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ELECTRONICALLY
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*Superior Court of California,
County of San Francisco*

12/22/2023
Clerk of the Court

BY: DAEJA ROGERS
Deputy Clerk

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 UNLIMITED CIVIL JURISDICTION

CGC-23-611256

17 GENERAL MOTORS COMPANY, a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 CITY AND COUNTY OF SAN FRANCISCO,

22 Defendant.

No.

**COMPLAINT FOR REFUND OF SAN
FRANCISCO GROSS RECEIPTS,
HOMELESSNESS GROSS
RECEIPTS, AND OVERPAID
EXECUTIVE GROSS RECEIPTS
TAXES, PENALTIES, AND
INTEREST**

1 Pursuant to California Government Code section 945.6 and San Francisco Business and
2 Tax Regulations Code sections 6.15-1 to 6.15-4, Plaintiff General Motors Company hereby files this
3 Complaint for Refund of San Francisco Gross Receipts, Homelessness Gross Receipts, and Overpaid
4 Executive Gross Receipts Taxes, Penalties, and Interest. The Complaint constitutes an appeal of the
5 denial of Claims for Business Tax Refund for the 2016 to 2022 taxable years for the Gross Receipts
6 Tax, Homelessness Gross Receipts Tax, and Overpaid Executive Gross Receipts Tax.¹ Plaintiff
7 complains of Defendant as set forth below.

8 **PARTIES**

9 1. Plaintiff General Motors Company (“Plaintiff” or “GM”) is a Delaware corporation with
10 its principal place of business at 300 Renaissance Center, Detroit, Michigan 48265.

11 2. Defendant City and County of San Francisco (hereinafter “City” or “Defendant”) is a
12 political subdivision of the State of California. The City is a “local government” as defined in the
13 California Constitution, Article XIII C, Section I(b).

14 **JURISDICTION AND VENUE**

15 3. Jurisdiction is vested in this Court under sections 940 *et seq.* of the California
16 Government Code.

17 4. Venue is proper in this Court pursuant to California Code of Civil Procedure sections
18 394 and 395.

19 **BASIS OF ACTION**

20 5. This is an action for refund of Gross Receipts Tax, Homelessness Gross Receipts Tax,
21 and Overpaid Executive Gross Receipts Tax (collectively, “City Taxes”) already paid. Specifically,
22 by this Complaint, GM seeks a refund of taxes, interest, and penalties overpaid by GM in the
23 amounts of \$107,981,205.30 in taxes, and \$12,946,387 in interest and penalties, plus interest as
24 provided by law, for the 2016 through 2022 taxable years (collectively, the “Years at Issue”).
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27 ¹ The claim regarding the Overpaid Executive Gross Receipts Tax applies to 2022 only, as
28 the tax was not in effect prior to that year.

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6. GM is an automotive manufacturer headquartered in Detroit, Michigan. In 2016, GM invested in Cruise Holdings (“Cruise”), a San Francisco based autonomous vehicle technology software company. GM is due a refund of City Taxes paid for the Years at Issue for a number of reasons discussed herein.

7. First, GM is due a refund because the California Government Code mandates that the City Taxes must fairly reflect the proportion of activity actually carried on within the City, and they do not, either generally or as applied to GM.

8. The San Francisco Business and Tax Regulations Code (“Code”) is facially invalid because it uses a payroll factor that *combines* the payroll of all of an entity’s separate business units, even though, under the Code, each distinct business activity must *separately* calculate its own City gross receipts using rules and tax rates specifically established for those separate lines of business. In addition, as applied to GM, the Code considers Cruise’s payroll in determining apportionment, which results in an amount of GM’s gross receipts being attributed to San Francisco that is *tens of thousands of times greater* than if Cruise’s payroll were not included in GM’s payroll factor. Lastly, using a single payroll factor for a manufacturing company with all of its manufacturing activity outside of the City is inherently distortive.

9. Because the City Taxes violate the Government Code, the Tax Collector must exercise his discretion to ensure compliance with the Government Code and because he failed to do so at the administrative level for GM’s claims for the Years at Issue, he has waived the right to do so in a judicial proceeding. The Tax Collector’s inaction is both a failure to exhaust administrative remedies and a waiver, and the City is therefore barred from putting forth an alternative apportionment methodology during these judicial proceedings.

10. Second, the City Taxes violate the fair apportionment requirements of the United States Constitution and California Constitution, including the Due Process and Commerce Clauses.

1 11. Third, the City Taxes discriminate against intrastate, interstate, and foreign commerce
2 and thus violate the Commerce Clause of the United States Constitution and provisions of the
3 California Constitution.

4 12. Fourth, for tax year 2022, GM included payroll in its payroll factor that should be
5 excluded, and GM is therefore due a refund. For tax year 2022, GM included payroll in its
6 numerator for individuals who did not perform work within the City during tax year 2022, and that
7 payroll must be excluded from the numerator pursuant to the Code. Moreover, including the payroll
8 expense related to a one-time, extraordinary modification event in both the numerator and
9 denominator of the payroll factor is distortive, and the payroll expense must be excluded from both
10 the numerator and denominator of the payroll factor pursuant to the Government Code, and the fair
11 apportionment provisions of the United States Constitution and the California Constitution.

12 13. Fifth, GM is due a refund for tax year 2022 based on the amended return that it filed on
13 October 24, 2023, which included adjustments to gross receipts and the payroll factor.

14 14. Finally, GM is entitled to a waiver of penalties imposed.

15 **FACTS**

16 15. Unless otherwise stated, the facts set forth refer to the Years at Issue.

17 **GM's Business**

18 16. GM is an automotive manufacturer headquartered in Detroit, Michigan. GM's
19 automotive business is focused on designing, engineering, manufacturing, and selling retail vehicles,
20 including trucks, crossovers, passenger cars, and automobile parts, through its network of dealers
21 and to its fleet customers.

22 17. GM's automotive engineering, design, and advanced technology development is
23 headquartered at the Warren Technical Center in Warren, Michigan, and all of its manufacturing
24 activities occur outside of San Francisco and have occurred outside of San Francisco for decades.

25 18. GM sells its vehicles through independent dealers, who in turn sell to retail customers.
26 As of January 31, 2023, there were approximately 4,200 GM dealers located in the continental
27 United States. No GM dealers were located in San Francisco during the Years at Issue.

1 19. GM generates the vast majority of its gross receipts from the sale of retail motor
2 vehicles and has been doing so since its inception.

3 **Cruise Holdings**

4 20. Cruise, headquartered in San Francisco, California, is an autonomous vehicle
5 technology software company working with artificial intelligence and other advanced technologies.

6 21. In 2016, GM invested in Cruise Automation, Inc., which immediately merged into a
7 surviving entity known as Cruise LLC. A new holding company, Cruise Holdings, was
8 subsequently formed, and GM contributed to Cruise Holdings its entire interest in Cruise LLC.
9 Cruise Holdings is referred to as “Cruise.”

10 22. Cruise is a quintessential Silicon Valley start-up technology company with a rideshare
11 and rideshare goods delivery business that is fundamentally different from GM’s business. Cruise’s
12 business is dedicated to developing fully driverless autonomous software and related artificial
13 intelligence technology for commercial deployment in its autonomous ride-sharing business, which
14 includes goods delivery. During the Years at Issue, Cruise was engaged in testing its autonomous
15 software and related technology and offering fared (paid) rides to the general public within San
16 Francisco, where almost all its research and development has occurred, using a fleet of
17 approximately 500 prototype autonomous vehicles.

18 23. During the majority of the Years at Issue, Cruise, like many technology start-ups,
19 performed only research and development activities. With the exception of an annual fee received
20 from Honda for rights to use Cruise’s trade names and trademarks and the exclusive right to partner
21 with Cruise to develop, deploy, and maintain a foreign market for Cruise’s autonomous vehicle
22 network, during the Years at Issue Cruise had very little revenue.

23 24. Beginning in June 2022, Cruise started earning revenue from the operation of its
24 autonomous rideshare business.

25 25. Cruise’s activities require specialized equipment, laboratories and other facilities, and a
26 workforce of highly trained individuals whose talents command substantial compensation.

1 26. Cruise incurs substantial costs and therefore requires substantial funding from outside
2 sources. The fee from Honda does not come close to covering even one-third of Cruise’s payroll
3 expense.

4 27. Unlike GM’s business, Cruise’s business does not include being an original equipment
5 manufacturer (“OEM”) or generating receipts from sales of automobiles, vehicle equipment, or
6 autonomous vehicle equipment.

7 28. After GM invested in Cruise in 2016, there were a series of third-party investments in
8 Cruise, including a 2018 investment by SoftBank Vision Fund. As a condition of SoftBank’s
9 investment, GM and Cruise agreed to be bound by various commercial terms and conditions. Those
10 agreements required that all future transactions between GM and Cruise be governed by terms
11 comparable to those in transactions between unrelated parties dealing at arm’s length. Those
12 agreements also prohibit GM from entering Cruise’s business (the autonomous rideshare with goods
13 delivery business) and prohibit Cruise from entering GM’s business (including designing,
14 manufacturing, and selling of retail vehicles).

15 29. In March 2022, and as a result of financial conditions at SoftBank, GM acquired
16 Softbank’s equity ownership stake in Cruise and made an additional purchase of Cruise equity.
17 Despite the increased financial investment, there was no substantial change in the day-to-day
18 separate operations of Cruise and GM, and all of the agreements put in place when SoftBank first
19 invested remain operative.

20 30. Additionally in 2022, Cruise incurred a one-time, extraordinary payroll expense related
21 to certain Cruise employees. In March 2022, Cruise modified its equity based restricted stock units
22 (“RSUs”) that settled in Cruise Class B Common Shares to remove the liquidity vesting condition
23 such that all granted RSU awards vest solely upon satisfaction of a service condition. The service
24 condition for the majority of these awards is satisfied over four years.

25 31. Upon modification, 31 million RSUs whose service condition was previously met
26 became immediately vested, thereby resulting in the immediate recognition of compensation
27 expense. As a result of this modification, Cruise had an additional payroll expense of approximately
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1 \$1.35 billion for liquidity of former and current Cruise employee equity-based incentive awards
2 (which otherwise would not have vested until a liquidity event had taken place) (this transaction is
3 referred to hereinafter as the “Cruise 2022 extraordinary payroll expense”).

4 32. When calculating its payroll factor for 2022, GM included some of this payroll expense
5 in the numerator of the payroll factor, and all of it in the denominator.

6 33. When GM first invested in Cruise in 2016, Cruise had approximately 40 employees.
7 By the end of 2022, Cruise employed over 3,000 people, almost all of whom are based at Cruise’s
8 headquarters in San Francisco. Approximately 65% of Cruise’s headcount consists of engineers.

9 34. For years 2020 through 2022, many of these Cruise employees worked full and/or part
10 time from their homes both inside and outside of San Francisco.

11 35. Cruise has an experienced executive leadership team that is separate from GM’s
12 leadership team. Cruise also maintains its own corporate functions that include human resources,
13 communications, legal, public policy, finance (including treasury and accounting), and marketing.
14 Together, Cruise’s executive leadership and corporate functions include approximately 480
15 professionals all based at Cruise’s headquarters in San Francisco (though, as noted above, many
16 worked outside of San Francisco during the Years at Issue due to the COVID-19 pandemic). These
17 employees are all employed directly by Cruise and operate separately from GM.

18 **GM’s Business Structure and Related Entities**

19 36. GM is the publicly traded parent corporation of a group of affiliated companies that
20 collectively form the global business. GM is the sole owner of General Motors Holdings, LLC
21 (“GMHL”), which in turn owns various operating subsidiaries either directly or through additional
22 legal entities including General Motors LLC (“GM LLC”), OnStar LLC (“OnStar”), Maven Drive
23 LLC (“Maven”), and Cruise.

24 37. GM LLC is the primary operating entity of GM’s U.S. automotive business.

25 38. In addition to its legal entity subsidiaries, GM LLC conducts operations through
26 several internal divisions, including Customer Care and Aftersales (“CCA”). CCA supplies
27 replacement parts and accessories to GM dealers, third-party wholesalers, and retailers.
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39. OnStar, headquartered in Detroit, Michigan, is a subscription-based company that offers a variety of subscription plans dedicated to safety and security services, including automatic crash response, emergency services, roadside assistance, crisis assistance, stolen vehicle assistance, and turn-by-turn navigation, exclusively to GM customers.

40. Maven, which was launched by GM in 2016, used a digital platform to provide car-sharing services. As of December 31, 2019, Maven operated in 15 cities, including San Francisco. Maven leased parking spaces at over 40 sites in San Francisco until it ceased operations, but did not lease office space in San Francisco. GM shut down Maven in 2020.

41. As of March 31, 2023, GM employed approximately 93,922 employees (including employees serving Maven, OnStar, CCA, and AC Delco) in the United States. GM estimates that as of that date, approximately 53,000 of its employees were based in Michigan.

42. GM's senior leadership and executives are located in Michigan, which is where decisions regarding the company's global operations are made.

43. During the Years at Issue, other than the fewer than 20 employees for Maven while it was still in operation, GM's core automotive business did not employ anyone in San Francisco.

44. GM files a consolidated federal income tax return, which includes itself and its affiliated group of corporations and disregarded entities including GM LLC, OnStar, Maven, and Cruise. For California income/franchise tax purposes, GM files a water's edge combined report that includes GMC, GMHL, GM LLC, OnStar, Maven, and Cruise, among others.

The City's Imposition of Gross Receipts Taxes

45. The City imposes a gross receipts tax for the privilege of engaging in business in the City.

46. Beginning in 2019, the City imposed both the Gross Receipts Tax ("GRT") and a Homelessness Gross Receipts Tax ("HGRT") on gross receipts, pursuant to the ordinances codified in Article 12-A-1 and Article 28 of the Code.

47. Beginning in 2022, the City also imposed an Overpaid Executive Gross Receipts Tax ("OEGRT") on gross receipts, pursuant to the ordinance codified in Article 33 of the Code.

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48. Until January 2021, the City also imposed a payroll expense tax.

49. A taxpayer must file gross receipt tax returns on a combined basis with the taxpayer’s related entities. *See* Code § 956.3. A person is a “related entity” to a taxpayer if that person and the taxpayer are permitted or required under section 25102 *et seq.* of the California Revenue and Taxation Code (“RTC”) to have their income reflected on the same combined report. *See* Code § 952.5. If a taxpayer has made a valid water’s edge election pursuant to RTC section 25110, the tax base and apportionment factor are computed on a combined basis consistent with the water’s edge election. *See* Code § 956.2(b), (c).

50. For the GRT, different tax rates and methods of dividing the tax base apply to various categories of business activities, e.g., retail trade, manufacturing, scientific and technical services, etc. *See* Code §§ 953.1-953.7.

51. A taxpayer is instructed to *separately* determine the amount of gross receipts attributable to the City on a per-business activity basis. Code § 953.9(a).²

52. The tax base for *each* business activity category is *separately* computed by allocating gross receipts based on the nature of the underlying transactions and/or apportioning gross receipts using a formula based on the taxpayer’s payroll according to the rules for that category. *See* Code §§ 956.1 & 956.2.

53. If a taxpayer engages in multiple categories of activities, the City first instructs the taxpayer to *separately* determine the amount of gross receipts attributable to the City on a per-business activity basis. *See* Code §§ 953.9 & 956.

54. The numerator of the payroll apportionment factor is the total payroll in the City for all entities in the combined group, divided by the total worldwide or water’s edge payroll for the combined group. *See* Code § 956.2.

² But if the taxpayer derives more than 80 percent of its total gross receipts from activities in one category, rather than applying the various tax rates for those business activities separately to each business, the City instructs the taxpayer to apply the tax rate applicable to the category that generated more than 80% of the gross receipts to all of the taxpayer’s gross receipts from all business activities. *See* Code §§ 953.9(a) & 956.

1 55. This payroll factor, which includes the payroll for all entities in the combined group, is
2 applied to each of the discrete activity categories that use the payroll factor as part of the calculation,
3 regardless of whether that category of activity has any payroll of its own attributable to the City. In
4 other words, the payroll factor combines the payroll of all of the separate business categories and
5 units.

6 56. The HGRT imposes a separate tax on gross receipts for the privilege of engaging in
7 business in the City if the person or combined group receives more than \$50,000,000 in total taxable
8 gross receipts. *See* Code § 2804. Taxable gross receipts are determined in the same manner as
9 under the GRT. *See* Code § 2804(e).

10 57. The OEGRT is a gross receipts tax on businesses in the City where the “Executive Pay
11 Ratio” for the tax year of that business or combined group exceeds 100:1. Code § 3303.

12 58. The term “Executive Pay Ratio” means “the ratio of the annual Compensation paid to
13 the person or combined group’s Highest-Paid Managerial Employee for a tax year to the median
14 Compensation paid to the person or combined group’s full-time and part-time employees based in
15 the City for that tax year” Code § 3302.³

16 59. The OEGRT is imposed on gross receipts at a graduated rate of between .1% (when the
17 Executive Pay Ratio is greater than 100:1 but less than 200:1) and .6% (when the Executive Pay
18 Ratio is greater than 600:1). Code § 3303. Taxable gross receipts are determined in the same
19 manner as under the GRT. *See* Code § 3303(c).

20 60. The City is required to levy tax in a manner that fairly reflects the proportion of taxed
21 activity actually carried on within the City.

22 61. California Government Code § 37101(b) provides that every city levying a tax “upon a
23 business operating both within and outside the legislative body’s taxing jurisdiction, *shall* levy the
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27 ³ “‘Highest-Paid Managerial Employee’ means the individual employee or officer of a
28 person or combined group with managerial responsibility in a business function who received the
most Compensation for a tax year.” *Id.*

1 tax so that the measure of tax *fairly reflects that proportion of the taxed activity actually carried on*
2 *within the taxing jurisdiction*” (emphasis added).

3 62. To meet the requirement that the City levy a tax that fairly reflects the proportion of
4 taxed activity actually carried on within the City, the Code grants the Tax Collector broad discretion
5 to apportion gross receipts in a manner that fairly reflects the activity actually carried on within the
6 City. Specifically, “[t]he Tax Collector may, in his or her reasonable discretion, independently
7 establish a person’s gross receipts within the City and establish or reallocate gross receipts among
8 related entities so as to fairly reflect the gross receipts within the City of all persons.” Code § 957;
9 *see also* Code § 2807 (granting the Tax Collector similar authority for purposes of the HGRT); Code
10 § 3306 (granting the Tax Collector similar authority for purposes of the OEGRT).

11 63. In lieu of gross receipts taxes, the City imposes on “every person engaging in business
12 within the City as an administrative office,” “an annual administrative office tax measured by its
13 total payroll expense that is attributable to the City.” Code § 953.8(a).

14 64. Similarly, in lieu of gross receipts taxes, the City imposes on “every person engaging
15 in business within the City as an administrative office,” “an annual homelessness administrative
16 office tax” and an “annual overpaid executive administrative office tax if the Executive Pay Ratio
17 for the tax year . . . exceeds 110:1.” The taxes are measured by the “total payroll expense . . . that is
18 attributable to the City.” Code §§ 2804(d), 3303(d).

19 65. “Engaging in business within the City as an administrative office” means a person is
20 engaging in a business with over 1,000 employees in the United States, over \$1 billion of gross
21 receipts, and with over 50 percent of total payroll in the City associated with providing
22 administrative or management services to the taxpayer and related entities. Code § 953.8(b); *see*
23 *also* Code §§ 2804(d), 3303(d) (incorporating § 953.8 for purposes of homelessness administrative
24 office tax and overpaid executive administrative office tax).

25 66. In other words, those taxpayers “engaging in business within the City as an
26 administrative office,” i.e., those taxpayers headquartered in the City, are exempt from the GRT,
27 HGRT, and OEGRT.

1 **GM's Payment of Tax and Refund Claim**

2 67. For San Francisco Gross Receipts Tax purposes, for tax year 2016, Maven and Cruise
3 filed separate returns. For 2017 and 2018, GM (which included GM LLC, OnStar, CCA, and AC
4 Delco) filed returns on a combined basis with Cruise and Maven, but calculated the tax due without
5 taking into account the impact of Cruise's payroll for purposes of the payroll factor. For the 2019
6 tax year, GM again filed a combined return, but calculated the amount of tax due as though Cruise
7 were separate from the combined group so as to accurately represent GM's business activity in the
8 City.

9 68. In early 2020, GM approached the City to clarify GM's apportionment in the City, and
10 to try and resolve any potential dispute. GM proactively raised the issue of apportionment with the
11 City. Over the course of a number of months, GM had several meetings with the City in an effort to
12 reach a resolution, which included discussions regarding the assessment of tax, interest, and
13 penalties, and the reasons that GM intended to seek a refund for overpayment of tax, interest, and
14 penalties.

15 69. In the summer of 2020, the City informed GM that it did not agree with GM's position,
16 that GM was required to include Cruise's payroll in GM's payroll factor, and that the City would not
17 agree to use an alternative apportionment methodology. The City gave GM the option to either file
18 amended returns and pay the amounts due, or face an audit.

19 70. In December 2020, GM filed combined amended returns for tax years 2016 through
20 2019 and paid the associated tax, penalties, and interest for those returns. GM also made additional
21 estimated tax payments for the 2020 tax year.

22 71. For tax years 2020, 2021, and 2022, GM filed returns on a combined basis with Cruise
23 and Maven and calculated the tax on a combined basis. GM later amended its 2020, 2021, and 2022
24 returns.

25 72. On September 15, 2021, GM timely filed a claim for refund of taxes, penalties, and
26 interest respectively for the tax years 2016, 2017, 2018, 2019, and 2020.
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1 73. On April 19, 2022, GM amended the refund claim for those years, and timely filed a
2 claim for refund for tax year 2021.

3 74. On May 18, 2023, GM timely filed a claim for refund for tax year 2022, and an
4 additional claim for refund for tax years 2020 and 2021.⁴

5 75. On November 2, 2023, GM filed an amended claim for refund for tax year 2022, and
6 an amended additional claim for refund for tax years 2020 and 2021.

7 76. GM sought a refund on numerous grounds, including but not limited to the grounds
8 that the City Taxes violate California Government Code § 37101(b) and must fairly reflect the
9 proportion of activity actually carried on within the City, and that the City Taxes violate provisions
10 of both the United States and California Constitutions.

11 77. GM also sought a waiver of penalties, pursuant to Code § 6.17-4 and 6.17-4.1, on the
12 grounds that, *inter alia*, GM had affirmatively reached out to the City in an attempt to resolve the
13 issues and exercised ordinary care in preparing its returns for the Years at Issue.

14 78. Rather than working with GM to reach a resolution at the administrative level, on June
15 1, 2022, the City denied the September 15, 2021 claim for refund, as amended on April 19, 2022,
16 with respect to the 2020 tax year, and the April 19, 2022 claim for refund with respect to the 2021
17 tax year.

18 79. On June 1, 2022, the City also informed GM that its September 15, 2021 claim was
19 deemed denied by operation of law on October 30, 2021, as to the tax years 2016 through 2019. The
20 City never provided written notice of the denial, in accordance with Cal. Gov. Code § 913, for those
21 tax years.

22 80. On July 3, 2023, the City denied GM's May 18, 2023 claim.
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26 ⁴ In March 2023, GM also made additional payments of tax, interest, and penalties for tax
27 years 2020 and 2021.

1 81. As of the filing of this complaint, GM has not received a denial regarding its
2 November 2, 2023 claim. However, pursuant to Cal. Gov. Code § 912.4. the claim was deemed
3 denied on December 18, 2023.

4 82. This lawsuit is timely filed under Cal. Gov. Code § 945.6(a).

5 83. Plaintiff has exhausted all administrative remedies.

6 **FIRST CAUSE OF ACTION**

7 **REFUND OF GRT, HGRT, and OEGRT TAXES, INTEREST, AND PENALTIES –**
8 **Cal. Gov. Code § 37101(b), S.F. Bus. & Tax Reg. Code, art. 12-A-1 § 957, S.F. Bus. & Tax Reg.**
9 **Code, art. 28 § 2807, and S.F. Bus. & Tax. Reg Code, art. 33 § 3306**
10 **(Failure to Fairly Reflect Proportion of Taxed Activity Actually Carried On Within the City)**

11 84. GM incorporates by reference each of the above allegations in Paragraphs 1 through
12 83.

13 85. California Government Code § 37101(b) provides that every city levying a tax “upon a
14 business operating both within and outside the legislative body’s taxing jurisdiction, *shall* levy the
15 tax so that the measure of tax *fairly reflects that proportion of the taxed activity actually carried on*
16 *within the taxing jurisdiction*” (emphasis added).

17 86. In order to adhere to this requirement for the City Taxes, the Tax Collector has broad
18 discretion to “independently establish a person’s gross receipts within the City and establish or
19 reallocate gross receipts among related entities so as to fairly reflect the gross receipts within the
20 City.” Code § 957; *see also* Code §§ 2807, 3306.

21 87. The City is required to exercise its discretion to ensure compliance with Government
22 Code § 37101(b).

23 88. The GRT, HGRT, and OEGRT do not on their face provide a “measure of tax” that
24 “fairly reflects that proportion of the taxed activity actually carried on within the taxing jurisdiction.”

25 89. As set forth above, under the Code, each distinct business activity must *separately*
26 calculate its own City gross receipts using rules and tax rates specifically established for those
27 separate lines of business.

1 90. However, the Code uses a payroll factor that *combines* the payroll of all the separate
2 business units.

3 91. The use of the combined payroll factor violates the Government Code because the
4 activities of the employees of one separate business unit do not and cannot fairly reflect the activities
5 of a separate business unit.

6 92. In addition, the measure of tax provided for in the Code does not, when specifically
7 applied to GM's situation, fairly reflect the proportion of the activities carried on by GM or Cruise
8 within the City.

9 93. The inclusion of Cruise's payroll in determining GM's tax does not fairly reflect the
10 proportion of activities carried on by GM within the City.

11 94. Cruise's technology and autonomous vehicle rideshare with goods delivery business is
12 fundamentally different from GM's business, which includes primarily designing, engineering,
13 manufacturing, and selling retail vehicles.

14 95. Unlike GM, Cruise is an advanced technology company developing an autonomous
15 vehicle ride sharing with goods delivery business based on artificial intelligence and other advanced
16 technologies.

17 96. GM generates the vast majority of its gross receipts from the sales of retail vehicles
18 and has been doing so since its inception. Unlike GM, Cruise's business does not include being an
19 OEM or generating receipts from sales of automobiles, vehicle equipment, or autonomous vehicle
20 equipment. Instead, Cruise receives the majority of its income in the form of an annual fee from
21 Honda for rights to use Cruise trade names and trademarks, and the exclusive right to partner with
22 Cruise to develop, deploy, and maintain a foreign market for Cruise's autonomous vehicle network.
23 During the Years at Issue, Cruise also received a very small amount of income from its fared (paid)
24 rides to the general public within San Francisco.

25 97. Cruise operates separately from GM. GM is not dependent on Cruise for any part of
26 GM's primary business activities. Cruise does not offer any supportive functions to GM's core
27 automotive manufacturing business.

1 98. Indeed, beginning in 2018, GM and Cruise were, by explicit agreement, required to
2 treat each other at arm's length and prohibited from operating within each other's lines of business.

3 99. Combining Cruise's payroll and GM's payroll for purposes of the payroll factor
4 significantly distorts GM's and Cruise's business activities in the City.

5 100. Because GM's manufacturing business and retail business had average gross receipts
6 of approximately \$148 billion for the Years at Issue, attributing nearly 1.5-2% of GM's gross
7 receipts to San Francisco results in, for example, for tax year 2022, attributing more than \$3 billion
8 in gross receipts to San Francisco. Yet GM's core automotive business does not employ anyone in
9 the City, has no plants or other physical locations in the City, has no dealerships in the City, and sells
10 only a de minimis amount of retail goods (approximately \$677,000 in 2022) in the City.

11 101. When combined on the same return, the standard apportionment formula instructs
12 GM to calculate its City gross receipts using a formula that includes a payroll factor for all of the
13 entities on the return. When filing with Cruise, GM's payroll factor has averaged around 2-4% since
14 2018. If GM filed without Cruise, its payroll factor would have been, as one example, *at most*, .03%
15 in 2017.

16 102. Cruise's payroll did not contribute in any way to GM's gross receipts and revenue
17 during the Years at Issue.

18 103. The measure of tax provided for in the Code does not fairly reflect the proportion of
19 the activities carried on by Cruise within the City.

20 104. The standard apportionment formula would have resulted in, at most, in 2022, 4.14%
21 of Cruise's gross receipts being attributed to the City, despite the fact that, at least prior to the Covid-
22 19 pandemic, Cruise had nearly all of its employees and operations in the City and continues to have
23 significant employee presence in the City.

24 105. In addition, using a single payroll factor for a manufacturing company with all of its
25 manufacturing activity outside of the City is inherently distortive.

26 106. Because the City Taxes do not fairly reflect the proportion of the taxed activity
27 actually carried on within the City, both on their face and as applied to GM, Defendant abused its
28

1 discretion in failing to use an alternative apportionment method that fairly reflects GM's gross
2 receipts within the City.

3 107. That is, because the City Taxes violate the Government Code, the City must exercise
4 its discretion to ensure compliance with Government Code § 37101(b).

5 108. The City's refusal to put forth an alternative apportionment method during the
6 administrative process constitutes a failure by the City to exhaust administrative remedies and a
7 waiver of the right to propose an alternative apportionment method.

8 109. Accordingly, GM is entitled, pursuant to Cal. Gov. Code § 37101(b) and Code
9 §§ 957, 2807, 3306 to a refund of taxes, interest, and penalties paid under the City Taxes.

10 110. Moreover, for tax year 2022, GM included payroll in the numerator and denominator
11 of the combined group's payroll factor related to the Cruise 2022 extraordinary payroll expense.
12 Inclusion of that payroll does not fairly reflect the activity actually carried on in the City; therefore
13 that payroll must be removed from both the numerator and denominator of the payroll factor and
14 GM is due a refund.

15 **SECOND CAUSE OF ACTION**

16 **REFUND OF GRT, HGRT, AND OEGRT TAXES, INTEREST, AND PENALTIES –** 17 **Violation of Commerce Clause** 18 **(Fair Apportionment)**

19 111. GM incorporates by reference each of the above allegations in Paragraphs 1 through
20 110.

21 112. The Code's apportionment formula violates the Commerce Clause of the U.S.
22 Constitution both on its face and as applied to GM.

23 113. The Commerce Clause requires that an apportionment formula satisfy both the
24 internal consistency and the external consistency tests.

25 114. Under the internal consistency test, the formula must be such that, if applied by every
26 jurisdiction, it would result in no more than all of the unitary business income being taxed.
27
28

1 115. The GRT violates the internal consistency test by imposing both the gross receipts tax
2 and administrative office tax and exempting businesses from the gross receipts tax if they are subject
3 to the administrative office tax.

4 116. As set forth above, an “administrative office” is in essence a taxpayer’s headquarters,
5 and, accordingly, a large business headquartered in the City is exempt from the GRT, HGRT, and
6 OEGRT.

7 117. If the Code were applied by every jurisdiction, a business that operates in multiple
8 jurisdictions and maintains an administrative office in one location would be subject to both the
9 gross receipts tax and the administrative office tax, but the business operating solely within the City
10 would be subject to only the administrative office tax.

11 118. As a result, the GRT Ordinance, both on its face and as applied to GM, fails the
12 internal consistency test and unfairly apportions gross receipts to the City.

13 119. In addition, because, as set forth above, the HGRT and OEGRT are layered on top of
14 the GRT and taxable gross receipts are determined in the same manner as under the GRT, *see* Code
15 §§ 2804(e), 3303(c), these taxes also fail the internal consistency test and violate the Commerce
16 Clause.

17 120. Under the external consistency test, the factor(s) used in the apportionment formula
18 must actually reflect a reasonable sense of how income is generated.

19 121. The City’s apportionment formula also violates the external consistency test by using
20 factors that do not actually reflect a reasonable sense of how income is generated.

21 122. As applied to GM, the City’s formula apportions GM’s gross receipts to the City
22 based almost entirely on Cruise’s payroll. However, Cruise employees are disconnected from GM’s
23 manufacturing business and the generation of GM’s gross receipts.

24 123. Accordingly, the Code’s apportionment method and Defendant’s application of the
25 standard apportionment method to GM violate the Commerce Clause of the U.S. Constitution, and
26 GM is entitled to a refund from Defendant of taxes, interest, and penalties paid under the City Taxes
27 during the Years at Issue.

1 124. Moreover, for tax year 2022, GM included payroll in the numerator and denominator
2 of the combined group's payroll factor related to the Cruise 2022 extraordinary payroll expense.
3 Inclusion of that payroll violates the Commerce Clause of the U.S. Constitution in that it does not
4 represent fair apportionment of GM's gross receipts; therefore, that payroll must be removed from
5 both the numerator and denominator of the payroll factor and GM is due a refund.

6 **THIRD CAUSE OF ACTION**

7
8 **REFUND OF GRT, HGRT, AND OEGRT TAXES, INTEREST, AND PENALTIES –**
9 **Violation of Due Process Clauses of the United States and California Constitutions**
10 **(Fair Apportionment)**

11 125. GM incorporates by reference each of the above allegations in Paragraphs 1 through
12 124.

13 126. Under the Due Process Clauses of the United States and California Constitutions,
14 Defendant cannot deprive any person of life, liberty, or property without due process of law.

15 127. Defendant's application of the standard apportionment formula to GM to impose tax,
16 interest, and penalties violates the Due Process Clauses because the tax imposed is out of all
17 appropriate proportion to the business transacted by GM within the City.

18 128. Defendant's application of the standard apportionment formula to GM attributes to
19 the City activities that are conducted wholly outside of the City, as set forth above.

20 129. Accordingly, Defendant's application of the standard apportionment method to GM
21 violates the Due Process Clauses of the U.S. and California Constitutions, and therefore GM is
22 entitled to a refund of taxes, interest, and penalties paid under the GRT, HGRT, and OEGRT.

23 130. Moreover, for tax year 2022, GM included payroll in the numerator and denominator
24 of the combined group's payroll factor related to the Cruise 2022 extraordinary payroll expense.
25 Inclusion of that payroll violates the Due Process Clauses of the U.S. and California Constitutions in
26 that the resulting apportionment percentage is out of all appropriate proportion to the business
27 transacted by GM within the City; therefore, that payroll must be removed from both the numerator
28 and denominator of the payroll factor and GM is due a refund.

1 **FOURTH CAUSE OF ACTION**

2 **REFUND OF GRT, HGRT, AND OEGRT TAXES, INTEREST, AND PENALTIES –**
3 **Violation of Commerce Clause of the United States Constitution and Provisions of the**
4 **California Constitution**
5 **(Discrimination Against Interstate Commerce)**

6 131. GM incorporates by reference each of the above allegations in Paragraphs 1 through
7 130.

8 132. The GRT violates the Commerce Clause of the United States Constitution and
9 provisions of the California Constitution.⁵

10 133. The Commerce Clause, and related provisions of the California Constitution, provide
11 that a State may not favor in-state over out-of-state entities.

12 134. The Code facially discriminates against intrastate, interstate, and foreign commerce in
13 violation of the Commerce Clause and the California Constitution.

14 135. The Code imposes two taxes: a tax on a business's gross receipts attributable to the
15 City and an administrative office tax based on payroll expense in the City. If a business is subject to
16 the administrative office tax, it is exempt from the gross receipts tax.

17 136. As set forth above, an "administrative office" is in essence a taxpayer's headquarters,
18 and, accordingly, a large business headquartered in the City is exempt from the GRT, HGRT, and
19 OEGRT.

20 137. By conditioning the exemption from the GRT on the location of a taxpayer's
21 "administrative office" (or headquarters), the City is impermissibly favoring businesses
22 headquartered in the City, in violation of the U.S. Commerce Clause and related provisions of the
23 California Constitution.

24 ⁵ See *General Motors Corp. v. City of Los Angeles*, 35 Cal. App. 4th 1736, 1743 (1995)
25 (“[I]t is clear that in spite of the absence of a specific “commerce clause” in our state Constitution,
26 other provisions in that Constitution—notably those provisions forbidding extraterritorial application
27 of laws and guaranteeing equal protection of the laws ...—combine with the equal protection clause
28 of the federal Constitution to proscribe local taxes which operate to unfairly discriminate against
intercity businesses by subjecting such businesses to a measure of taxation which is not fairly
apportioned to the quantum of business actually done in the taxing jurisdiction.”) (quoting *General
Motors Corp. v. City of Los Angeles*, 5 Cal. 3d 229, 238 (1971)) (additional quotation marks
omitted).

1 138. Because the HGRT and OEGRT are layered on top of the GRT, they also violate the
2 U.S. Commerce Clause and related provisions of the California Constitution.

3 139. The HGRT imposes a higher tax rate on businesses subject to the GRT and the
4 administrative office tax.

5 140. For businesses subject to the GRT, the HGRT increases the GRT rate, with the rate
6 varying depending on the applicable business classification.

7 141. For businesses subject to the GRT, the HGRT increases the GRT rate from .175% to
8 .690%, depending on the applicable business classification. Code § 2804(d).

9 142. For businesses subject to the administrative office tax, the business is subject to the
10 homelessness administrative office tax at the rate of 1.5% of payroll expense attributable to the City.
11 Code § 2804(d).

12 143. However, a business subject to the homeless administrative office tax is exempt from
13 the HGRT. Because this exemption is conditioned on the location of a business's administrative
14 office, the HGRT violates the U.S. Commerce Clause and related provisions of the California
15 Constitution.

16 144. Similarly, the OEGRT is invalid because it also provides that a business subject to the
17 overpaid executive administrative office tax is exempt from the OEGRT. Code § 3303(d). Because
18 this exemption is conditioned on the location of a business's administrative office, the HGRT
19 violates the U.S. Commerce Clause and related provisions of the California Constitution.

20 145. In addition, the OEGRT violates the U.S. Commerce Clause and related provisions of
21 the California Constitution for the independent reason that it impermissibly conditions the
22 imposition of the tax on the location of a business's higher paid employees.

23 146. If higher paid employees are based in the City, the OEGRT can be avoided or
24 reduced. If the higher paid employees are based outside the City, the OEGRT would be fully
25 imposed.

26 147. The OEGRT scheme discriminates against intrastate, interstate, and foreign
27 commerce, in violation of the Commerce Clause and provisions of the California Constitution. By
28

1 exempting a business from the OEGRT if its higher paid employees are based in the City and
2 penalizing a business when its higher paid employees are not based in the City, the OEGRT coerces
3 a business to keep such employees in the City or to move such employees to the City.

4 148. Because the GRT, HGRT, and OEGRT are unconstitutional, GM is entitled to a
5 refund of taxes, interest, and penalties paid under the GRT, HGRT, and OEGRT.

6
7 **FIFTH CAUSE OF ACTION**

8 **REFUND OF GRT, HGRT, AND OEGRT TAXES FOR TAX YEAR 2022 –**
9 **SF Bus. & Tax. Reg. Code § 956.2(d)**
10 **(Improper Inclusion of Payroll in the Numerator of the Payroll Factor)**

11 149. GM incorporates by reference each of the above allegations in Paragraphs 1 through
12 148.

13 150. For purposes of calculating the payroll factor for each tax year, the numerator of the
14 payroll factor is the total amount paid for compensation in the City, and the denominator is the total
15 amount of compensation paid by the taxpayer. Code § 956.2(d).

16 151. Compensation in the City is defined by Code § 953.8(f), which states that a payroll
17 expense is the compensation paid to individuals “who, during any tax year, perform work or render[]
18 services in whole or in part in the City.”

19 152. For tax year 2022, the GM combined group’s payroll factor included the Cruise 2022
20 extraordinary payroll expense in both the numerator and the denominator. Some of the payroll
21 included in the numerator related to the Cruise 2022 extraordinary payroll expense was payroll
22 expense for employees who did not perform any work in the City during tax year 2022. Pursuant to
23 the Code, that payroll must be removed from the numerator of the payroll factor and GM is due a
24 refund.

25
26 **SIXTH CAUSE OF ACTION**

27 **REFUND OF GRT, HGRT, AND OEGRT TAXES FOR TAX YEAR 2022–**
28 **(Refund Based on Filing of Amended Return)**

153. GM incorporates by reference each of the above allegations in Paragraphs 1 through
152.

1 154. GM filed an amended return for tax year 2022 on October 24, 2023 to reflect accurate
2 gross receipts and payroll data.

3 155. The City did not audit or otherwise review the underlying data, but denied the refund
4 claim in its entirety.

5 156. The amended return for tax year 2022 represents complete and accurate information
6 which was not available to GM when it filed its original 2022 return.

7 157. Therefore, GM is due a refund.

8 **SEVENTH CAUSE OF ACTION**

9 **Waiver of Penalties – Exercise of Ordinary Care and Lack of Willful Neglect**
10 **– SF Bus. & Tax Reg. Code §§ 6.17-4, 6.17-4.1**

11 158. GM incorporates by reference each of the above allegations in Paragraphs 1 through
12 157.

13 159. Under Code § 6.17-4 for years ending on or before June 30, 2021, and Code § 6.17-
14 4.1 for years ending on or after July 1, 2021, penalties may be waived where a taxpayer fails to make
15 timely payment or report of tax liability or otherwise comply with the provisions of the Code due to
16 reasonable cause and circumstances beyond the taxpayer's control, and notwithstanding the exercise
17 of ordinary care by the taxpayer and in the absence of willful neglect. GM exercised ordinary care at
18 all times in complying with its tax obligations, and no willful neglect is present.

19 160. GM maintains a department of tax professionals who prepare returns for hundreds, if
20 not thousands, of jurisdictions around the world. The San Francisco gross receipts tax was enacted
21 only two (2) years prior to the Years at Issue and is exceedingly complex for companies in multiple
22 lines of business that operate within and without the City.

23 161. GM originally filed its returns and paid taxes using an approach that fairly reflects the
24 proportion of its taxed activity actually carried on within the City.

25 162. When GM realized that there may be disagreement over the way it had filed its
26 returns, GM affirmatively reached out to the City in an attempt to proactively resolve the issue, and
27

1 acted swiftly to amend its returns when the City explained it had a different position. GM has fully
2 cooperated with the City.

3 163. GM is also forced to amend its returns each year due to timing differences between
4 the City returns (due in February) and all other state and federal returns (due in the fall of each year),
5 and in some years this leads to additional tax, interest, and penalties due because of circumstances
6 beyond GM's control.

7 164. In light of the foregoing, GM is entitled to a waiver of penalties for the Years at Issue.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for the following relief:

- 10 1. Award Plaintiff a refund of amounts overpaid, \$107,981,205.30 in taxes, and
11 \$12,946,387 in interest and penalties, plus interest as provided by law, for the tax years
12 2016 through 2022.
13 2. Award Plaintiff its attorneys' fees and costs of suit as permitted by law.
14 3. Award such other and further legal and equitable relief as the Court deems just and
15 reasonable.

16 Dated: December 22, 2023

VALLEJO, ANTOLIN, AGARWAL & KANTER LLP

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20 By: 

21 Andres Vallejo

22 Attorneys for Plaintiff
23 General Motors Company
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