

Hearing Date and Time: October 21, 2010 at 9:45 a.m. (Prevailing Eastern Time)

Reply Deadline: August 26, 2010 at 4:00 p.m. (Prevailing Eastern Time)

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |   |                         |
|---|---|-------------------------|
| In re:  | : | Chapter 11 Case         |
| MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,   | : | Case No. 09-50026 (REG) |
| Debtors.  | : | (Jointly Administered)  |
| OFFICIAL COMMITTEE OF UNSECURED<br>CREDITORS OF MOTORS LIQUIDATION COMPANY<br>f/k/a GENERAL MOTORS CORPORATION, | : | Adversary Proceeding    |
| Plaintiff,  | : | Case No. 09-00504 (REG) |
| vs.   | : |                         |
| JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,  | : |                         |
| Defendants.   | : |                         |

**Counter-Statement of Material Facts Pursuant to Local Bankruptcy Rule 7056-1**

Pursuant to Rule 7056-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York, the Official Committee of Unsecured Creditors (“**Plaintiff**” or “**Committee**”) of Motors Liquidation Company f/k/a General Motors Corporation (“**Old GM**”), by its counsel, responds to the Rule 7056-1(b) Statement of Undisputed Material Facts of Defendant JPMorgan Chase Bank, N.A. (“**JPMorgan**”) in Support of its Motion for Summary Judgment, and submits the following counter-statement of material facts:

1. Plaintiff does not dispute the statement made in this paragraph.

2. Plaintiff does not dispute the statement made in this paragraph.

3. Plaintiff does not dispute the statements made in this paragraph.

4. Plaintiff does not dispute the statement made in this paragraph.

5. Plaintiff does not dispute the statements made in this paragraph.

6. Plaintiff does not dispute the statements made in this paragraph.

7. Plaintiff does not dispute the statements made in this paragraph.

8. Plaintiff does not dispute the statements made in this paragraph, but clarifies that the filings with the Delaware Secretary of State were also necessary for perfection of the security interests. (Callagy Decl. Ex. 6 (Duker Tr.) at 18:19-19:7).<sup>1</sup>

9. Plaintiff does not dispute the statements made in this paragraph.

10. Plaintiff does not dispute the statement made in this paragraph.

11. Plaintiff does not dispute the statement made in this paragraph.

12. Plaintiff does not dispute the statements made in this paragraph.

13. Plaintiff does not dispute the statements made in this paragraph.

14. Plaintiff does not dispute the statements made in this paragraph.

15. Plaintiff does not dispute the statements made in the first two sentences of this paragraph. Plaintiff disputes the statements made in the second two sentences only to the extent that the Committee lacks knowledge or information sufficient to confirm whether twenty-six state fixture filings were made in the specified counties.

16. Plaintiff disputes the statement made in this paragraph. While Plaintiff admits that the Term Loan<sup>2</sup> documentation states that the Term Loan Lenders' perfected security

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<sup>1</sup> "Callagy Decl." refers to the John M. Callagy declaration, dated July 1, 2010, filed in support of JPMorgan's summary judgment motion.

<sup>2</sup> Terms not otherwise defined herein shall have the meanings set forth in Plaintiff's Statement of Undisputed Material Facts Pursuant to Local Bankruptcy Rule 7056-1 dated July 1, 2010.

interest in the Term Loan collateral could not be eliminated unless the Term Loan was fully paid off or without the written consent of each lender, Plaintiff disputes that the only way the Term Loan Lenders' perfected security interest in the Term Loan collateral could be eliminated is by fully paying off the Term Loan or with the written consent of each lender. The filing of the Term Loan Termination Statement eliminated the Term Loan Lenders' perfected security interest in the Term Loan collateral. (Fisher Decl. Exs. X and W).<sup>3</sup>

17. Plaintiff does not dispute the statements made in this paragraph.

18. Plaintiff disputes the statement made in this paragraph because JPMorgan was represented by Simpson Thacher in connection with the filing of the Term Loan Termination Statement. Simpson Thacher communicated with JPMorgan and Mayer Brown in connection with the filing of the Term Loan Termination Statement. (Fisher Decl. Exs. P at JPMCB-STB-0000072 and 76, Q at JPMCB-00000919 and 920 p. 4, R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, T, U at JPMCB-STB-00000427 and V). Simpson Thacher sent the Term Loan Termination Statement and closing checklist to JPMorgan before approving both documents. (Fisher Decl. Ex. S at JPMCB-STB-00000273, 296 and 361). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied "Ryan Nice job on the documents." (Fisher Decl. Ex. T). Furthermore, Merjian approved and signed the escrow instructions which also authorized Mayer Brown to file the Term Loan Termination Statement. (Fisher Decl. Exs. V and W). When asked by Green about comments to the escrow instructions, Merjian replied that "it was fine." (*Id.* at Ex. V).

19. Plaintiff disputes the statement made in this paragraph. Simpson Thacher represented JPMorgan in connection with the filing of the Term Loan Termination Statement and

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<sup>3</sup> "Fisher Decl." refers to the Eric B. Fisher declaration, dated July 1, 2010, filed in support of Plaintiff's partial summary judgment motion.

Simpson Thacher was authorized, involved and responsible for the filing thereof. (Fisher Decl. Exs. P at JPMCB-STB-0000072 and 76, Q at JPMCB-00000919 and 920 p. 4, R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, T, U at JPMCB-STB-00000427, V and W at JPMCB-STB-00000887). Statements about a party's authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

20. Plaintiff does not dispute the statement made in this paragraph.

21. Plaintiff does not dispute the statement made in this paragraph.

22. Plaintiff does not dispute the statement made in this paragraph.

23. Plaintiff does not dispute the statement made in this paragraph.

24. Plaintiff does not dispute the statements made in this paragraph.

25. Plaintiff does not dispute the statement made in this paragraph.

26. Plaintiff disputes the statement made in this paragraph. Gordon reviewed and commented on the closing checklist after asking Green to prepare the initial draft. (Fisher Decl. Exs. H (Green Tr.) at 12:22-13:17 and K at MB004228 and 4233). Moreover, Gordon was copied on numerous emails concerning drafts of the closing documents and closing checklist. (Fisher Decl. Exs. R at JPMCB-STB-00000184, 206 and 271, T and U at JPMCB-STB-00000427).

27. Plaintiff does not dispute the statement made in this paragraph except to the extent it is meant to imply that Green prepared such documents without the assistance of others at Mayer Brown. (Fisher Decl. Exs. H (Green Tr.) at 12:22-13:17 and K at MB004228; Callagy Decl. Ex. 3 (Gonshorek Tr.) at 20:8-10).

28. Plaintiff does not dispute the statement made in this paragraph.

29. Plaintiff disputes the statement made in this paragraph, but only to the extent it is meant to imply that the termination agreement provides the sole source of Old GM's authority to file termination statements. The termination agreement did not require that amendments or modifications to its terms be in writing. (Fisher Decl. Ex. G at JPMCB-00000093). The termination agreement also did not contain an integration or merger clause stating that the termination agreement contained the entire agreement of the parties. (*Id.*) Old GM's authority to file UCC-3 termination statements was derived from the following words and conduct of JPMorgan and its counsel: JPMorgan and its counsel received drafts of all UCC-3 termination statements before they were filed, including the draft Term Loan Termination Statement, and never asked questions about or communicated any changes to such UCC termination statements. (Fisher Decl. Exs. R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, H (Green Tr.) at 49:11-15, F (Merjian Tr.) at 24:8-12 and C (Duker Tr.) at 45:15-22). JPMorgan received several versions of the closing checklist, all of which indicated that the UCC-3 termination statements, including the draft Term Loan Termination Statement, would be filed, and never asked questions or communicated any changes to such checklists. (Fisher Decl. Exs. O at JPMCB-00000906 and 908 p. 4, Q at JPMCB-00000919 and 920 p. 4, S at JPMCB-STB-00000273, 296 and 361, F (Merjian Tr.) at 18:7-11 and C (Duker Tr. 45:15-22). Simpson Thacher received and approved the closing checklist indicating that the Term Loan Termination Statement would be filed and a draft of the Term Loan Termination Statement before it was filed. (Fisher Decl. Ex. R at JPMCB-STB-00000184, 206 and 271). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied "Ryan Nice job on the documents." (Fisher Decl. Ex. T). Simpson Thacher approved and signed escrow instructions on behalf of JPMorgan directing that the Term Loan Termination Statement be filed. (Fisher Decl. Exs. U at JPMCB-STB-00000427 and V). Moreover, when

asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (*Id.* at Ex. V). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

30. Plaintiff does not dispute the statements made in this paragraph.

31. Plaintiff does not dispute the statement made in this paragraph.

32. Plaintiff does not dispute the statements made in this paragraph.

33. Plaintiff disputes the statement made in this paragraph, but only to the extent it is meant to imply that the termination agreement provides the sole source of authority to file termination statements. The termination agreement did not require that amendments or modifications to its terms be in writing. (Fisher Decl. Ex. G at JPMCB-00000093). The termination agreement also did not contain an integration or merger clause stating that the termination agreement contained the entire agreement of the parties. (*Id.*) Authority to file UCC-3 termination statements was derived from the following words and conduct of JPMorgan and its counsel: JPMorgan and its counsel received drafts of all UCC-3 termination statements before they were filed, including the draft Term Loan Termination Statement, and never asked questions about or communicated any changes to such UCC termination statements. (Fisher Decl. Exs. R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, H (Green Tr.) at 49:11-15, F (Merjian Tr.) at 24:8-12 and C (Duker Tr.) at 45:15-22). JPMorgan received several versions of the closing checklist, all of which indicated that the UCC-3 termination statements, including the draft Term Loan Termination Statement, would be filed, and never asked questions or communicated any changes to such checklists. (Fisher Decl. Exs. O at JPMCB-00000906 and 908 p. 4, Q at JPMCB-00000919 and 920 p. 4, S at JPMCB-STB-00000273, 296 and 361, F (Merjian Tr.) at 18:7-11 and C (Duker Tr. 45:15-22). Simpson Thacher received and approved the closing checklist indicating that the Term Loan Termination

Statement would be filed and a draft of the Term Loan Termination Statement before it was filed. (Fisher Decl. Ex. R at JPMCB-STB-00000184, 206 and 271). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied “Ryan Nice job on the documents.” (Fisher Decl. Ex. T). Simpson Thacher approved and signed escrow instructions on behalf of JPMorgan directing that the Term Loan Termination Statement be filed. (Fisher Decl. Exs. U at JPMCB-STB-00000427 and V). Moreover, when asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (*Id.* at Ex. V).

34. Plaintiff does not dispute the statement made in this paragraph.

35. Plaintiff disputes the statements made in this paragraph. The termination agreement did not require that amendments or modifications to its terms be in writing. (Fisher Decl. Ex. G at JPMCB-00000093). The termination agreement also did not contain an integration or merger clause stating that the termination agreement contained the entire agreement of the parties. (*Id.*) Old GM’s and Mayer Brown’s authority to file UCC-3 termination statements was derived from the following words and conduct of JPMorgan and its counsel: JPMorgan and its counsel received drafts of all UCC-3 termination statements before they were filed, including the draft Term Loan Termination Statement, and never asked questions about or communicated any changes to such UCC termination statements. (Fisher Decl. Exs. R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, H (Green Tr.) at 49:11-15, F (Merjian Tr.) at 24:8-12 and C (Duker Tr.) at 45:15-22). JPMorgan received several versions of the closing checklist, all of which indicated that the UCC-3 termination statements, including the draft Term Loan Termination Statement, would be filed, and never asked questions or communicated any changes to such checklists. (Fisher Decl. Exs. O at JPMCB-00000906 and 908 p. 4, Q at JPMCB-00000919 and 920 p. 4, S at JPMCB-STB-

00000273, 296 and 361, F (Merjian Tr.) at 18:7-11 and C (Duker Tr. 45:15-22). Simpson Thacher received and approved the closing checklist indicating that the Term Loan Termination Statement would be filed and a draft of the Term Loan Termination Statement before it was filed. (Fisher Decl. Ex. R at JPMCB-STB-00000184, 206 and 271). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied “Ryan Nice job on the documents.” (Fisher Decl. Ex. T). Simpson Thacher approved and signed escrow instructions on behalf of JPMorgan directing that the Term Loan Termination Statement be filed. (Fisher Decl. Exs. U at JPMCB-STB-00000427 and V). Moreover, when asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (*Id.* at Ex. V). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

36. Plaintiff disputes the statements made in this paragraph. Gordon provided his comments on the closing checklist to Green, which Green incorporated before sending out the first draft of the checklist. (Fisher Decl. Exs. H (Green Tr.) at 12:22-13:17 and K at MB004228 and 4233). The closing checklist referenced the documents that JPMorgan, Simpson Thacher and Old GM believed were necessary close the Lease Payoff because JPMorgan, Simpson Thacher and Old GM never communicated any changes to the closing checklist. (Fisher Decl. Exs. F (Merjian Tr.) at 18:7-11 and C (Duker Tr.) 45:15-22; Cooperman Decl. Ex. A).<sup>4</sup> In fact, after receiving a draft closing checklist from Green, Merjian replied “Ryan Nice job on the documents.” (Fisher Decl. Ex. T). In addition, Sundaram, of Old GM, told Green that he reviewed the checklist and had no changes. (Cooperman Decl. Ex. A).

37. Plaintiff does not dispute the statement made in this paragraph.

38. Plaintiff does not dispute the statement made in this paragraph.

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<sup>4</sup> “**Cooperman Decl.**” refers to the Katie L. Cooperman declaration, dated August 5, 2010, filed herewith in support of Plaintiff’s opposition to JPMorgan’s summary judgment motion.

39. Plaintiff disputes the statement made in this paragraph. Plaintiff does not dispute that counsel for JPMorgan asked Green if he had any expectation that any reference on the closing checklist would release security for the Term Loan and Green answered: “No. The intent was to list the documents which would release security relating to the synthetic lease facility.” (Callagy Decl. Ex. 2 (Green Tr.) at 85-87).

40. Plaintiff does not dispute the statement made in this paragraph but clarifies that the closing checklist included the Term Loan Financing Statement as a Delaware UCC-1 financing statement that needed to be terminated. (Fisher Decl. Ex. O at JPMCB-00000908 p. 4).

41. Plaintiff does not dispute the statement made in this paragraph but clarifies that Gordon reviewed and commented on the closing checklist. (Fisher Decl. Exs. H (Green Tr.) at 12:22-13:17 and K at MB004228 and 4233).

42. Plaintiff disputes the statement made in this paragraph. The UCC-1 filing numbers listed on the closing checklist were derived from a UCC search Green had requested that Perlowski perform (Fisher Decl. Ex. L (Perlowski Tr.) at 5:16-17 and 11:7-9), the results of which were reviewed and discussed among Perlowski, Green and Gonshorek. Perlowski, Green and Gonshorek all agreed on which UCC financing statements required termination statements. (Fisher Decl. Ex. M (Gonshorek Tr.) at 9:13-24 and 11:19-25). In addition, Gordon reviewed and commented on the closing checklist. (Fisher Decl. Exs. H (Green Tr.) at 12:22-13:17 and K at MB004228 and 4233).

43. Plaintiff does not dispute the statement made in this paragraph but clarifies that Perlowski was working from a prior search for UCC-1 financing statements recorded against Old GM and in favor of JPMorgan. (Callagy Decl. Ex. 8).

44. Plaintiff does not dispute the statement made in this paragraph.

45. Plaintiff disputes the statement made in this paragraph. The Term Loan Financing Statement expressly defines credit agreement as “the term loan agreement, dated as of November 29, 2006, among the Debtor, Saturn Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.” (Callagy Decl. Ex. 9 at MB002417).

46. Plaintiff does not dispute the statements made in this paragraph.

47. Plaintiff does not dispute the statement made in this paragraph but clarifies that the closing checklist listed the Term Loan Financing Statement (“financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”) as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. N at MB005592 and 5598 and P at JPMCB-STB-0000076).

48. Plaintiff does not dispute the statement made in this paragraph.

49. Plaintiff does not dispute the statement made in this paragraph.

50. Plaintiff disputes the statements made in this paragraph. Each version of the closing checklist received by Duker listed the Term Loan Financing Statement, (“financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. O at JPMCB-00000906 and 908 p. 4, Q at JPMCB-00000919 and 920 p.4 and S at JPMCB-STB-00000273 and 361). Moreover, Duker received a draft of the Term Loan Termination Statement before it was filed, referencing the Term Loan Financing Statement as having been filed on “11.30.06.” (*Id.* at Ex. S at JPMCB-STB-00000296).

51. Plaintiff disputes the statements made in this paragraph. Every circulated draft of the closing checklist referenced the Term Loan Financing Statement, (“financing statement as to

equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. N at MB005598, O at JPMCB-00000908 p. 4, Q at JPMCB-00000920 p.4, R at JPMCB-STB-00000271 and S at JPMCB-STB-00000361).

52. Plaintiff denies knowledge or information about what the parties recognized. Every draft of the closing checklist received by the parties referenced the Term Loan Financing Statement, (“financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”), as a document for which a termination statement would be prepared and filed. (*Id.*) Moreover, Gordon understood that the quoted language “refers to a financing statement that was filed on November 30th, 2006.” (Callagy Decl. Ex. 4 (Gordon Tr.) at 10:21-11:3).

53. Plaintiff disputes the statement made in this paragraph because of the following discussions via email regarding the UCC termination statements listed on the checklist: On October 15, 2008, Merjian and Gordon received drafts of the closing documents from Green, which included draft termination statements for all Delaware UCC-1 financing statements listed on the closing checklist. (Fisher Decl. Ex. R at JPMCB-STB-00000184 and 206). On October 15, 2008, Duker received drafts of the closing documents from Merjian, which included draft termination statements for all Delaware UCC-1 financing statements listed on the closing checklist. (Fisher Decl. Ex. S at JPMCB-STB-00000273 and 296). Moreover, on October 17, 2008, Merjian signed off on all such draft termination statements. (Fisher Decl. Ex. T). On October 24, 2008, Merjian received draft escrow instructions from Green referencing all such termination statements and told Green he had no comments to the escrow instructions three days later. (Fisher Decl. Exs. U and V). On October 29, 2008, Duker emailed Green, copying Gordon and Gonshorek, to see if the title company had completed its review of the documents,

including all UCC termination statements, it received. (Cooperman Decl. Ex. B at JPMCB-00001230). Gonshorek, Perlowski and Green had discussions about which Delaware UCC-1 financing statements required the preparation of termination statements and agreed that four termination statements should be prepared. (Fisher Decl. Exhibit M (Gonshorek Tr.) at 11:19-25).

54. Plaintiff does not dispute the statement made in this paragraph.

55. Plaintiff disputes the statements made in this paragraph. Four of the ten draft UCC-3 termination statements attached to Green's email were to release Delaware UCC-1 financing statements referenced in the closing checklist. (Fisher Decl. Ex. R at JPMCB-STB-00000204-206 and 226). Plaintiff lacks knowledge sufficient to confirm whether the six additional UCC-3 termination statements attached to Green's email were county filings to be filed in the counties where the "Properties" were located.

56. Plaintiff does not dispute the statement made in this paragraph but clarifies that one of the draft UCC-3 termination statements circulated did not reference a filing number. (Fisher Decl. Ex. R at JPMCB-STB-00000227).

57. Plaintiff disputes the statement made in this paragraph. Green referenced the Term Loan on both the Term Loan Termination Statement ("INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06") and the closing checklist ("financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)"). (Fisher Decl. Ex. R at JPMCB-STB-00000206 and 271).

58. Plaintiff does not dispute the statement made in this paragraph.

59. Plaintiff does not dispute the statement made in this paragraph.

60. Plaintiff does not dispute that Gonshorek testified that he prepared the Term Loan Termination Statement to “terminate the UCC in connection with the synthetic lease becoming unwound.” (Callagy Decl. Ex. 3 (Gonshorek Tr.) at 20:15-20). Plaintiff denies knowledge or information about Mr. Gonshorek’s state of mind. Gonshorek questioned whether the properties identified in the Term Loan Financing Statement related to the Lease Payoff. (Callagy Decl. Ex. 2 (Green Tr.) at 96:22-98:15).

61. Plaintiff does not dispute the statement made in this paragraph.

62. Plaintiff does not dispute the statement made in this paragraph.

63. Plaintiff does not dispute the statement made in this paragraph but clarifies that the Term Loan Termination Statement referenced “INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06” and identified JPMorgan as the “SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT.” (Fisher Decl. Ex. X).

64. Plaintiff disputes the statement made in this paragraph. The Term Loan Termination Statement referenced the Term Loan (“INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06”). (Fisher Decl. Ex. X).

65. Plaintiff does not dispute the statement made in this paragraph.

66. Plaintiff does not dispute the statement made in this paragraph.

67. Plaintiff does not dispute the statement made in this paragraph.

68. Plaintiff disputes the statements made in this paragraph. Green testified that “by having the various parties sign-off on escrow instructions, it would confirm that” the representatives of the parties “were on the same page” about what would happen at closing. (Callagy Decl. Ex. 2 (Green Tr.) at 52:17-53:2). Gonshorek testified that the escrow instructions instruct “the title company how to proceed with money, documents disbursements, and who gets what after the deal is funded.” (Callagy Decl. Ex. 3 (Gonshorek Tr.) at 25:13-20). Merjian

understood that the termination statements listed in the escrow instructions, including the Term Loan Termination Statement, were documents that would be released to Mayer Brown upon closing. (Fisher Decl. Ex. F (Merjian Tr.) at 34:19-35:5).

69. Plaintiff disputes the statement made in this paragraph. Plaintiff does not dispute that the subject line of the escrow instructions is as follows:

Termination of that certain Participation Agreement dated as of October 31, 2001, among General Motors Corporation (“**GM**”), as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1 (“**Trust**”), as Lessor, Wilmington Trust Company (“**Trustee**”), as Trustee, the Persons named therein as Investors, the Persons named therein as Backup Facility Banks, Relationship Funding Company, LLC, and JPMorgan Chase Bank (“**Agent**”), as Administrative Agent, as amended (the “**Participation Agreement**”) and release of all liens related thereto including liens relating to the following properties: (i) the SPO Headquarters Building located in Grand Blanc, Michigan (the “**Grand Blanc Property**”); (ii) the GM Powertrain L6 Engine Plant in Flint, Michigan (the “**Flint Property**”); (iii) the Franklin Deck in Detroit, Michigan (the “**Franklin Deck**”); (iv) the River East Parking Deck in Detroit, Michigan (the “**River East Deck**”); and (v) Parcel 6/C in Detroit, Michigan (“**Parcel 6/C**”) (the Grand Blanc Property, the Flint Property, the Franklin Deck, the River East Deck and Parcel 6/C herein are each a “**Property**” and, collectively, the “**Properties**”). Capitalized terms used but not otherwise defined herein have the respective meanings specified in Annex A to the Participation Agreement.

(Fisher Decl. Ex. W at MB0000024). Because the escrow instructions referenced the Term Loan Financing Statement, Plaintiff disputes that the escrow instructions related only to the Lease Payoff. (*Id.*)

70. Plaintiff does not dispute the statement made in this paragraph.

71. Plaintiff does not dispute the statement made in this paragraph.

72. Plaintiff disputes the statement made in this paragraph. The first page of the escrow instructions referenced the Term Loan Financing Statement as a document for which a termination statement would be filed. (Fisher Decl. Ex. W at MB0000024).

73. Plaintiff does not dispute the statement made in this paragraph.

74. Plaintiff does not dispute the statements made in this paragraph.

75. Plaintiff does not dispute the statements made in this paragraph.

76. Plaintiff disputes the statement made in this paragraph. The escrow instructions authorized Mayer Brown to file those documents upon their delivery. (Fisher Decl. Ex. W). In fact, when Green was alerted that there was a problem concerning the filing of the Term Loan Termination Statement, the first thing he told Gordon at their meeting was that “the UCC causing the concern was referenced on the checklist and in the escrow instructions.” (Fisher Decl. Ex. H (Green Tr.) at 68:9-14). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

77. Plaintiff does not dispute that Gordon so testified, but disputes the substance of the testimony to the extent it is meant to imply that the termination agreement was the sole source of authority to file termination statements. (Fisher Decl. Ex. H (Green Tr.) at 71:5-6).

78. Plaintiff does not dispute the statement made in this paragraph.

79. Plaintiff does not dispute the statements made in this paragraph but clarifies that Mayer Brown transmitted the UCC-3 termination statements to a third-party vendor for filing with the Delaware Secretary of State. (Callagy Decl. Ex. 3 (Gonshorek Tr.) at 32:23-33:1).

80. Plaintiff does not dispute the statement made in this paragraph but clarifies that the UCC-3 termination statements required JPMorgan’s authorization, not its signature, and such UCC-3 termination statements were authorized by JPMorgan. (Fisher Decl. Exs. W, R at JPMCB-STB-00000204-206 and 226 and X).

81. Plaintiff does not dispute the statement made in this paragraph.

82. Plaintiff does not dispute the statements made in this paragraph.

83. Plaintiff does not dispute the statement made in this paragraph but clarifies that such statement appears in paragraph 24. (Duker Aff. at ¶ 24).<sup>5</sup>

84. Plaintiff does not dispute the statement made in this paragraph.

85. Plaintiff does not dispute the statement made in this paragraph but denies knowledge or information about what anyone from anywhere else suggested.

86. Plaintiff does not dispute the statement made in this paragraph.

87. Plaintiff does not dispute the statement made in this paragraph.

88. Plaintiff does not dispute the statement made in this paragraph.

89. Plaintiff does not dispute the statement made in this paragraph but denies knowledge or information about what anyone from anywhere else suggested.

90. Plaintiff does not dispute the statement made in this paragraph.

91. Plaintiff denies knowledge or information about when Morgan Lewis discovered that the Term Loan Termination Statement related to the Term Loan and states that such information could have been learned before June 1, 2009 (the “**Petition Date**”). In March of 2009, the Term Loan Agreement was amended. (Fisher Decl. Ex. C (Duker Tr.) at 26:18-27:1). Moreover, in May 2009, Morgan Lewis began conducting lien searches. (Cooperman Decl. Ex. C at JPMCB-MLB-0007018-8816). In addition, on May 6, 2009, Duker requested a “summary of all legal/collateral documentation including details on all UCC filings” in connection with the Term Loan from various internal JPMorgan departments because he was concerned about the potential bankruptcy of Old GM. (Fisher Decl. Exs. C (Duker Tr.) at 54:20-23 and Z). Duker never received the information he requested. (Fisher Decl. Ex. C (Duker Tr.) at 62:14-17).

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<sup>5</sup> “**Duker Aff.**” refers to the Richard W. Duker affidavit, dated June 29, 2010, filed in support of JPMorgan’s summary judgment motion.

Morgan Lewis failed to conduct a lien search in Delaware until June 2009. (Cooperman Decl. Ex. C at JPMCB-MLB-0006335-6336).

92. Plaintiff does not dispute that on June 19, 2009, Morgan Lewis provided an affidavit executed by Gordon to counsel for the estate, the U.S. Treasury and the Committee which stated, in part:

Mayer Brown has never represented GM with respect to the Term Loan Agreement among GM and others and [JPMorgan], as Administrative Agent.

GM was not authorized by the Termination Agreement to terminate any financing statement related to the Term Loan Agreement.

(Fisher Decl. Ex. G at JPMCB-00000079).

93. Plaintiff does not dispute the statement made in this paragraph but clarifies that all of the deponents in this adversary proceeding had notice that the Term Loan Termination Statement that was filed in October 2008 was related to the Term Loan well in advance of the Petition Date. Every draft of the closing checklist received by the deponents referenced the Term Loan Financing Statement, (“financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. N at MB005598, O at JPMCB-00000908 p. 4, Q at JPMCB-00000920 p.4, R at JPMCB-STB-00000271 and S at JPMCB-STB-00000361). Moreover, JPMorgan approved a draft of the Term Loan Termination Statement (“INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06”) before it was filed. (Fisher Decl. Exs. S at JPMCB-STB-00000296 and T). In addition, on May 6, 2009, Duker requested a “summary of all legal/collateral documentation including details on all UCC filings” in connection with the Term Loan from various internal JPMorgan departments because he was concerned about the potential bankruptcy

of Old GM. (Fisher Decl. Exs. C (Duker Tr.) at 54:20-23 and Z). Duker never received the information he requested. (Fisher Decl. Ex. C (Duker Tr.) at 62:14-17).

94. Plaintiff does not dispute the statement made in this paragraph but clarifies that Merjian had notice that the Term Loan Termination Statement was related to the Term Loan well in advance of the Petition Date. For example, Merjian received several versions of the closing checklist, all of which listed the Term Loan Financing Statement, (“financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)”), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. P at JPMCB-STB-0000072 and 76 and R at JPMCB-STB-00000184 and 271). Moreover, Merjian approved the closing checklist and a draft of the Term Loan Termination Statement (“INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06”) before it was filed. (Fisher Decl. Exs. R at JPMCB-STB-00000184, 206 and 271 and T). Furthermore, Merjian approved and signed escrow instructions authorizing the filing of the Term Loan Termination Statement. (Fisher Decl. Exs. V and W). Specifically, when asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (*Id.* at Ex. V).

95. Plaintiff does not dispute the statement made in this paragraph.

96. Plaintiff does not dispute the statement made in this paragraph.

97. Plaintiff disputes the statement made in this paragraph. The DIP Order granted Plaintiff “automatic standing and authority to both investigate” the perfection of first priority liens of the Term Loan Lenders, and to bring actions, including avoidance actions, in connection therewith against the Term Loan Lenders. (Fisher Decl. Ex. DD at 25).

98. Plaintiff does not dispute that the DIP Order states that “[a]ny Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy

Court, it being understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as lender.” (*Id.* at 26).

99. Plaintiff does not dispute the statement made in this paragraph.

100. Plaintiff does not dispute that JPMorgan authorized and caused the filing of all UCC-3 termination statements relating to the Term Loan subsequent to the Term Loan repayment but clarifies that JPMorgan had already authorized the filing of the Term Loan Termination Statement in October of 2008. (Fisher Decl. Ex. X).

101. Plaintiff disputes the statement made in this paragraph. Mayer Brown believed it had authority to file all UCC-3 termination statements referenced in the escrow instructions, including the Term Loan Termination Statement because when Green was alerted that there was a problem concerning the filing of the Term Loan Termination Statement, the first thing he told Gordon at their meeting was that “the UCC causing the concern was referenced on the checklist and in the escrow instructions” and “was within the universe of documents involved in the [Lease Payoff].” (Fisher Decl. Ex. H (Green Tr.) at 68:9-71:5-6). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

102. Plaintiff does not dispute that Gordon so testified, but clarifies that the testimony is inconsistent with Gordon’s affidavit, which narrowly states that “**GM** was not authorized **by the Termination Agreement** to terminate any financing statement related to the Term Loan Agreement.” (Fisher Decl. Ex. G at JPMCB-00000079 at ¶ 10). Gordon declined to sign an earlier version of his affidavit, which contained the following, broader assertion: “**Mayer Brown**

was not authorized to terminate any financing statement related to the Term Loan Agreement.” (Fisher Decl. Ex. AA at JPMCB-00000115 at ¶ 10). The implication of this revision is that authority to file the Term Loan Termination Statement was derived from sources other than the termination agreement. Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

103. Plaintiff does not dispute that Green so testified, but disputes the substance of the testimony to the extent it is meant to imply that Green did not believe he had permission or was authorized to file the Term Loan Termination Statement. For example, when Green was alerted that there was a problem concerning the filing of the Term Loan Termination Statement, the first thing he told Gordon at their meeting was that “the UCC causing the concern was referenced on the checklist and in the escrow instructions” and “was within the universe of documents involved in the [Lease Payoff].” (Fisher Decl. Ex. H (Green Tr.) at 68:9-71:5-6). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

104. Plaintiff does not dispute that Green testified that he “understood that the documents related to the synthetic lease.” (Callagy Decl. Ex. 2 (Green Tr.) at 99).

105. Plaintiff disputes the statement contained in this paragraph because Green received a copy of the Term Loan Financing Statement which expressly defines credit agreement as “the term loan agreement, dated as of November 29, 2006, among the Debtor, Saturn Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.” (Callagy Decl. Ex. 9 at MB002414 and 2417).

106. Plaintiff does not dispute that Green testified that he “understood that the security relating to the synthetic lease was going to be released.” (Callagy Decl. Ex. 2 (Green Tr.) at 83).

107. Plaintiff does not dispute that Green so testified, but disputes the substance of the testimony to the extent it is meant to imply that Green did not believe that JPMorgan and its counsel authorized Mayer Brown to file the Term Loan Termination Statement. In particular, after JPMorgan and its counsel received the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied “Ryan Nice job on the documents.” (Fisher Decl. Ex. T). Furthermore, when asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (Fisher Decl. Ex. V). JPMorgan never told Mayer Brown not to file the Term Loan Termination Statement. (Fisher Decl. Ex. H (Green Tr.) at 49:11-15). JPMorgan never communicated changes to the closing checklist or asked questions about the list of financing statements it contained. (Fisher Decl. Exs. F (Merjian Tr.) at 18:7-11 and C (Duker Tr.) at 41:2-8). JPMorgan never communicated changes to the draft Term Loan Termination Statement. (*Id.* at F (Merjian Tr.) at 24:8-12 and C (Duker Tr.) at 45:15-22). Moreover, when Green was alerted that there was a problem concerning the filing of the Term Loan Termination Statement, the first thing he told Gordon at their meeting was that “the UCC causing the concern was referenced on the checklist and in the escrow instructions” and “was within the universe of documents involved in the [Lease Payoff].” (Fisher Decl. Ex. H (Green Tr.) at 68:9-71:5-6). Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

108. Plaintiff does not dispute that Gonshorek testified that all of the work he did with Green in October 2008 related to the Lease Payoff. (Callagy Decl. Ex. 3 (Gonshorek Tr.) at 47).

109. Plaintiff does not dispute that Gonshorek testified that he believed that the documents he was preparing were being prepared in the context of the Lease Payoff and no other transaction. (*Id.* at 47-48).

110. Plaintiff does not dispute the statements made in this paragraph.

111. Plaintiff does not dispute that Debra Homic Hoge's affidavit so stated, but disputes the substance of the statements to the extent they imply that Old GM did not provide Mayer Brown with any authority to file the Term Loan Termination Statement. Sundaram, of Old GM, received the checklist explicitly referencing the Term Loan Financing Statement and told Green that he reviewed the checklist and had no changes. (Cooperman Decl. Ex. A). Statements about a party's authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

112. Plaintiff does not dispute that Duker's affidavit so stated, but disputes the substance of the statement to the extent it is meant to imply that JPMorgan did not authorize Old GM or its counsel to file the Term Loan Termination Statement in October 2008. For example, the Term Loan Termination Statement, received and approved by JPMorgan before the Petition Date, states the "NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT" and lists "JPMORGAN CHASE BANK, AS ADMINISTRATIVE AGENT." (Fisher Decl. Exs. S at JPMCB-STB-00000296 and X). In addition, JPMorgan received several versions of the closing checklist, all of which listed the Term Loan Financing Statement, ("financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)"), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. O at JPMCB-00000906 and 908 p. 4, Q at JPMCB-00000919 and 920 p. 4 and S at JPMCB-STB-00000273, 296 and 361). JPMorgan never asked questions or communicated any changes to such documents. (Fisher Decl. Exs. H (Green Tr.) at 49:11-15, C (Duker Tr.) at 41:2-8 and 45:15-22 and F (Merjian Tr.) at 18:7-11 and 24:8-12). Statements about a party's authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

113. Plaintiff does not dispute that Duker's affidavit so stated, but disputes the substance of the statements to the extent they imply that Simpson Thacher did not represent JPMorgan in connection with the filing of the Term Loan Termination Statement or was not authorized with respect to the Term Loan Termination Statement. For example, Simpson Thacher communicated with JPMorgan and Mayer Brown in connection with the filing of the Term Loan Termination Statement. (Fisher Decl. Exs. P at JPMCB-STB-0000072 and 76, Q at JPMCB-00000919 and 920 p. 4, R at JPMCB-STB-00000184, 206 and 271, S at JPMCB-STB-00000273, 296 and 361, T, U at JPMCB-STB-00000427 and V). Simpson Thacher sent the Term Loan Termination Statement and closing checklist to JPMorgan before approving both documents. (Fisher Decl. Ex. S at JPMCB-STB-00000273, 296 and 361). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied "Ryan Nice job on the documents." (Fisher Decl. Ex. T). Furthermore, Merjian approved and signed the escrow instructions which also authorized Mayer Brown to file the Term Loan Termination Statement. (Fisher Decl. Exs. V and W). When asked by Green about comments to the escrow instructions, Merjian replied that "it was fine." (*Id.* at Ex. V). Statements about a party's authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

114. Plaintiff does not dispute that Merjian so testified, but disputes the substance of that testimony to the extent it is meant to imply that Simpson Thacher did not authorize the filing of the Term Loan Termination Statement. Every version of the closing checklist received by Simpson Thacher listed the Term Loan Financing Statement, ("financing statement as to equipment, fixtures and related collateral located at certain U.S. manufacturing facilities (file number 6416808 4, file date 11/30/06)"), as a document for which a termination statement would be prepared and filed. (Fisher Decl. Exs. P at JPMCB-STB-0000072 and 76 and R at JPMCB-

STB-00000184 and 271). Moreover, Simpson Thacher received and approved the closing checklist and a draft of the Term Loan Termination Statement (“INITIAL FINANCING STATEMENT FILE # 6416808 4 on 11.30.06”) before it was filed. (Fisher Decl. Exs. R at JPMCB-STB-00000184. 206 and 271 and T). In particular, after receiving the draft Term Loan Termination Statement and closing checklist from Green, Merjian replied “Ryan Nice job on the documents.” (*Id.* at Ex. T). Furthermore, Simpson Thacher approved and signed escrow instructions authorizing the filing of the Term Loan Termination Statement. (Fisher Decl. Exs. V and W). Specifically, when asked by Green about comments to the escrow instructions, Merjian replied that “it was fine.” (*Id.* at Ex. V). Moreover, the termination agreement did not require that amendments or modifications to its terms be in writing. (Fisher Decl. Ex. G at JPMCB-00000093). The termination agreement also did not contain an integration or merger clause stating that the termination agreement contained the entire agreement of the parties. (*Id.*) Statements about a party’s authority to perform an act are inadmissible legal conclusions and should not properly be considered assertions of material fact.

Dated: New York, New York  
August 5, 2010

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