

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FELDER'S COLLISION PARTS, INC.	)	CASE NO.
	)	
	)	SECTION NO. _____
VERSUS	)	
	)	JUDGE _____
	)	
GENERAL MOTORS COMPANY, ALL	)	MAGISTRATE _____
STAR ADVERTISING AGENCY, INC.,	)	
ALL STAR CHEVROLET NORTH, L.L.C.,	)	
ALL STAR CHEVROLET, INC., & JOHN	)	
DOE DEFENDANTS 1-25	)	
_____	)	

VERIFIED COMPLAINT

Plaintiff, Felder's Collision Parts, Inc. ("Felder's"), by and through its attorneys, brings this Verified 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 Section 1331, 15 U.S.C. Section 13(a), known as the Robinson-Patman Act, and 15 U.S.C. Section 2, known as the Sherman Act. This Court also has supplemental subject matter jurisdiction over Felder's state law claims pursuant to 28 U.S.C. Section 1367.

2.

Venue is proper in this District under 15 U.S.C. Section 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 Company ("GM") 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.

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 replacement parts. In the automobile replacement 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 OEM parts manufactured by GM.

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 for use in repairing GM automobiles.

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 for use in repairing automobiles. After-market collision parts make up approximately 20% of the automobile replacement 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.

13.

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 in southern Louisiana and southern Mississippi that are compatible with GM automobiles.

14.

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.

15.

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 and drive Felder's out of business in the southern Louisiana and southern Mississippi market.

16.

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 parts 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., the cost of the part plus the variable costs of selling the part.

17.

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 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."

18.

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.

19.

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 repairs of GM vehicles in southern Louisiana and southern Mississippi, specifically eliminating competition from Felder's.

20.

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 selling collision parts for GM automobiles. 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.

21.

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.

22.

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 recoup their losses from GM. Upon information and belief, the price at which the part is sold by the All Star

Defendants to its customers is 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 southern Louisiana and southern Mississippi.

23.

For instance, in the GM Collision Conquest Calculator example attached as Exhibit 2, GM proposes to sell a particular part to its dealer for \$135.01. That part is normally listed for sale by the dealer for \$228.83. A comparable after-market part listed for sale for \$179.00. Although the dealer's cost of the part is much higher, GM instructs the dealer to sell the part to a collision center or body shop at a "bottom line price" of \$119.93, which represents a 33% discount on the aftermarket price.

24.

Upon sale of the part for \$119.93, the dealership then recoups from GM the difference between the sale price of \$119.93 and the part cost of \$135.01, plus an alleged back-end "profit" of 14%. Upon information and belief, the cost of the part is below the average variable cost to the dealer, which is the cost of the part plus the variable costs of selling the part. Upon information and belief, additional variable costs up to 30% of the cost of the good or item are typical when measuring total AVC for the good or item, such that the AVC for the good or item could equal up to 130% of the direct cost of the good or item paid by the dealer to the manufacturer. Upon information and belief, GM instructs its dealers to sell its collision parts at such a discounted price with the inducement of kicking-back dollars to make the dealer whole and providing a nominal profit because it would be difficult, if not impossible, for the after-

market competitors to match or sell below the dealer's "bottom line price." Thus, the dealer's competitors, such as Felder's, are unable to compete with the dealers.

25.

In the alternative, this recoupment did not fully compensate the dealership for its additional variable costs involved in selling the part.

26.

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.

27.

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, GM proposed to sell an OEM fender to the All Star Defendants for \$121.59 that would normally be sold by the All Star Defendants for \$206.09. The aftermarket equivalent of that part sells for \$176.04. GM proposed to the All Star Defendants to sell the OEM part for \$117.95, well below the price of the aftermarket fender and below the cost of the part to the All Star Defendants. In exchange, GM would then kickback \$20.66 to the All Star Defendants, allowing it to recoup its losses.

28.

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 for \$556.13 and would normally be sold at a price of \$942.59. However, as the price of a comparable and equivalent aftermarket part is \$680.63, GM induced the All Star Defendants to sell the door to a collision center or body shop at a price of \$456.02, an amount that is, 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 recoup its losses.

29.

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 recouped by the All Star Defendants.

30.

Upon elimination of the competition and monopolization of the market for GM collision parts in the market of south Louisiana and south Mississippi, 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 below AVC for two main reasons. 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. 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.

31.

Upon information and belief, barriers to entry into the automotive parts industry are high and difficult, and, 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, they 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.

32.

Four after-market parts competitors of Felder’s have already been driven to bankruptcy by the illegal, anti-competitive, and conspiratorial actions of GM, the All Star Defendants, and the John Doe Defendants 1-25.

33.

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 income for Felder’s was in excess of \$3 million. By 2011, total 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.

COUNT ONE:

ROBINSON-PATMAN ACT VIOLATION

34.

Felder’s re-alleges and incorporates herein by reference paragraphs 1 through 33 of this Complaint.

35.

Felder’s brings this Complaint pursuant to 15 U.S.C. § 13, known as the Robinson-Patman Act. The purpose of the Robinson-Patman Act is to provide the public protection against predatory price cutting. *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 219-20 (1993). Felder’s has a private right of action for violations of the Robinson-Patman Act based on the provisions of the Clayton Act, 15 U.S.C. § 15(a).

36.

Under Section 13, predatory pricing is illegal if, first, the plaintiff shows that “the prices complained of are below an appropriate measure of its rival’s costs.” *Brooke Group Ltd.*, 509 U.S. at 222. 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.” *Brooke Group Ltd.* at 224.

37.

GM, the All Star Defendants, and the John Doe Defendants 1-25 have each conspired to

“bump the competition” and have engaged in predatory pricing as stated herein, with the effect of substantially lessening competition for the retail sale of GM automotive repair parts in the southern Louisiana and southern Mississippi markets.

38.

The actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 as stated herein have caused Felder’s damages, including loss of their businesses profitability, value, and their ability to survive in the marketplace.

39.

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 automotive 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 supracompetitive prices to recoup the losses.

40.

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

SHERMAN ACT VIOLATION

41.

Felder’s re-alleges and incorporates herein by reference paragraphs 1 through 40 of this

Complaint.

42.

Felder's also brings this Complaint pursuant to 15 U.S.C. § 2, known as the Sherman Act. The same conduct outlawed by the Robinson-Patman Act as described above is also actionable under section 2 of the Sherman Act. *See Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 318-19 & n.2 (2007). 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).

43.

Under the Sherman Act, as with the Robinson-Patman 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." *Brooke Group Ltd.*, 509 U.S. at 222. 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." *Brooke Group Ltd.* at 224.

44.

The predatory pricing actions of GM, the All Star Defendants, and the John Doe Defendants 1-25 to "bump the competition," and their conspiracy to do the same as stated herein, demonstrate their intent to monopolize the retail sale of collision parts in southern Louisiana and southern Mississippi, 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.

45.

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 the sale of collision repair parts in southern Louisiana and southern Mississippi.

46.

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 supracompetitive prices to recoup the losses.

47.

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:

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

48.

Felder's Collision re-alleges and incorporates herein by reference paragraphs 1 through 47 of this Complaint.

49.

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.*

50.

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).

51.

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 cost 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).

52.

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

53.

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 FOUR:

VIOLATIONS OF THE ANTI-TRUST LAWS OF LOUISIANA.

54.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 53 of this Complaint.

55.

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.

56.

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

57.

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.

58.

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).

59.

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.

60.

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 cost 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 FIVE: JOINT AND SOLIDARY LIABILITY FOR CONSPIRATORS

61.

Felder's re-alleges and incorporates herein by reference paragraphs 1 through 61 of this Complaint.

62.

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

63.

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

64.

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:

- (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 the Robinson-Patman Act, 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.**

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 12 2012

Wayne L. Felder

WAYNE L. FELDER
DIRECTOR,
FELDER'S COLLISION PARTS, INC.