemental Complaint against Defendants and states as follows:

I. JURISDICTION AND VENUE

1.

The court has jurisdiction over this matter pursuant to 28 U.S.C § 1331, 15 U.S.C. §§ 1 and 2, known as the Sherman Act, and Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22. This Court also has supplemental subject matter jurisdiction over Felder’s state law claims pursuant to 28 U.S.C. § 1367. Felder’s seeks treble damages and equitable relief pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

2.

Venue is proper in this District under 15 U.S.C. § 22 because the Defendants transact business in this District.

II. PARTIES

3.

Felder's is a Louisiana corporation that transacts business in this District.

4.

General Motors LLC ("GM")¹ is a Delaware corporation with its principal place of business in Michigan. GM is a manufacturer of several brands of automobiles, including Chevrolet, GMC, Buick and Cadillac and automobile replacement parts for those vehicles. GM is subject to the personal jurisdiction of this Court as it contracts with dealerships to sell its automobiles and automobile replacement parts throughout the state of Louisiana.

5.

All Star Advertising Agency, Inc. is a Louisiana limited liability company authorized to and doing business in the State of Louisiana.

6.

All Star Chevrolet, Inc. is a Louisiana corporation authorized to and doing business in the State of Louisiana. Upon information and belief, All Star Chevrolet, Inc. owns and operates a dealership in Baton Rouge, Louisiana that sells Chevrolet automobiles, a brand manufactured by GM.

7.

All Star Chevrolet North, L.L.C. is a Louisiana limited liability company authorized to and doing business in the State of Louisiana. Upon information and belief, All Star Chevrolet North, L.L.C. owns and operates a dealership in Baker, Louisiana that sells Chevrolet automobiles, a brand manufactured by GM.

¹ In its motion to dismiss Felder's' Complaint, GM stated that the proper defendant was General Motors LLC and that General Motors Company was incorrectly named as a defendant. *See* Record Doc. No. 22 at p. 4. Accordingly, Felder's' amends its suit to name the correct entity, General Motors LLC.

8.

Collectively, the defendants identified in Paragraphs 5 to 7 do business in the state of Louisiana under the trade name All Star Automotive Group (the “Group”), a trade name that is owned by defendant All Star Advertising Agency, Inc., which Group is a business enterprise comprised of a conglomerate of dealerships selling the automobiles and automobile replacement parts of the following manufacturers: GM, Chrysler, Ford, Toyota, Hyundai, Kia, Nissan, Isuzu, and Volvo. The Group is headquartered in Baton Rouge, Louisiana. Unless identified individually, said defendants will hereinafter be referred to collectively as “the All Star Defendants.”

9.

The John Doe Defendants 1-25 are other presently unknown juridical entities who are authorized to and conduct business in the State of Louisiana.

III. BACKGROUND

10.

This case concerns an illegal conspiracy and collusion among GM and the All Star Defendants and the John Doe Defendants 1-25 to control the market for automobile collision parts for which there is an aftermarket alternative and that are compatible with GM vehicles. In the automobile collision parts market, there are two types of parts: original equipment manufacturer parts (“OEM parts”) and after-market parts. Specifically, this case concerns an illegal conspiracy and collusion among GM, the All Star Defendants, and the John Doe Defendants 1-25 concerning the sale of collision parts for which there is an aftermarket alternative and that are compatible with GM vehicles.

11.

As their name indicates, OEM parts are manufactured by GM and sold under its brand name to the All Star Defendants and the John Doe Defendants 1-25. The All Star Defendants and the John Doe Defendants 1-25, in turn, sell the OEM parts to collision centers and body shops throughout this District, south Louisiana, and Mississippi as set forth infra for use in repairing GM automobiles. The illegal actions of GM, All Star Defendants, and John Doe Defendants 1-25 that are the subject of the allegations herein are within the flow of, and have had a direct and substantial effect on, interstate trade and commerce.

12.

After-market collision parts (e.g. body and fender parts) are manufactured by entities other than automobile manufacturers. These after-market collision parts are sold by businesses such as Felder's to collision centers and body shops (hereinafter, jointly "collision centers") for use in repairing automobiles. After-market collision parts make up approximately 20% of the automobile collision part market. After-market collision parts are less expensive than OEM parts and are historically sold for a lower price than the alternative OEM parts. Prices of OEM parts are, on average, 25 to 50% higher than equivalent aftermarket parts. These parts are of like grade and quality as the OEM collision parts. The remaining 80% of the automobile collision part market is already subject to a monopoly by each manufacturer as to collision parts for the cars it produces and its dealer networks sell.

13.

All Star's OEM parts distribution center opened in 2003. It is the largest parts distribution center in Louisiana at more than 50,000 square feet and \$5 million in inventory.

14.

Felder's was established in 1993 and does business in this District. It provides high quality after-market collision parts and is in direct competition with the All Star Defendants and other dealerships [the John Doe Defendants 1-25] in contract with GM for the market of collision parts for which an aftermarket alternative exists and that are compatible with GM automobiles.

15.

In particular, Felder's sells aftermarket collision parts in the following Louisiana parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Point Coupee, Rapids, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Vernon, Washington, West Baton Rouge, and West Feliciana. Felder's also does business in the following Mississippi counties: Hancock, Harrison, Pearl River, Marion, Rankin, Forrest, Hinds, Jackson, Stone, Lamar, and Walthall. Upon information and belief, All Star also sells collision parts for which there is an aftermarket alternative in these same parishes and counties. For ease of reference, the above-listed parishes and counties will hereinafter be referred to as the "Geographic Market."

16.

The business of automobile collision parts is driven by the automobile insurance industry, which, in most cases, pays for the repairs of damaged automobiles.

17.

Insurance companies are motivated, primarily, by a desire to have repairs completed in the shortest period of time and at the lowest price. Thus, they often push body shops to purchase

collision parts that will be delivered promptly, but at a low cost. Initially, this created a preference for cheaper, but quality, aftermarket parts.

18.

Understanding these market conditions, entities such as All Star and GM began searching for ways to deliver collision parts for which there was an aftermarket alternative at a lower cost. Eventually, they devised a scheme, described herein, to accomplish that goal and, in the process, eliminate the competition of aftermarket sellers of collision parts.

19.

All Star enjoys a substantial share of the Geographic Market for automobile collision parts for which there is an aftermarket alternative and that are compatible with GM vehicles because it operates the largest OEM distribution center in the state of Louisiana and is able to deliver parts to body shops in a short period of time. With the commencement of the illegal predatory pricing described herein, the All Star Defendants have positioned themselves as the leader in the provider of automobile collision parts in the Geographic Market.

20.

In the last several years, GM, the All Star Defendants, and the John Doe Defendants 1-25 began operating price incentive programs the sole purpose of which was to eliminate or “bump” the competition posed by sellers of after-market collision parts, such as Felder’s. GM, the All Star Defendants, and the John Doe Defendants 1-25 desired to become the sole seller of collision parts compatible with GM automobiles, already having a monopoly over 80% of the collision parts market.

21.

In order to target the after-market parts vendors, GM colluded and conspired with buyers of its OEM collision parts, such as the All Star Defendants and the John Doe Defendants 1-25, to monopolize the market for collision parts for which an aftermarket alternative exists and that are compatible with GM automobiles and drive Felder's out of business in the Geographic Market.

22.

GM created price incentive programs to induce the All Star Defendants and the John Doe Defendants 1-25 to sell OEM collision parts at or below the price of comparable collision parts compatible with GM automobiles offered by sellers of after-market collision parts, such as Felder's. To achieve this goal, at the point of sale to body shops and collision centers, the All Star Defendants and the John Doe Defendants 1-25 sell collision parts lower than their average variable costs ("AVC"), i.e., variable costs (i.e., hourly wages, cost of materials) divided by output.

23.

After a sale below AVC to a body shop or collision center is complete, GM promises to kick-back to the All Star Defendants and the John Doe Defendants 1-25 at a future date the difference between the cost of the part paid to GM by the All Star Defendants and the John Doe Defendants, plus an alleged recoupment or measure of back-end "profit."

24.

Upon information and belief, in furtherance of its inducement to cause body shops and collision centers to purchase OEM parts from the All Star Defendants and the John Doe Defendants 1-25, GM offers cash rebate debit cards to representatives of the body shops and collision centers.

25.

GM's programs were entered into by the parties for the specific purposes of eliminating competition and making GM the only seller of collision parts for which an aftermarket equivalent exists and that are compatible with GM automobiles in the Geographic Market, specifically eliminating competition from Felder's.

26.

In particular, GM initiated a program appropriately called "Bump the Competition." As illustrated in the document attached hereto as Exhibit 1, GM offered "highly competitive pricing" with after-market GM collision parts. The sole purpose of this program, as its name suggests, was to "bump the competition" out of existence and establish for GM a monopoly on the market of collision parts for which an aftermarket equivalent exists and that are compatible with GM vehicles. The "Bump the Competition" program made it easy for collision parts customers, such as body shops, to get OEM GM parts at "'Bump the Competition' discounts" from dealerships, such as the All Star Defendants. The GM program was available for over 4,400 part numbers and included such parts as lighting, fascias, wheels, mirrors, doors, fenders, grilles, panels, hoods, windows, and windshields. *See* Exhibit 1.

27.

Upon information and belief, GM developed a "GM Collision Conquest Calculator" as part of the "Bump the Competition" Program. An example of the "GM Collision Conquest Calculator is attached as Exhibit 2. This calculator facilitated the conspiracy among GM, the All Star Defendants, and the John Doe Defendants 1-25, to sell OEM GM parts to a collision center or body shop at a price below the average variable cost paid by the All Star Defendants or the John Doe Defendants 1-25 to GM. That is, at the time of sale, the price of the good sold was

less than the cost to the All Star Defendants or the John Doe Defendants plus the costs of selling the part.

28.

After the All Star Defendants sell a collision part at a targeted price that is equal to or below the price charged by after-market part vendors, the All Star Defendants then purportedly recoup a portion of their losses from GM. Upon information and belief, however, the price at which the part is sold by the All Star Defendants to its customers is still below its AVC. Said program to sell OEM parts below the costs of the All Star Defendants and the John Doe Defendants 1-25 is designed and operated with the intent to restrain trade, injure Felder's business, and monopolize the market for GM repair parts in the Geographic Market.

29.

For instance, in the GM Collision Conquest Calculator example attached as Exhibit 2, the dealer *pays* G.M. \$135.01 for a particular part. That part is normally listed for sale by the dealer to the collision center for \$228.83. A comparable after-market part is listed for sale for \$179.00. Although the dealer's cost of the part is \$135.01, GM instructs the dealer to sell the part to a collision center or body shop at a "bottom line price" that is 33% less than the cost of the comparable aftermarket equivalent part, or \$119.93, which is approximately \$15.00 less than the cost the dealer paid GM for the part.

30.

Upon sale of the part for \$119.93, the dealership then recoups from GM at a later date the difference between the sale price of \$119.93 and the part cost of \$135.01, plus an alleged back-end "profit" of 14%.

31.

Upon information and belief, GM and the All Star Defendants only lower the price of parts for which there is an aftermarket alternative where the body shop or collision center or person off the street identifies an alternative aftermarket part and shows the All Star Defendants a quote obtained from a seller of aftermarket collision parts, such as Felder's. In other words, the lower price is offered only when there is an opportunity to beat or "bump" the aftermarket price. The lower price is not offered where the body shop or collision center cannot demonstrate a competing aftermarket price.

32.

Upon information and belief, similar deals exist or existed on numerous OEM GM parts that dealerships are instructed to sell below their AVC to collision centers and body shops and recoup those losses from GM, including, nearly all of the GM Conquest Calculator list attached as Exhibit 3, which list displays, on its face, that the targeted price is below the dealer's part cost alone.

33.

A further example of the anti-competitive actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 is the "Bump the Competition Calculator," attached as Exhibit 4 that illustrates a particular sale of OEM parts by GM to the All Star Defendants. Under this example, the All Star Defendants pays G.M. \$121.59 for a part that would normally be sold by the All Star Defendants for \$206.09. The aftermarket equivalent of that part sells for \$176.04. The All Star Defendants then sell the OEM part to the collision center for \$117.95, which is well below the price of the aftermarket fender and, importantly, *below the price the All Star*

Defendants paid G.M. for the part. Significantly, GM would then kickback \$20.66 to the All Star Defendants, allowing it to partially recoup its losses.

34.

A similar action was undertaken with respect to the sale of a door as illustrated in Exhibit 3. Said item was sold by GM to the All Star Defendants paid G.M. \$556.13 for the door, which would normally be sold for \$942.59 to the collision center. The price of an equivalent aftermarket part is \$680.63. The All Star Defendants then sell the door to a collision center at a price of \$456.02, an amount that is below what the All Star Defendants paid for the door, and, upon information and belief, below the average variable cost to the All Star Defendants. In return, GM agreed to kickback \$177.97 to the All Star Defendant to partially recoup its losses.

35.

Upon information and belief, GM, the All Star Defendants, and the John Doe Defendants 1-25 were engaged in similar practices in the sale of aftermarket parts to collision centers and body shops that, at the time of sale, were below the AVC of the All Star Defendants and the John Doe Defendants 1-25. The losses were subsequently partially recouped by the All Star Defendants upon receipt of the subsidies from GM.

36.

The receipt of subsidies from GM does not alter the fact that, at the point of sale by the All Star Defendants and the John Doe Defendants 1-25 to the collision center, the sale by the All Star Defendants' sale of an automobile collision part for which there is an aftermarket alternative is below what the All Star Defendants paid G.M. for the part and is also below the All Star Defendants' AVC given the sharp discount at which the part must be sold.

37.

Felder's avers that the appropriate point in determining whether the sale of an aftermarket collision part is below AVC is at the point of time of sale to the collision center and not after the All Star Defendants receive a "kick back" or subsidy from GM. The Supreme Court has recognized that antitrust laws protect *competition* not *competitors*. *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962) (emphasis added). Lower prices that are *not* below average variable cost are a recognized method of competition. However, predatory pricing, i.e., prices that are below AVC, is anti-competitive. At all times, the focus is on the competitive nature of the sale *to the consumer, i.e., the collision center* and the sale by the All Star Defendants and John Doe Defendants 1-25 to the collision center. Reliance on post-sale events (i.e., the receipt of a subsidy to encourage predatory pricing) does not change the illegality of the action and the harm to competition.

38.

The All Star Defendants' ability to recoup losses from GM is an inducement to engage in predatory pricing. Cases in which courts have focused on the entire transaction, including rebates and specials, find actions legal because there is no harm to competition, as the transaction at the time of sale is not below AVC. It is true that there is no difference where a seller sells 100% of his stock at \$.80 per share or, in the alternative, sells 80% of his stock at \$1.00 per share and the other 20% is distributed for free. In both cases, the gross revenue to the seller and cost to the buyer is \$.80. In the case of "Bump the Competition," the seller, i.e., the All Star Defendants get an unfair advantage by selling below cost and then receiving a subsidy from its manufacturer to induce the sale below cost. In the former example, there is no harm to competition because the profit margin to the seller is constant. In the latter case, competition is harmed because the

seller is able to operate at a negative profit margin until it receives the illegal inducement, and buyers who are customers or former customers of aftermarket sellers, such as Felder's, are able to consistently purchase products at prices below the OEM seller's cost and at or below the aftermarket prices.

39.

Upon elimination of the competition and monopolization of the market for GM collision parts for which an aftermarket alternative exists in the Geographic Market, GM, the All Star Defendants, and the John Doe Defendants 1-25 have a reasonable prospect and/or a dangerous probability of recouping any losses resulting from the sale of collision parts for which an aftermarket equivalent exists and are compatible with GM automobiles below AVC for two main reasons.

40.

First, upon information and belief, the All Star Defendants and the John Doe Defendants 1-25 will now only sell an OEM collision part below their AVC when an aftermarket part is available and GM is made aware of the aftermarket alternative. At that point, the All Star Defendants and the John Doe Defendants 1-25 are instructed by GM to match the price (which price is below the dealers' AVC) and seek recoupment of their losses from GM.

41.

Second, GM has made no effort to sell below cost or reduce prices in any way for those parts that do not have an aftermarket alternative because GM and its dealers already enjoy a monopoly on those parts, thus making no incentive to reduce prices for their customers. Once the defendants successfully "Bump" all of the competition, they likewise will have no incentive to reduce prices for customers on those parts that do currently have aftermarket alternatives. The

effect of this scheme is that (1) the dealers recoup their losses through the much higher OEM prices achieved on parts for which there is either no aftermarket alternative or no qualifying estimate from an aftermarket supplier, and (2) the attached exhibits show the supra-competitive prices already in place in the absence of an aftermarket supplier, and the enormous margins through which the dealers will recoup losses in the future; hence, the dealers achieve recoupment in two time-frames, both immediately and on a grander scale in the future.

42.

From 2007 to 2013, the All Star Defendants have enjoyed a significant increase in revenue from the sale of collision parts. At the same time, the All Star Defendants have enjoyed increasing profit margins on the sale of collision parts. Such trends are confirmation of the success of the “Bump the Competition” Program and All Star’s ability to eliminate competition for the sale of automobile collision parts for which there is an aftermarket alternative. Such trends also reflect that the All Star Defendants are likely recouping any loss of revenue from the sale of automobile collision parts for which there is an aftermarket alternative by increasing the prices for automobile collision parts for which there is no aftermarket alternative to the detriment of the consumer.

43.

An example of the likelihood that GM, the All Star Defendants, and John Doe Defendants 1-25 will increase their prices of collision parts for which there was an aftermarket alternative once the aftermarket distributors such as Felder’s have been eliminated, may be found in patent infringement litigation involving Ford Motor Company (“Ford”).

44.

In 2005, Ford initiated a patent infringement action against manufacturers and distributors of aftermarket parts for certain models of a Ford F-150 truck. The matter was captioned *Ford Global Technologies v. International Trade Commission*, No. 2007-1357, United States Court of Appeals for the Federal Circuit. Upon information and belief, during the pendency of the litigation, Ford charged prices for these parts in competition with the aftermarket sellers. For example, Ford sold a valance for a 2-wheel-drive truck for \$43.90. Ford eventually settled its lawsuit with aftermarket manufacturers and distributors, who became the sole distributor of aftermarket collision parts compatible with Ford vehicles. Following settlement and the elimination of competition from the aftermarket manufacturers, Ford sharply increased the price of the parts whose patents it had enforced. For example, the referenced valance jumped in price from \$43.90 to \$79.63, an increase of 81.4%.

45.

Upon information and belief, GM, the All Star Defendants, and John Doe Defendants 1-25 will likely follow the same approach—in addition to the inherent recoupment discussed above with regard to the supra-competitive prices already charged for parts for which there is no aftermarket alternative or for parts for which there is no competing estimate from an after-market parts supplier—and sharply increase the prices of collision parts for which there was formerly an aftermarket alternative.

46.

Upon information and belief, barriers to entry into the market for collision parts that have an aftermarket equivalent are high and difficult and the All Star Defendants and John Doe Defendants 1-25 enjoy substantial dominance in the market.

47.

Given the monopolistic practices of GM, the All Star Defendants, and the John Doe Defendants 1-25, after they drive the after-market collision parts sellers from business, will be able to raise prices on OEM parts to supracompetitive prices, thus giving them a reasonable prospect and/or dangerous probability of further recouping any global losses.

48.

As an indicator of high barriers to entry and the dominance of the All Star Defendants and John Doe Defendants 1-25, and upon information and belief, in the past 10 years, no new aftermarket parts sellers have entered the market in direct competition with the Felder's. Upon information and belief, sellers of aftermarket parts cannot compete with sellers of OEM parts that conspire with the OEM, such as GM, to reduce prices below the seller's AVC.

49.

Further highlighting the high barriers to entry in the market for collision parts for which there is an aftermarket alternative and compatible with GM automobiles and upon information and belief, three after-market parts competitors of Felder's, who sell aftermarket parts in the same geographic markets as Felder's and All Star, have already been driven out of business by the illegal, anti-competitive, and conspiratorial actions of GM, the All Star Defendants, and the John Doe Defendants 1-25. The exit of competitors from the market and lack of new entrants in the market for collision parts for which there is an aftermarket alternative are indicative of the high barriers to entry in the market for aftermarket collision parts for which there is an aftermarket alternative and compatible with GM automobiles.

50.

Barriers to entry are further high because the sale of collision parts is a relationship-driven business in which sellers and buyers develop long-time histories of sales, making it difficult for newcomers to enter the market for collision parts.

51.

Upon information and belief, Bumper Supply, which did business in Jackson, Mississippi, competed with Felder's, All Star, and GM in the Mississippi Gulf Coast and Hattiesburg, Mississippi. Upon further information and belief, the illegal, anti-competitive, and conspiratorial actions of GM and the All Star Defendants caused Bumper Supply to go out of business.

52.

Upon information and belief, Eric's Bumper, which did business in New Orleans, Louisiana, competed with Felder's, All Star, and GM in the New Orleans area. Upon further information and belief, the illegal, anti-competitive, and conspiratorial actions of GM and the All Star Defendants caused Eric's Bumper to go out of business.

53.

Upon information and belief, United Bumper Sales, which did business in Shreveport, Louisiana, competed with Felder's, All Star, and GM in the Alexandria, Louisiana area. Upon further information and belief, the illegal, anti-competitive, and conspiratorial actions of GM and the All Star Defendants caused United Bumper Sales to go out of business.

54.

Indeed, the only viable seller of aftermarket collision parts able to remain in business in the Geographic Market in addition to the Felder's is Keystone Automotive Industries, Inc., the

country's largest aftermarket parts distributor. Given Keystone Automotive Industries' size in and diversification beyond the market it is, thus far, able to withstand the pressures from the defendants' predatory pricing conduct.

55.

Upon information and belief, body shops will purchase automobile collision parts from the entity that is able to supply the parts at the lowest price and the shortest period of time, in order to satisfy the demands of the automobile insurers. As a result of the illegal and discriminatory pricing practices described herein, body shops now will turn to the All Star Defendants for their automobile collision parts needs, and Felder's cannot compete because it cannot lower its prices to match the All Star Defendants' anti-competitive prices and remain in business.

56.

Felder's has also seen its once-profitable business slow drastically as a result of the illegal and anti-competitive introduction of the "Bump the Competition" program by GM, such program having been implemented solely for the purpose of driving companies such as Felder's from business. Felder's most profitable year was 2008, the last year before the start of the pricing program. In 2008, total annual income for Felder's was in excess of \$3 million. By 2011, total annual income for Felder's had declined more than \$1 million. In particular, after-market demand for bumpers and lights, the biggest sources of income, has declined substantially since 2008, due to the conspiracy and collusion between by GM and the All Star Defendants and the John Doe Defendants 1-25 to undercut prices. Indeed, if GM is allowed to continue "bumping the competition," Felder's may well face a similar fate to the other after-market parts sellers and be forced out of business.

57.

Felder's avers that the exit of competitors and the lack of new entrants into the market for collision automobile parts for which there is an aftermarket alternative suggests a reasonable prospect and/or a dangerous probability that All Star will raise its prices to supracompetitive levels once it has achieved the desired monopoly on the sales of collision automobile parts.

58.

Ultimately, the continued existence of the "Bump the Competition" Program will have long-ranging effects on competition. If allowed to continue unchecked, sellers of aftermarket parts will be forced to close their business. Manufacturers like GM will expand programs similar to the "Bump the Competition" Program to include hard parts, such as engines, in addition to collision parts affecting the sellers of aftermarket hard parts.

59.

Sellers of OEM collision parts like All Star will increase their prices of parts that formerly had aftermarket alternatives to supra-competitive prices just as they have done on parts that currently have no aftermarket alternatives. Body shops that purchase collision parts from dealerships like All Star will similarly have to increase their prices. Their customers, including insurance companies, will then pay more for collision parts, and insurance companies will pass along the cost increases in the form of higher premiums. Further, upon information and belief, the dealerships will cease stocking parts for automobiles older than 5 or 7 years old once they acquire the monopoly on collision parts making such automobiles obsolete and require purchases of new automobiles.

COUNT ONE:

VIOLATION OF SECTION 1 OF THE SHERMAN ACT

60.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 59 of this Complaint.

61.

Felder's brings this Complaint pursuant to 15 U.S.C. § 1, known as the Sherman Act. Section 1 prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states." Section 1 prohibits conspiracies that impose an unreasonable restraint of trade. Felder's has a private right of action for violations of the Sherman Act based on the provisions of the Clayton Act, 15 U.S.C. § 15(a).

62.

As set forth herein, GM, All Star, and the John Doe Defendants 1-25 have conspired to unreasonably restrain the trade of automobile collision parts for which there is an aftermarket alternative.

63.

Said conspiracy has produced adverse and anticompetitive effects with the market for automobile collision parts for which there is an aftermarket alternative in the Geographic Market. Said effects are shown by the exit of several aftermarket sellers in this Geographic Market and the lack of any new entrants into the market who cannot compete with the conspiratorial and anti-competitive actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 who have conspired to create a monopoly on the sale of automobile collision parts by selling parts with an aftermarket alternative at a price below the All Star Defendants' AVC as set forth herein.

64.

The anticompetitive conduct of GM, the All Star Defendants, and John Doe Defendants 1-25 is a *per se* violation of Section 1 of the Sherman Act.

65.

Alternatively, if the anticompetitive conduct of GM, the All Star Defendants, and John Doe Defendants 1-25 may be judged under the antitrust Rule of Reason, there is no legitimate business justification for the anticompetitive actions described herein and the conduct through which they adopted and implemented their unlawful combination and conspiracy. Moreover, the anticompetitive effects of the conduct of GM, the All Star Defendants, and John Doe Defendants 1-25 far outweigh any conceivable precompetitive benefits or justifications. Even if such a justification had existed, any possible precompetitive benefits could have been obtained by less restrictive alternatives.

66.

As a direct and proximate result of the unlawful combination and conspiracy of GM, All Star Defendants and John Doe Defendants 1-25, these Defendants have unreasonably restrained trade and commerce. They have unlawfully excluded actual and potential competition from the relevant market, and profited from their anticompetitive conduct by establishing and maintaining predatory pricing for automobile collision parts for which an aftermarket alternative exists and are compatible with GM automobiles and by otherwise reaping financial benefits from their unlawful combination and conspiracy.

67.

As a direct and proximate result of the illegal, conspiratorial, and anti-competitive actions of GM, the All Star Defendants, and John Doe Defendants 1-25, Felder's has sustained damages,

including, but not limited to, the loss of profits, the loss of business value, and their ability to compete in the market for automobile collision parts for which there is an aftermarket alternative.

68.

As a result of the illegal actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 as stated herein, Felder's is entitled to recover all damages, including, but not limited to, treble damages and reasonable attorneys' fees, and is entitled to injunctive relief enjoining the continued illegal actions of said defendants as provided for in 15 U.S.C. §§ 15 and 26.

COUNT TWO

ATTEMPTED MONOPOLIZATION IN VIOLATION OF SECTION 2 OF THE

SHERMAN ACT

69.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 68 of this Complaint.

70.

Felder's also brings this Complaint pursuant to Section 2 of the Sherman Act, codified at 15 U.S.C. §2. Felder's has a private right of action for violations of the Sherman Act based on the provisions of the Clayton Act, 15 U.S.C. § 15(a).

71.

Under the Sherman Act, predatory pricing is illegal if, first, the plaintiff shows that "the prices complained of are below an appropriate measure of its rival's costs." *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222 (1993). Second, the conduct is

illegal if “the competitor had a reasonable prospect, or, under § 2 of the Sherman Act, a dangerous probability, of recouping its investment in below-cost prices.” *Id.* at 224.

72.

The predatory pricing actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 to “bump the competition,” constitute an attempt to monopolize the retail sale of collision parts in the Geographic Market, and further demonstrate that there is a dangerous probability of GM, the All Star Defendants, and the John Doe Defendants 1-25 achieving monopoly power.

73.

GM, the All Star Defendants, and the John Doe Defendants 1-25 have colluded and conspired to and have engaged in the below cost predatory pricing described herein in an attempt to monopolize, with the specific intent of doing so, the sale of collision parts compatible with GM automobiles in the Geographic Market.

74.

As alleged herein, there exists a reasonable prospect and/or a dangerous probability of the All Star Defendants and the John Doe Defendants 1-25 recouping any losses resulting from the sale of OEM collision parts below their costs once the after-market competitors, such as Felder’s, have been driven from the market, and the All Star Defendants and the John Doe Defendants 1-25 can set supra-competitive prices to recoup the losses.

75.

There is no legitimate business justification for the anticompetitive conduct of GM, the All Star Defendants, and John Doe Defendants 1-25. The anticompetitive effects described in this First Supplemental and Amended Complaint outweigh any conceivable pro-competitive

benefit or justification. Even if such justification had existed, any possible pro-competitive benefits could have been obtained by less restrictive alternatives.

76.

As a direct and proximate result of the illegal, conspiratorial, and anti-competitive actions of GM, the All Star Defendants, and John Doe Defendants 1-25, the Felder's have sustained damages, including, but not limited to, the loss of profits, the loss of business value, and loss of their ability to compete in the market for automobile collision parts for which there is an aftermarket alternative.

77.

As a result of the illegal actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 as stated herein, Felder's is entitled to recover all damages, including, but not limited to, treble damages and reasonable attorneys' fees, and is entitled to injunctive relief enjoining the continued illegal actions of said defendants as provided for in 15 U.S.C. §§ 15 and 26.

COUNT THREE

**CONSPIRACY TO MONOPOLIZE IN VIOLATION OF SECTION 2 OF THE
SHERMAN ACT**

78.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 77 of this Complaint.

79.

Felder's also brings this Complaint pursuant to Section 2 of the Sherman Act, codified at 15 U.S.C. §2. Felder's has a private right of action for violations of the Sherman Act based on

the provisions of the Clayton Act, 15 U.S.C. 15(a).

80.

Section 2 of the Sherman Act makes conspiracy to monopolize illegal. Conspiracy to monopolize may be established by proof of (1) the existence of specific intent to monopolize; (2) existence of a combination or conspiracy to achieve that end; (3) overt acts in furtherance of the combination or conspiracy; and (4) an effect upon a substantial amount of interstate commerce. *Stewart Glass & Mirror, Inc. v. U.S. Auto Glass Discount Centers, Inc.*, 200 F.3d 307, 316 (5th Cir. 2000).

81.

As described *supra*, the All Star Defendants, GM, and John Doe Defendants 1-25 have demonstrated the specific intent to monopolize by the creation of the “Bump the Competition” program, the express purpose of which is to eliminate competition from aftermarket sellers of collision parts in the market for automobile collision parts for which there is an aftermarket alternative and are compatible with GM automobiles.

82.

GM conspired with the All Star Defendants and John Doe Defendants 1-25 by creating the “Bump the Competition” Program to induce the All Star Defendants and John Doe Defendants 1-25 to sell OEM collision parts below their AVC. Upon information and belief, the All Star Defendants and John Doe Defendants 1-25 would not have agreed to participate in the Program but for the suggestion of GM and the promise of a partial recoupment or kickback of 14% of the cost of the good sold.

83.

Upon information and belief, the overt act in this case is the sale of automobile collision

parts for which there is an aftermarket alternative by the All Star Defendants and John Doe Defendants 1-25 and the subsequent partial recoupment or kickback of 14% by GM. Another overt act in furtherance of the conspiracy was GM's marketing of the program with the stated goal of "bumping" the competition.

84.

Upon information and belief, the conspiracy between GM, the All Star Defendants, and John Doe Defendants 1-25 had a substantial effect on interstate commerce because it diminished the competition between the All Star Defendants and John Doe Defendants 1-25, resulting in fewer interstate sales of goods by the Felder's.

COUNT FOUR:

**VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER
PROTECTION ACT**

85.

Felder's Collision re-alleges and incorporates herein by reference paragraphs 1 through 84 of this Complaint.

86.

Felder's also brings this Complaint pursuant to the Louisiana Unfair Trade Practices ("LUTPA") and Consumer Protection Act, La. Rev. Stat. Ann. § 51:1401, *et seq.*

87.

In particular, Felder's asserts a private right of action under LUTPA for damages

resulting from “unfair or deceptive acts or practices in the conduct of any trade or commerce” committed by GM, the All Star Defendants, and the John Doe Defendants 1-25, all of which is declared illegal under La. Rev. Stat. Ann. § 51:1405(A). Felder’s has a private right of action under LUTPA pursuant to La. Rev. Stat. Ann. § 51:1409(A). *See also Cheramie Services, Inc. v. Shell Deepwater Production, Inc.*, 35 So.3d 1053, 1058 (La. 2010).

88.

Felder’s avers that the conduct of GM, the All Star Defendants, and the John Doe Defendants 1-25 discussed above involving a concerted effort to sell collision repair parts below the AVC to the All Star Defendants and the John Doe Defendants 1-25 constitutes “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” that is illegal under La. Rev. Stat. Ann. § 51:1405(A).

89.

Pursuant to La. Rev. Stat. Ann. § 51:1409, the Felder’s are entitled to all damages, including, but not limited to, recovery of their attorneys’ fees resulting from the illegal acts of GM, the All Star Defendants, and the John Doe Defendants 1-25

90.

Felder’s is also entitled to injunctive relief prohibiting GM, the All Star Defendants, and the John Doe Defendants 1-25 from continuing the unfair trade practices of GM, the All Star Defendants, and the John Doe Defendants 1-25 under La. Rev. Stat. Ann. § 51:1409(C).

COUNT FIVE:

VIOLATIONS OF THE ANTI-TRUST LAWS OF LOUISIANA

91.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 90 of this Complaint.

92.

Felder's also brings this Complaint pursuant to the antitrust laws of the State of Louisiana, La. Rev. Stat. Ann. §§ 51:122, 123, 124, 137, and 422.

93.

In particular, the defendants are liable for "conspiracy in restraint of trade" as prohibited by La. Rev. Stat. Ann. § 51:122.

94.

Defendants are further liable for their "attempt to monopolize ... and conspire ... to monopolize any part of the trade or commerce" of the sale of collision repair parts in violation of La. Rev. Stat. Ann. § 51:123.

95.

Defendants are further liable for the sale of OEM collision repair parts at a price where the "effect of the sale, contract for sale, or lease, or the condition, agreement, or understanding is to substantially lessen competition or tends to create a monopoly in" the market for automotive repair parts, all in violation of La. Rev. Stat. Ann. §51:124(A).

96.

Felder's has a claim for violation of these statutes and recovery of damages, including, but not limited to, the recovery of costs and reasonable attorneys' fees, pursuant to La. Rev. Stat.

Ann. § 51:137.

97.

Defendants are further liable to Felder's for the above-described conduct, as GM, the All Star Defendants, and the John Doe Defendants 1-25 have conspired and agreed to "bump the competition" by selling merchandise, namely, collision repair parts, at less than the AVC to the All Star Defendants and the John Doe Defendants 1-25, with the effect of diverting business from Felder's and in damage to the public welfare. Said actions are to sell goods "at less than cost ... with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or impairing fair competition and thus injuring public welfare," which are declared illegal and against the public policy of this State and thereby prohibited by La. Rev. Stat. Ann. § 51:422 "where the result of such ... sale is to ... substantially lessen competition, or to unreasonably restrain trade, or to tend to create monopoly in any line of commerce." Felder's is authorized to bring this action pursuant to La. Rev. Stat. Ann. § 51:424 and is entitled to injunctive relief and the recovery of reasonable attorneys' fees as provided for therein.

COUNT SIX: JOINT AND SOLIDARY LIABILITY FOR CONSPIRATORS

98.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 97 of this Complaint.

99.

GM, the All-Star Defendants, and John Doe Defendants 1-25 have conspired to commit the above referenced violations of Sections 1 and 2 of the Sherman Act, LUTPA, and the Louisiana Anti-trust Statutes.

100.

As a result of their conspiracy, GM, the All-Star Defendants, and John Doe Defendants 1-25 are jointly and severally liable unto Felder's for its damages pursuant to article 2324 of the Louisiana Civil Code.

TRIAL BY JURY

101.

Felder's requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Felder's Collision prays that this Honorable Court enter the following as a judgment against GM, the All Star Defendants, and the John Doe Defendants 1-25, *in solido* as to Counts One through Five of this First Amended and Supplemental Complaint:

- (1) Decree that the predatory pricing actions, collusion, and conspiracy of GM, the All Star Defendants, and the John Doe Defendants 1-25 constitute an illegal restraint of trade and/or conspiracy to restrain trade;
- (2) Decree that the actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 were done in violation of sections 1 and 2 of the Sherman Act, the Louisiana Unfair Trade Practices Act, and/or the Louisiana Antitrust Statute.
- (3) enjoin the unlawful predatory pricing practices of the GM, and the All Star Defendants, including, but not limited to, a stop to the "Bump the Competition" program and all similar price-matching programs used by GM and the All Star Defendants;
- (4) award Felder's Collision treble damages for the injuries it sustained by them in an amount to be determined at trial, reasonable attorneys' fees, costs of court,

prejudgment and post judgment interest allowed by law; and

- (5) Provide for such additional relief as this Honorable Court deems just and proper under the circumstances.

Respectfully submitted:

/s/ James M. Garner
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**ATTORNEYS FOR FELDER'S COLLISION PARTS,
INC.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been served on all known counsel of record by either facsimile, e-mail and/or depositing same in the United States Mail, properly addressed and postage prepaid, this 14th day of October 2013.

/s/ James M. Garner
JAMES M. GARNER