HEARING DATE AND TIME: October 26, 2010 at 8:45 a.m. (Eastern Time)
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**
BOYD BRYANT, on behalf of himself and all others similarly situated,	:	**Adversary No. 09-00508 (REG)**
Plaintiffs,	:	
vs.	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	
Defendant.	:	

CLASS ACTION PLAINTIFF BOYD BRYANT'S MEMORANDUM AND EVIDENCE IN SUPPORT OF FINAL AWARD OF ATTORNEYS' FEES, INCENTIVE AWARD TO BOYD BRYANT, AND EXPENSES

TO THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Mr. Boyd Bryant, Class Action Plaintiff herein ("Mr. Bryant"), files his Memorandum and Evidence In Support of Final Award of Attorneys' Fees, Incentive Award to Boyd Bryant, and Expenses, and respectfully alleges and shows unto the Court the following:

Mr. Bryant and Class Counsel respectfully submit this Memorandum and Evidence In Support of Final Award of Attorneys' Fees, Incentive Award to Boyd Bryant, and Expenses, and respectfully ask the Court to: 1) to finally approve of the Attorney Fee Award in an amount not to exceed thirty-three percent (33%) of the Allowed Claim of $12,000,000 or $4,000,000 cash, whichever is greater, as per the payment procedures outlined in the Settlement Agreement; 2) to finally approve of the Incentive Award to Boyd Bryant in the amount of ten thousand dollars ($10,000.00); and 3) to finally approve of Class Counsel's Reimbursable Costs and Expenses Awarded in the amount of $279,888.28 (which includes $5,711.88 of expenses incurred by Pronkse & Patel, PLLC). As explained herein, Mr. Bryant and Class Counsel, on behalf of the Class, have overcome significant litigation, procedural, and jurisdictional obstacles to obtain an excellent result for the Class, with possible settlement relief of as much as $12,000,000 in consideration and the likelihood each Class Member's validly submitted claim will result in one-hundred (100%) percent reimbursement for Parking Brake expenses incurred.

Underscoring the merits of the Settlement Agreement, not a single objection was filed in response to the Notice of Hearing on Debtor's Motion for Preliminary Approval of Settlement, Including Claims Estimation, For Conditional Certification of Settlement Class, To Approve Cash Disbursement and Forms of Notice, and to Set Fairness Hearing. Docket 6414, Main Case; Docket No. 44, Adversary Proceeding #: 09-00508-reg. In addition, no objections were filed to the July 29, 2010, Memorandum of Law and Evidence in Support of Debtors' Motion for Preliminary Approval of Settlement, Including Claims Estimation, For Conditional Certification of Settlement Class, to Approve Cash Disbursement and Forms of Notice, and to Set Fairness Hearing, filed by Mr. Bryant and Class Counsel (the "**Bryant Memorandum**"). Docket No. 6443, Main Case; Docket No. 46, Adversary Proceeding #: 09-00508-reg. Finally, the Court

conducted a hearing on August 6, 2010 regarding the Settlement Agreement's preliminary approval. On August 9, 2010, the Court entered its Order Preliminarily Approving Settlement, Conditionally Certifying Settlement Class, Approving Cash Disbursement and Forms of Notice, and Setting Fairness Hearing. Docket No. 57, Adversary Proceeding #: 09-00508-reg. Following entry of this order, no objections were filed to the final approval of the Settlement Agreement, including to the Attorney Fee Award, the Incentive Award to Boyd Bryant, and to the Reimbursable Costs and Expenses Awarded. The absence of any objection is an unmistakable signal the Class approves of the Settlement Agreement. Importantly, "[a] favorable reception by the class constitutes 'strong evidence' of the fairness of a proposed settlement and supports judicial approval." *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207, 2010 U.S. Dist. LEXIS 79679 at **8-9 (S.D.N.Y. Aug. 5, 2010)(citing *Detroit v. Grinnell Corp*., 495 F.2d 448, 462 (2d Cir. 1974) and *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 119 (2d Cir. 2005)). Mr. Bryant and Class Counsel respectfully ask the Court to bear in mind the lack of any objection when making a final determination regarding fees, incentive award, and expenses here.

Relief Requested

1. As summarized, there are three components of final-approval relief requested in the present motion: 1) final approval of Attorney Fee Award; 2) final approval of the Incentive Award to Boyd Bryant, and 3) final approval of the Reimbursable Costs and Expenses Awarded. As revealed in the Settlement Agreement, Class Counsel obtained for the Class a benefit in the form of a $12,000,000 Allowed Claim. The Allowed Claim is, in effect, a $12,000,000 common fund to the Class inasmuch as the potential exists for the Allowed Claim to be monetized, one way or the other, in the amount of $12,000,000, and Parking Brake claims to

be paid from it. Accordingly, the fee request for the greater of an award of 33% of the Allowed Claim or $4,000,000 is based upon the existence of a $12,000,000 common fund, and not on any perceived lesser amount. The second component of the present motion is the is a request that Mr. Bryant be awarded a $10,000 cash incentive payment for his role as the sole class representative from the beginning of the lawsuit to the present. That Mr. Bryant deserves this award is easily established. The third and final component is Class Counsel's request for reimbursement of costs and expenses they have incurred. To date, Class Counsel (and Pronske & Patel, PLLC) have incurred a total of $279,888.28 costs and expenses as a result of the over five years of litigation in this matter. This sum is undoubtedly recoverable.

Standard for Finally Approving Class Action Attorney Fee Award

2. To decide an appropriate amount of attorneys' fees for class actions, courts have followed the principles articulated by the Court of Appeals for the Second Circuit in *Grinnell*, and confirmed in *Goldberger v. Integrated Research, Inc.*, 209 F.3d 43, 47-50 (2d Cir. 2000). Under this approach, courts do not consider that a "just and adequate fee" can be ascertained by merely multiplying an attorney's hours by the attorney's typical hourly fees. *Grinnell*, 495 F.2d at 471. The courts regard this calculation as "the only legitimate starting point for analysis." *Id*. To this, "other, less objective factors" are applied to reach the ultimate award. *Id*. The foremost of these factors is the attorney's "risk of litigation, i.e., the fact that, despite the most vigorous and competent of efforts, success is never guaranteed." *Id.* (internal quotation mark omitted). As discussed in *Goldberger*, the accepted factors to consider when adjudicating a common-fund, class-action attorney fee are:

1) the time and labor expended by counsel;

2) the magnitude and complexities of the litigation;

3) the risk of the litigation;

4) the quality of representation;

5) the requested fee in relation to the settlement; and

6) public policy considerations.

Goldberger, 209 F.3d at 50. Mr. Bryant will address each of these *Goldberger* factors below.

3. On the whole, Class Counsel's fee request is appropriate given the customary 33% of the common fund sought as an Attorney Fee Award. In evaluating the appropriateness of the Attorney Fee Award, the Court should be guided by the notion that "an attorney [who] succeeds in creating a common fund from which members of a class are compensated for a common injury" is "entitled to a reasonable fee – set by the court – to be taken from the fund." *Id*. at 47. In calculating a reasonable attorney's fee, the Court has discretion to choose between the lodestar method and the percentage of recovery method. *In re WorldCom, Inc. ERISA Litig.*, No. 02 Civ. 4816 (DLC), 2005 U.S. Dist. LEXIS 28686, 2005 WL 3101769, at *7 (S.D.N.Y. Nov. 21, 2005). However, "[t]he trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *WorldCom*, 2005 U.S. Dist. LEXIS 28686, 2005 WL 3101769, at *7 (quoting *Wal-Mart*, 396 F.3d at 121). This "spares the court and the parties the 'cumbersome, enervating, and often surrealistic process' of loadstar computation." *In re Visa Check/MasterMoney Antitrust Litig*., 297 F. Supp. 2d 503, 520 (E.D.N.Y. 2003)(quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)). Finally, even where the percentage method is used, the lodestar method remains useful as a "cross-check on the reasonableness of the requested percentage." *Goldberger*, 209 F.3d at 47, 50.

The Attorney Fee Sought By Mr. Bryant and Class Counsel

4. The fee common-fund fee sought by Mr. Bryant and Class Counsel is summarily (and accurately) described in the following excerpt from Debtors' Motion for Preliminary Approval of Settlement, Including Claims Estimation, For Conditional Certification of Settlement Class, to Approve Cash Disbursement and Forms of Notice, and to Set Fairness Hearing:

> I. Payment of Attorneys' Fees, Costs, and An Incentive Award. Through the Settlement Agreement, Class Counsel requests approval of their entitlement to, under their contingency fee agreement and based on the work performed in this matter, to an Attorney Fee Award in an amount not to exceed thirty-three percent (33%) of the Allowed Claim or $4,000,000.00 cash, whichever is greater. The process by which Class Counsel is paid is set forth in the Settlement Agreement, whereby Class Counsel will initially be paid thirty-three percent (33%) of the Cash Settlement Fund, which shall be the cash proceeds of the Allowed Claim; thereafter, in the event a Final Unclaimed Fund exists, and Class Counsel's initial attorney fee payment was less than $4,000,000.00 cash, and members of the Settlement Class with approved claims have been, to the extent possible, made one hundred percent (100%) whole with respect to their claimed out-of-pocket expenditures for Parking Brake repairs, Class Counsel may then receive up to the difference between the initial attorney fee payment and $4,000,000.00 cash. Pursuant to the Settlement Agreement, Class Counsel additionally requests approval of reimbursable costs and expenses of two hundred ninety thousand dollars ($290,000.00) cash, and approval of an incentive award to Bryant of ten thousand dollars ($10,000.00) cash. The Debtors agree not to object to the Attorney Fee Award as proposed in the Settlement Agreement, or the requested reimbursable costs and expenses and Incentive Award for Bryant in the amounts set forth above and in the Settlement Agreement.

Docket 6414, Main Case, p. 9, ¶16(I); Docket 44, Adversary Proceeding #: 09-00508-reg, p. 9, ¶16(I); *see also* Settlement Agreement, ¶4.1. The requested fee award of the greater of 33% of the Allowed Claim or $4,000,000 cash, the $10,000 incentive award, and the expense payment

are wholly separate from the process identified in the above excerpt by which these three awards, and Settlement Class Members' claims, are paid. This payment process exists because the Allowed Claim must be monetized in order to pay Settlement Class claims and to satisfy other Settlement Agreement payment obligations. Importantly, this payment process does not, in and of itself, increase or decrease the Attorney Fee Award, the Incentive Award to Boyd Bryant, or the Reimbursable Costs and Expenses Awarded. Class Counsel, for example, face the substantial likelihood that the ultimate payout to them will be below any Attorney Fee Award of 33% of the Allowed Claim or $4,000,000 cash, regardless of the existence of the above-described payment process.

Mr. Bryant and Class Counsel Can Satisfy All *Goldberger* Factors To Support Attorney Fee Award

5. ***The time and labor expended by counsel.*** The declarations of John Arnold and Jim Wyly[1] establish that, combined, their two firms spent over eight thousand (8,000) hours prosecuting this action.[2]

6. The attorney activities related to this case, filed in February 2005, began with a challenge to a General Motors removal to federal court. Once the case was successfully remanded, Class Counsel spent months sifting through many thousands of pages of documents

[1] Mr. Arnold's Declaration is attached hereto as Exhibit "A"; Mr. Wyly's Declaration is attached hereto as Exhibit "B". Because bankruptcy counsel, Pronske & Patel, PLLC, has incurred expenses in prosecuting this matter, undersigned counsel, Rakhee Patel, is also submitting her Declaration to substantiate that firm's $4,485.07 in expenses. Ms. Patel's Declaration is attached as Exhibit "C".

[2] To the extent it could be argued that Class Counsel are jointly applying for fees here, a single aggregate fee award can be made in connection with a joint application for fees. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 02 MDL 1484 (JFK), 2007 WL 313474 (S.D.N.Y. Feb. 1, 2007) (awarding aggregate fee in response to joint application).

produced by General Motors Corporation ("**General Motors**")[3] not only to develop Mr. Bryant's case for liability against General Motors, but also to discover evidence supporting Mr. Bryant's desire to prosecute this as a nationwide class action under Ark. R. Civ. P. 23. In anticipation of the fall 2006 class-certification hearing, Class Counsel retained engineer expert witnesses, produced them for deposition, conducted vehicle inspections, and undertook extensive briefing regarding the class-certification issue. In January 2007, the trial court, after conducting a day-long evidentiary hearing, entered an order certifying Mr. Bryant's case as a class action. This order was affirmed on appeal to the Arkansas Supreme Court, and the United States Supreme Court declined to review the class certification. Class Counsel participated in all appellate activities, including the briefing and oral arguments.

7. In late 2008, relatively soon after the Arkansas Supreme Court affirmed the trial court's class certification, Class Counsel prepared for and attended two mediations with General Motors. Those mediations did not yield a settlement, but many aspects of the mediation negotiations carried over into negotiations leading up to the Settlement Agreement. In early 2009 Class Counsel was required to respond to and argue a motion for summary judgment filed by General Motors. They were also required to engage in extensive motion practice to thwart a perceived competing class action filed in California. In addition, because the trial court was pressing to set the Bryant matter for trial in mid 2009, Class Counsel prepared for and spent four (4) days in Detroit deposing various General Motors witnesses regarding the merits of Mr. Bryant's defective parking brake allegations.

[3] Here, Mr. Bryant and Class Counsel are referring to General Motors Corporation, the corporate entity (and manufacturer of Class vehicles) which Mr. Bryant litigated against prior to Debtors' June 2009 bankruptcy filing.

8. Upon General Motors seeking bankruptcy protection in June 2009, Class Counsel retained bankruptcy counsel (Pronske & Patel, P.C.), and, with its assistance, immediately confronted a removal of Mr. Bryant's case to bankruptcy court (W.D. Ark.), as well as a motion to transfer venue to this Court. The Arkansas bankruptcy court declined to rule on whether to abstain and remand this matter to the Arkansas state court. Instead, it transferred venue to this Court, which prompted an appeal to the Arkansas federal district court. In this Court, Class Counsel and lawyers from Pronske & Patel, P.C. have filed several items, including proofs of claim and a Motion to Allow Plaintiffs to File a Class Proof of Claim and Alternative Motion, Subject to Motion for an Order Allowing Plaintiffs to File a Class Proof of Claim, For the Application of Federal Rule of Bankruptcy Procedure 7023 Pursuant to Federal Rule of Bankruptcy Procedure 9014. Docket 4560, Main Case.

9. In early 2010, Class Counsel and counsel for Debtors began substantive settlement discussions. These discussions took place over several months' time and have now culminated in the Settlement Agreement. The documentation of the Settlement Agreement and related matters occurred in July and August 2010, and is followed by the instant submission and others recently filed in this Court. In addition to documenting the settlement, Class Counsel has overseen class notice and administration issues, and have also been negotiating the hopeful monetization of the Allowed Claim to eventually create the Cash Settlement Fund.

10. As Mr. Bryant noted at the beginning of the Bryant Memorandum, this litigation, which has been on file since February 2005, has been an extraordinarily hard-fought and time-consuming endeavor for all involved. This Court is the seventh (7^{th}) different tribunal to address the Parking Brake issues. The time and labor expended by Class Counsel, beyond

doubt, support the common-fund attorney fee sought by Mr. Bryant. This first *Goldberger* factor is easily satisfied.

11. ***The magnitude and complexities of the litigation.*** Class Counsel, with the assistance of technical engineer experts, managed to distill down thousands of pages of technical materials produced by General Motors into a liability theory that not only supported certification of a nationwide class of vehicle owners numbering nearly four million (4,000,000) people, but also a sound liability theory. A cursory review of the trial court's Findings of Fact and Conclusions of Law Regarding Class Certification and Order Certifying Class (**"FOF/CL"**), *see* Docket 6414, Main Case, Exh. "D", Docket 44, Adversary Proceeding #: 09-00508-reg, Exh. "D," is indicative of Class Counsel's grasp of the highly complex technical and engineering nuances of the Parking Brake defect in issue, and the skill with which they presented class-certification evidence to the trial court.

12. The causes of action Class Counsel asserted on behalf of Mr. Bryant and the class (breach of Uniform Commercial Code ("UCC") express and implied warranties, violations of the federal Magnuson Moss Warranty Act, fraudulent concealment, and unjust enrichment), by no means, involve areas of law that are easily digested and understood, particularly in the context of a class certification. Again, a review of the FOF/CL reveals Class Counsel was required to master the complexities of these areas of law, especially to defeat General Motors' arguments regarding lack of Rule 23(b) predominance and superiority due to alleged individualized proof issues and incurable choice-of-law problems.

13. Finally, that the class certification was affirmed on appeal speaks to Class Counsel's handling of the litigation's complexities at the trial court level, as well as Class Counsel's ability to prosecute appeals. In addition, as the Court well knows, properly navigating

a class action through a bankruptcy as complex as Debtors' is no easy task. By achieving the Settlement Agreement, Class Counsel, along with Pronske & Patel, P.C., managed to preserve the ability of class members to make a claim for money spent, if any, repairing their defective Parking Brakes, even despite Debtors' bankruptcy. Absent these efforts by Class Counsel, numerous vehicle owners nationwide likely would have been barred from making claims by virtue of the Court's November 30, 2009 claims bar date. For all of these reasons, the second *Goldberger* factor is satisfied.

14. ***The risk of the litigation***. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Grinnell Corp., 495 F.2d at 470 (citation omitted). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814(MP), 2004 U.S. Dist. LEXIS 8608 at *11 (S.D.N.Y. May 14, 2004); *see also In re Am. Bank Note Holographics Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award"). Moreover, as earlier suggested, the risk of the litigation is often cited as the "most important *Goldberger* factor." *In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005); *see also Goldberger*, 209 F.3d at 54.[4]

[4] The risk of no recovery in complex cases of this type is real. There have been numerous class actions in which lead counsel expended thousands of hours and yet received no remuneration despite their diligence and expertise. *See, e.g., Steed Fin. LDC v. Nomura Sec. Int'l*, No. 04-5485, 2005 U.S. App. LEXIS 19947 (2d Cir. Sept. 14, 2005) (affirming summary

15. As noted by Messrs. Arnold and Wyly in their declarations, Class Counsel have prosecuted this case on an entirely contingent basis and have received no compensation of any kind for their efforts to investigate and litigate this matter for five (5) years, and in multiple jurisdictions. They have, combined, spent over eight thousand (8,000) hours over the course of this matter, and, in so doing, have expended hundreds of thousands of dollars without monetary contribution from Mr. Bryant or the Class.

16. The risk of the litigation is measured as of the time the action was filed. *See Goldberger*, 209 F.3d at 50. At the beginning of the case, the risks inherent in taking it were very real given the difficulties always associated with obtaining certification of any nationwide products-based class action. Class Counsel originally believed Arkansas class-action jurisprudence might support such a certification. However, the several Arkansas cases Class Counsel would need to rely upon were open ended enough in their holdings so as to create uncertainty. As reflected both in the FOF/CL and in the opinion issued by the Arkansas Supreme Court affirming the class certification, *see* Docket 6414, Main Case, Exh. "E", Docket 44, Adversary Proceeding #: 09-00508-reg, Exh. "E," General Motors, seizing upon the

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judgment and dismissal of all plaintiffs' claims, including 10(b) and 20(a) claims); *AUSA Life Ins. Co. v. Ernst & Young*, 39 F. App'x 667 (2d Cir. 002) (affirming district court's dismissal after a full bench trial and earlier appeal and demand); *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (appellate court overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988, on the basis of 1994 Supreme Court opinion); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (class won a substantial jury verdict and a motion for judgment n.o.v. was denied, but on appeal judgment was reversed and the case dismissed, after 11 years of litigation); *Winkler v. NRD Mining, Ltd.*, 198 F.R.D. 355 (E.D.N.Y. 2000) (granting defendants' motion for judgment as a matter of law after jury verdict for plaintiffs); *In re Health Mgmt., Inc. Sec. Litig.*, No. 96 CV 889 (E.D.N.Y. 1999) (jury verdict for auditor in securities class action); *In re Walt Disney Co. Derivative Litig.*, No. 15452, 2005 Del. Ch. LEXIS 113 (Del. Ch. Aug. 9, 2005) (defense verdict on all counts after nine years of litigation and a three-month bench trial).

uncertainty in these holdings, raised several arguments to defeat Rule 23 predominance and superiority such as individualized proof and multi-state choice-of –law. Risk always existed that either the trial court or the Arkansas Supreme Court would side with General Motors and refuse to certify Mr. Bryant's class. Fortunately, Class Counsel succeeded in convincing the courts that class certification was appropriate under Arkansas procedural law.

17. Further, as previously noted, there existed a perceived competing class action filed by counsel and plaintiffs in California. Unlike Mr. Bryant's case, the California class was never certified. Fortunately, as a result of motion practice in late 2008 and early 2009, Class Counsel secured from the Arkansas trial court a series of rulings that would protect Mr. Bryant's class from any attempted California interference.

18. Finally, that Class Counsel persevered even in the face of Debtors' complex bankruptcy exemplifies their willingness to confront risk. Upon the bankruptcy filing Class Counsel quickly secured excellent bankruptcy counsel in Pronkse & Patel, P.C. Many hours and dollars were then spent pursuing what turned out to be a viable litigation strategy against Debtors, and, ultimately, the securing of a very beneficial Settlement Agreement. Class Counsel's reaction was against the backdrop of Debtors' removal, the transfer of the case to this Court, and express threats by Debtors to de-certify Mr. Bryant's class. This backdrop admittedly created doubt amongst Class Counsel as to whether they could successfully continue to pursue class-wide relief. Again, however, their perseverance has paid off in the form of a very beneficial Settlement Agreement that could provide each Settlement Class member full reimbursement. All in all, Mr. Bryant and Class Counsel easily satisfy the third *Goldberger* factor.

19. ***The quality of representation.*** The quality of the representation by Class Counsel is also an important factor that supports the reasonableness of the requested fee. *See Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). In *Edmunds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987), the court stated "prosecution and management of a complex national class action requires unique legal skills and abilities." Class Counsel's skills and abilities, beyond doubt, were necessary to reach the point of entering into the Settlement Agreement with Debtors here.

20. As noted by Messrs. Arnold and Wyly in their declarations, Class Counsel are experienced class-action attorneys that have had experience with and success in other class actions. In this case, all of their skill and experience was necessary given the quality of opposing counsel representing GM, pre-bankruptcy, and Debtors, post bankruptcy. *In re Keyspan Corp. Sec. Litig.*, No. 2001-5852, 2005 U.S. Dist. LEXIS 29068, at *35 (E.D.N.Y. Aug. 25, 2005)("The quality of opposing counsel is also important in evaluating the quality of Class Counsels' work.")(citing *Warner Communications Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985)).

21. Notwithstanding their experience in other cases, Class Counsel have managed, among other things in this case, to defeat a removal to federal court, to have the first contested nationwide class action certified in Arkansas and upheld on appeal, and, after the filing of a very complex bankruptcy by Debtors, to negotiate a Settlement Agreement which provides real and substantial benefits to Mr. Bryant and Settlement Class members. Class Counsel played integral roles in all motion practice, trial court rulings, all appeals, and all bankruptcy-related events. The fourth *Goldberger* factor is clearly satisfied.

22. ***The requested fee in relation to the settlement.*** Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. *See e.g. Ayers v. SGS Control Servs.*, No. 03 Civ. 9078(RMB),2008 U.S. Dist. LEXIS 69307 at *29 (S.D.N.Y. Sept. 8, 2008). As discussed in detail below, courts in the Second Circuit and around the country have consistently awarded percentage fees to plaintiffs' counsel that are comparable to the 33% common fund fee requested here by Mr. Bryant and Class Counsel. The present request for a fee award as described in paragraph 8, *supra*, is fair and reasonable in relation to the fees typically awarded in complex class actions.

23. ***Public policy considerations***. "Public policy should encourage meritorious suits and discourage frivolous ones." *Farinella v. PayPal, Inc.*, 611 F. Supp. 2d 250, 273 (E.D.N.Y. 2009). Further, public policy considerations require that "[t]he fees awarded must be reasonable, but they must also serve as an inducement for lawyers to make similar efforts in the future." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d at 524. While public policy favors "the award of reasonable attorney's fees," courts must also "guard against providing a monetary windfall to class counsel to the detriment of the plaintiff class." *In re NTL Inc. Sec. Litig.*, No. 02 Civ. 3013 (LAK), 2007 U.S. Dist. LEXIS 32285, 2007 WL 1294377, at *8 (S.D.N.Y. May 2, 2007) (internal quotations omitted). As evidenced by the grant of class certification, it having been affirmed on appeal, and the fact the case has now been settled for the real and substantial benefit of Settlement Class members in the form of likely full reimbursement, Mr. Bryant's case is far from frivolous. Further, there is no "monetary windfall" to Class Counsel resulting from the proposed Attorney Fee Award. As discussed throughout this briefing, Class Counsel will never receive more than 33% of the Allowed Claim (and likely will not even receive the full 33%), which is a customary common-fund fee in the Second Circuit.

And, as shown below, any fee received by Class Counsel is far below any reasonable lodestar calculation that can be made. In summary, the sixth "public policy" *Goldberger* factor is satisfied.

Class Counsel's Requests An Appropriate Common-Fund Fee, As Substantiated By Lodestar Crosscheck

24. As described above and in the Settlement Agreement, ¶4.1, Class Counsel seeks a contingent-fee-based Attorney Fee Award of 33% or $4,000,000 cash of the total benefit to the Settlement Class, which is the Allowed Claim of $12,000,000.00. As the process for payment in the Settlement Agreement reflects, Class Counsel, for their Attorney Fee Award, first asks to be awarded 33% of the Cash Settlement Fund. Following Parking Brake-repairs reimbursement payments to the Settlement Class Members, an analysis will be conducted to determine whether a Final Unclaimed Fund exists. If such a fund exists, then eligible Settlement Class Members not yet made whole will be paid additional monies, limited only by their being made completely whole. If, after these additional Final Unclaimed Fund payments money still remains in the Final Unclaimed Fund, Class Counsel will then receive payment of the remaining Attorney Fee Award, capped at a total of $4,000,000.00.

25. First, with respect to the request for the greater of the 33% of the Allowed Claim or $4,000,000 cash, such a request is typical in class action settlements in the Second Circuit. *See e.g., Clark v. Ecolab Inc.*, No. 07 Civ. 8623 (PAC), 2010 U.S. Dist. LEXIS 47036 at **27-28 (S.D.N.Y. May 11, 2010) ("Class Counsel's request for one-third of the Fund is reasonable and 'consistent with the norms of class litigation in this circuit.')(citing *Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05 Civ. 3452, 2008 U.S. Dist. LEXIS 23016, at *15 (S.D.N.Y. Mar. 24, 2008); *Warren v. Xerox Corp.*, No. 01-CV-2909 (JG), 2008 U.S. Dist. LEXIS 73951 at *22 (E.D.N.Y. Sept. 19, 2008)("Class counsels' request for $3,080,000 in fees and $914,827 in

expenses (totaling approximately $4,000,000), constitutes approximately 33.33% of the total settlement, and is comparable to sums allowed in similar cases.); *Strougo ex rel. Brazilian Equity Fund, Inc*., 258 F.Supp.2d at 262 (33 1/3% of settlement fund approved for attorneys' fees); *In re Blech Sec. Litig*., No. 94 Civ. 7696, 2002 U.S. Dist. LEXIS 23170, 2002 WL 31720381, at *1 (S.D.N.Y. Dec. 4, 2002) (33 1/3% of settlement fund approved for attorneys' fees, plus costs); *Adair v. Bristol Technology Sys.*, No. 97 Civ. 5874, 1999 U.S. Dist. LEXIS 17627, 1999 WL 1037878, at *4 (S.D.N.Y. Nov. 16, 1999) (33% of settlement fund approved for attorneys' fees, plus costs); *Cohen v. Apache Corp*., No. 89 Civ. 0076, 1993 U.S. Dist. LEXIS 5211, 1993 WL 126560, at *1 (S.D.N.Y. Apr. 21, 1993) (33 1/3% of settlement fund approved for attorneys' fees); *In re Gulf Oil/Cities Service Tender Offer Litig.,* 142 F.R.D. 588, 596-597 (S.D.N.Y. 1992) (33 1/3% of settlement fund approved for attorneys' fees); *In re Crazy Eddie,* 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (33.8% of settlement fund approved for attorneys' fees, plus costs).

26. Secondly, Class Counsel's request of the greater of 33% of the Allowed Claim or $4,000,000, rather than strictly a percentage of the result from monetizing the Allowed Claim, is proper in this setting. Indeed, "[a] Second Circuit panel [has] held that attorneys' fees awarded as a percentage of a common fund must take into consideration the entirety of the fund, not only that portion received directly by class members." *Parker v. Time Warner Entm't Co., L.P*., 631 F. Supp. 2d 242, 264-265 (E.D.N.Y. 2009)(citing *Masters v. Wilhelmina Model Agency, Inc*., 473 F.3d 423, 437 (2d Cir. 2007)). As earlier discussed, the benchmark for evaluating the common fund in this case is $12,000,000, the amount of the Allowed Claim. Any lesser common-fund valuation, in the particular circumstances of this case, would be inappropriate.

27. Finally, any lodestar crosscheck will yield a finding that Class Counsel is not receiving excessive compensation. In conducting such a crosscheck, the Court must engage in a two-step analysis: first, to determine the lodestar, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate: and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attomey's work. *See e. g. Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.,* 487 F.2d 161, 167-69 (3d Cir. 1973), subsequently refined in, *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp*., 540 F.2d 102, 116-18 (3d Cir. 1976) (en banc).

28. Based on the declarations of Messrs. Arnold and Wyly, Class Counsel have spent a combined eight thousand seven hundred eighty five and seven/tenths (8,785.70) hours working on this matter since its inception in late 2004, to early 2005. Utilizing any reasonable hourly rate – for example, $350.00-$500.00 per hour – and the 8,785.7 hours in time spent, a base lodestar-crosscheck range of $3,084,995 to $4,392,850.00 can be calculated. If even a modest risk multiplier[5] of 3.0 is utilized, *see e.g. Wal-Mart Stores*, 396 F.3d at 123 (affirming 3.5 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008)("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *Dupler v. Costco Wholesale Corp*., No 06-CV-3141, 2010 U.S. Dist.

[5] Courts are encouraged to award a multiplier because "[calculation of the lodestar,] is simply the beginning of the analysis." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *In re Ivan Boesky Sec. Litig.*, 888 F. Supp. 551, 562 (S.D.N.Y. 1995); *Global Crossing*, 225 F.R.D. at 436 (employing lodestar cross-check). Moreover, courts have regularly recognized that in instances where a lodestar analysis is used, counsel may be entitled to a "multiplier" of their lodestar rate to compensate them for the risk assumed by them, the quality of their work, and the result achieved by the class. *See In re Veeco Instruments Inc. Secs. Litig.*, 05 MDL 01695, 2007 U.S. Dist. LEXIS 85554, 2007 WL 4115808, at *2-3 (S.D.N.Y. Nov. 7, 2007).

LEXIS 46938 at *32 (E.D.N.Y. Apr. 15, 2010)(approving of a 3.3 multiplier), a lodestar crosscheck range of $9,254,985 to $13,178,550 results. Under any Allowed-Claim monetization and claims experience scenarios imaginable, Class Counsel's Attorney Fee Award will not approach these amounts. In fact, it cannot approach these amounts given the four million dollar ($4,000,000.00) agreed-upon cap, which will likely never be met anyway. This is yet another reason their requested Attorney Fee Award in the Settlement Agreement is reasonable and should be finally approved.

Incentive Award to Boyd Bryant Should Be Finally Approved

29. "[Incentive or] service awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiff." *Clark*, 2010 U.S. Dist. LEXIS 47036 at **30-31 (citing *Khait v. Whirlpool Corp.*, No. 06-6381 2010 U.S. Dist. LEXIS 4067 at **26-27 (E.D.N.Y. Jan. 20, 2010)(awarding $15,000 service awards each to 5 named plaintiffs and $10,000 service awards each to 10 named plaintiffs); and *Mohney*, 2009 U.S. Dist. LEXIS 27899 at **18-19)(awarding $ 6,000 service awards each to 14 named plaintiffs)). As discussed in Class Counsel's declarations, Mr. Bryant has subjected his vehicle to multiple inspections and testing by different parties; has given his deposition; has attended a portion of the September 2006 class certification hearing in the Arkansas State Court; has participated in settlement talks, including those during mediation; and has maintained contact with Class Counsel and monitored the overall progress of this matter throughout the years of this litigation. Mr. Bryant has been and continues to be the sole class representative. Mr. Bryant deserves compensation both for his participation and service as class representative, and in light of the risks Mr. Bryant has incurred

by becoming and continuing as a class-action litigant. The amount of ten thousand dollars ($10,000.00) awarded to Mr. Bryant is neither excessive nor unduly preferential, and should be finally approved and awarded to Mr. Bryant.

Requested Reimbursable Costs And Expenses Awarded Are Reasonable

30. Finally, "courts typically allow counsel to recover their reasonable out-of-pocket expenses." *Clark*, 2010 U.S. Dist. LEXIS 47036 at *30 (citing *In re Indep. Energy Holdings PLC Sec. Litig*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003)); *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993)). In their declarations, Class Counsel and Pronske & Patel, PLLC submit evidence supporting their request for $279,888.28 in Reimbursable Costs and Expenses Awarded. Given the lengthy history of this litigation, and the extensive work performed by Class Counsel, as well as Pronske & Patel, PLLC, the Court should view this request as eminently reasonable, and as no barrier to preliminary approval of the Settlement Agreement.

WHEREFORE, based on the arguments, authorities and evidence presented with this Memorandum and Evidence In Support of Final Award of Attorneys' Fees, Incentive Award to Boyd Bryant, and Expenses, Mr. Bryant and Class Counsel, on behalf of the Settlement Class, respectfully request entry of Judgment in this matter, among other things, finally approving of the Attorney Fee Award, the Incentive Award to Boyd Bryant, and the Reimbursable Costs And Expenses Awarded. Mr. Bryant and Class Counsel also fully support and respectfully request the relief sought in the contemporaneously filed Debtors' Brief In Support of Final Approval of Settlement and Final Certification of Settlement Class. Finally, Mr. Bryant and Class Counsel request such other and further relief which is just.

Dated: Dallas, Texas
October 19, 2010

/s/ Rakhee V. Patel

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COUNSEL FOR BOYD BRYANT, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**
BOYD BRYANT, on behalf of himself and all others similarly situated, Plaintiffs,	:	**Adversary No. 09-00508 (REG)**
vs.	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	
Defendant.	:	

Declaration of John W. Arnold Under Penalty of Perjury

STATE OF TEXAS §
§
COUNTY OF DALLAS §

1. "My name is John W. Arnold. I am over age eighteen (18), of sound mind, and am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. "David W. Crowe and I are partners in our law firm, Bailey/Crowe & Kugler, LLP. Mr. Crowe and I, along with Jim Wyly and Sean Rommel of Wyly-Rommel, PLLC in Texarkana, Texas (collectively "Class Counsel"), have represented Plaintiff Boyd Bryant ("Mr. Bryant") and the class certified in the Arkansas State Court ("the Class") throughout the entirety of the captioned litigation, and have all worked on the case. Each of us has been appointed Class

Counsel by the Arkansas State Court in connection with the Certification Order, and preliminarily appointed as Class Counsel by the Court in this matter.

3. "Mr. Crowe and I have other class-action experience, and consider ourselves to be experienced class-action attorneys. We negotiated and achieved a successful class-action settlement in the matter of *McNeely v. National Mobile Health Care, LLC. See e.g. McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 U.S. Dist. LEXIS 86741 (W.D. Okla. Oct. 27, 2008). In commenting on the adequacy of class counsel there, the *McNeely* Court remarked, "The Court's review of the work performed in this matter, and the class-certification evidence, shows Ms. McNeely's counsel are experienced litigators, including class action litigators. They are eminently capable of conducting this matter as a class action. . . ." *Id.* at *20. The Court in *McNeely* also wrote, in the context of approving the requested fee, that, "Class counsel are qualified to handle these issues and, in the Court's view, have done a competent and thorough job of navigating their way through the different phases of this difficult litigation, as well as through the different certification and merits-related arguments NMHC and Security Life have raised." *Id.* at *44.

4. "In addition to the *McNeely* and *Bryant* matters, Mr. Crowe and I have defended one class action in federal court in Texarkana, Texas, and have prosecuted two others in Oklahoma federal courts, one of which is still pending. During the past fourteen (14) years I have also assisted other members of my firm with the prosecution and defense of other class actions. Finally, Mr. Crowe and I have handled many complex commercial and other forms of cases in the state and federal trial and appellate court systems during the past decade or more, and feel both competent and comfortable handling larger, complex cases such as Mr. Bryant's class action here.

5. "Class Counsel represents Mr. Bryant on a pure contingent-fee basis. Under the written contingent-fee agreement between Mr. Bryant and Class Counsel, the latter is permitted to apply to the presiding court for an attorney fee to be evaluated either on a lodestar basis or calculated based on any common fund determined to exist. Mr. Bryant is not required to front any case expenses. Case expenses are also to be paid from any class recovery. Finally, Mr. Bryant, under the contingent-fee agreement, is not required to pay Class Counsel any fee or other form of reimbursement in the event he does not prevail in his class-action case. To date, Class Counsel have not received any compensation for labor in this matter and have not received reimbursement for any incurred costs or expenses.

6. "As described in the Settlement Agreement, ¶4.1, Class Counsel seeks a contingent-fee-based Attorney Fee Award of thirty-three percent (33%) of the benefit to the Settlement Class, which is the Allowed Claim of twelve million dollars ($12,000,000.00), or $4,000,000 cash, whichever is greater. As the Settlement Agreement procedure reflects, Class Counsel, for their Attorney Fee Award, first asks to be paid thirty-three percent (33%) of the Cash Settlement Fund. Following Parking Brake-repairs reimbursement payments to the Settlement Class Members, an analysis will be conducted to determine whether a Final Unclaimed Fund exists. If such a fund exists, then eligible Settlement Class Members not yet made whole will be paid additional monies, limited only by their being made completely whole. If, after these additional Final Unclaimed Fund payments, money still remains in the Final Unclaimed Fund, Class Counsel will then receive payment of the remaining Attorney Fee Award, capped at a total of four million dollars ($4,000,000).

7. "Based on a review of relevant case law, class action treatises, and other resources, the Attorney Fee Award, as proposed, is a commonly awarded fee and is an

appropriate common-fund fee in this case. Moreover, in the event the Court wishes to perform a lodestar crosscheck of the Attorney Fee Award, Class Counsel asserts that lawyers in their respective firms have spent more than eight thousand six hundred (8,000) hours working on this matter since its inception in late 2004 to early 2005.

8. "On behalf of Bailey/Crowe & Kugler, LLP ("BCK"), the total hours of attorney time for this litigation is 4,235.3 hours, comprised of the following:

David W. Crowe	1,381.3 hours
John W. Arnold	2,705.8 hours
Other Partner/Associates	148.2 hours

The time reflected in these hourly numbers represents time actually spent on the *Bryant* matter, in the exercise of reasonable judgment by the attorneys.

9. "It is my understanding that Class Counsel from Wyly~Rommel, PLLC spent 4,550.40 hours on the *Bryant* matter. Added to the BCK hourly numbers, 8,785.70 hours, combined, was spent by Class Counsel on *Bryant*. Utilizing any reasonable hourly rate in Texarkana, Texas, Miller County, Arkansas, and/or Dallas, Texas – for example, a range of $350.00-$500.00 per hour – and the 8,785.7 hours in time spent, a base lodestar-crosscheck range of $3,084,995 to $4,392,850.00 can be calculated. If even a modest risk multiplier of 3.0 is utilized, a lodestar crosscheck range of $9,254,985 to $13,178,550 results. Under any Allowed-Claim monetization and claims experience scenarios imaginable, Class Counsel's Attorney Fee Award will not approach these amounts. In fact, it cannot approach these amounts given the $4,000,000 agreed-upon Attorney Fee Award cap, which will likely never be met anyway.

10. "On behalf of BCK, a total of $153,422.15 in costs and expenses have been paid to various individuals and entities, and constitute reimbursable costs and expenses associated with the *Bryant* matter. Among the incurred-expense items are: expert witness fees, travel expenses (hotel, air, and food), postage, facsimile, and Fed Ex charges, long-distance telephone charges, photocopy charges, Lexis electronic-research charges, mediation fees, and hourly fees paid to appellate counsel Cullen & Company and Kellog Huber. These expenses were incurred during the course of prosecuting the *Bryant* matter, are legitimate and were necessary, and were incurred based on the reasonable, professional judgment of BCK Class Counsel.

11. "To the extent the Court may need a general overview of what has occurred in the *Bryant* litigation during the past five-plus years, both to determine settlement fairness (procedural and substantive), including for final-approval purposes utilizing the *Grinnell* factors, and to determine whether Class Counsel's requested fee is appropriate based on the *Goldberger* and other factors, I will provide it in the next several paragraphs.

12. "Although this matter was originally filed in February 2005 before CAFA's[1] effective date, Mr. Bryant and Class Counsel were initially confronted with GMC removing on CAFA grounds to the United States District Court for the Western District of Arkansas. Following remand to the Arkansas State Court, which took approximately five (5) months to obtain, Class Counsel conducted extensive document discovery regarding the Parking Brake defect, retained and designated multiple engineer expert witnesses, produced them for deposition, and fully briefed the issue of class certification to the Arkansas State Court. Following a day-long certification hearing in September 2006, and entry of the Certification Order by the Arkansas State Court in January 2007, Class Counsel moved into a year-and-a-half long phase of successfully contesting appeals of the Certification Order by General Motors

[1] Class Action Fairness Act of 2005. *See* 28 U.S.C. §§1332(d); 1453; and 1711-1715.

Corporation ("GMC")[2] both to the Arkansas Supreme Court and the United States Supreme Court.

13. "In October 2008, during the pendency of GMC's petition for writ of *certiorari*, Class Counsel and GMC participated in a two-day mediation in New Orleans, Louisiana. The mediation was conducted by the Hon. Edward Infante, an experienced class-action mediator. While unsuccessful in its entirety, the parties and Judge Infante were able to work through several substantive matters, including major elements of the Class reimbursement tier-structure and the notice plan provisions that are now, in large measure, contained in the Settlement Agreement. A second mediation was conducted in San Francisco in early November 2008, again by Judge Infante. Despite the occurrence of these two mediations, no settlement was reached.

14. "In December 2008 and January 2009 Class Counsel drafted responsive briefing and attended a hearing regarding a motion for summary judgment filed by GMC. Further, because the Arkansas State Court was pressing to set the matter for trial on the merits in mid-to-late 2009, Class Counsel spent over four (4) different days in late 2008 and early 2009 deposing multiple employees of GMC at Renaissance Center, GMC's world headquarters in Detroit. Finally, during this general time period, Class Counsel were also required to engage in extensive motion practice to thwart a perceived competing class action filed in California.

15. "During the spring of 2009, the Arkansas State Court appointed a new mediator, Mr. John Mercy of Texarkana, Texas. While Mr. Mercy entertained and relayed informal discussions between the parties in an attempt to hold settlement talks together, it was becoming increasingly evident to all involved that GMC was in dire financial straits, and that it would likely commence bankruptcy proceedings.

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[2] Here, Mr. Arnold is referring to General Motors Corporation, the corporate entity (and manufacturer of Class vehicles) which Mr. Bryant litigated against prior to Debtors' June 2009 bankruptcy filing.

16. "Following the commencement of Debtors' bankruptcy on June 1, 2009, and the entry of the Court's Sale Order involving General Motors Company[3], Debtors removed the Arkansas Action to the Arkansas Bankruptcy Court. In response, Class Counsel retained bankruptcy counsel and moved for a remand to the Arkansas State Court under both mandatory and discretionary abstention principles. GMC then moved to transfer the removed action to this Court. On October 1, 2009, over stringent opposition from Mr. Bryant and the Class, the Arkansas Bankruptcy Court entered a transfer order. On October 14, 2009, the transfer to this Court occurred, resulting in the captioned adversary proceeding. It is my understanding that Mr. Bryant's remand motion remains pending for resolution and an appeal of the transfer order has been filed with the United States District Court for the Western District of Arkansas.

17. "On November 27, 2009 Mr. Bryant filed the Bryant Proofs of Claim in this matter. That same date, Mr. Bryant filed the "Plaintiffs' Motion to Allow Plaintiffs to File a Class Proof of Claim and Alternative Motion, Subject to Motion for an Order Allowing Plaintiffs to File a Class Proof of Claim, For the Application of Federal Rule of Bankruptcy Procedure 7023 Pursuant to Federal Rule of Bankruptcy Procedure 9014." *See* Docket Entry No. 4560. Based upon the pre-petition Certification Order, Mr. Bryant, on the Class's behalf, asked this Court to allow Mr. Bryant and the Class to seek class-wide relief in Debtors' bankruptcy. *Id.*

18. "In September 2009, Class Counsel began to engage in discussions with Debtors' Counsel regarding the nature of Mr. Bryant's case, and whether there was interest in trying to resolve it. In January 2010, Class Counsel and Debtors' Counsel began more substantive and earnest settlement discussions and negotiations. Debtors, at that time, indicated that while they were interested in reaching a settlement, a strong argument existed to de-certify

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[3] General Motors Company is referred to as "New GM" in the Settlement Agreement. *See* Settlement Agreement, ¶ 1.30.

the Class in the context of challenging Mr. Bryant's Motion to Allow Plaintiffs to File a Class Proof of Claim. Class Counsel, of course, recognized and appreciated the time, costs, and risks associated with any de-certification fight. Prolonged litigation over the de-certification issue, including potential appeals associated with it, might not conclude until well after Debtors' plan had been confirmed, and after Debtors' bankruptcy estate is depleted of assets. In addition, they recognized that if Debtors were successful in their effort to de-certify, Class Members could be unable to obtain any Parking Brake reimbursements whatsoever, given potential enforcement of the Court's November 30, 2009 claims bar date. Accordingly, Class Counsel concluded the pursuit of a settlement was in the best interests of the Class.

19. "The settlement negotiations between Class Counsel and Debtors' Counsel initially dealt with the Class reimbursement components that had mostly been resolved in the pre-petition mediation sessions. As reflected in the Settlement Agreement, which now provides a potentially lucrative *pro rata* reimbursement to Settlement Class Members, the Class-reimbursement mechanism of any settlement has always been of paramount concern to Mr. Bryant and Class Counsel. While Class Counsel and Debtors' Counsel were, in general, able to resolve issues related to the Class-reimbursement, Debtors, in early 2010, indicated to Class Counsel that the only settlement consideration they could provide is an allowed, general unsecured claim in Debtors' bankruptcy proceedings. Due to this unique form of non-cash settlement consideration, Class Counsel began contemplating the creation of a cash settlement fund by assigning or selling any allowed claim received from Debtors to a third party, or *via* the receipt of plan distributions of New GM stock or other consideration in satisfaction of the allowed claim, and liquidation of same in the applicable markets, or otherwise.

20. "To implement a settlement out of this contemplated cash settlement fund, it was thought Class Members would be reimbursed from the fund under the settlement-tier structure, and attorneys' fees, expenses, and an incentive award to Mr. Bryant would also be paid from the fund. To further implement the settlement, the costs of notice and administratively handling the settlement was also considered. Following lengthy conversations about all of these issues, Class Counsel and Debtors' Counsel eventually arrived at the Allowed Claim amount of twelve million dollars ($12,000,000), and the Cash Disbursement of one hundred thousand dollars ($100,000) to defray Administration Expenses and certain expenses associated with implementing the Plan of Notice.

21. "Now that the Settlement Agreement has been executed, Mr. Bryant and Class Counsel continue to believe it represents the best possible outcome for the Class in the circumstances, especially given the numerous difficulties presented by Debtors' bankruptcy.

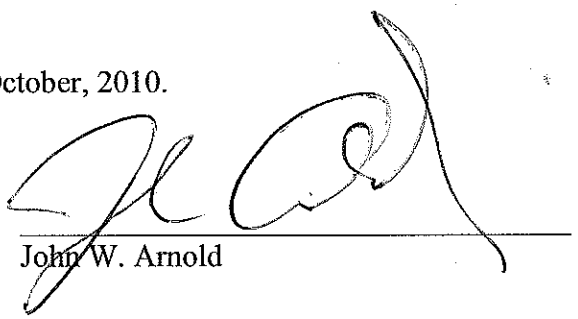
22. "During the course of the *Bryant* litigation, Mr. Bryant has subjected his vehicle to multiple inspections and testing by different parties; has given his deposition; has attended a portion of the September 2006 class certification hearing in the Arkansas State Court; has participated in settlement talks, including those during mediation; and has maintained contact with Class Counsel and monitored the overall progress of this matter throughout the years of this litigation. Mr. Bryant deserves compensation both for his participation and service as Class representative, and in light of the risks Mr. Bryant has incurred by becoming and continuing as a class-action litigant. The amount of ten thousand dollars ($10,000.00) awarded to Mr. Bryant is neither excessive nor unduly preferential.

23. "As of the date this Declaration is executed, my law firm has received no Settlement Agreement objections or opt outs from any Class member.

24. "Class Counsel has received the $100,000 cash payment from Debtors. This payment was immediately deposited into an account at Texas Capital Bank (for privacy concerns, I will not recite the account number). From this $100,000 sum, I have paid Dahl Inc. ("Dahl"), the Claims Administrator, the sum of $20,677 for Published Notice and initial administration costs. Dahl has recently invoiced me $3,450.08 for administration expenses, and I plan on paying that amount very shortly. No other payments have been or will be made from this account, until, of course, Dahl invoices me again for administration services rendered in this case.

25. "I, John W. Arnold, under penalty of perjury state that the foregoing is true and correct."

EXECUTED on this the 19th day of October, 2010.



John W. Arnold

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**
BOYD BRYANT, on behalf of himself and all others similarly situated,	:	**Adversary No. 09-00508 (REG)**
Plaintiffs,	:	
vs.	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	
Defendant.	:	

Declaration of James C. Wyly Under Penalty of Perjury

STATE OF TEXAS §
§
COUNTY OF BOWIE §

1. "My name is James C. Wyly. I am over age eighteen (18), of sound mind, and am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. "Sean Rommel and I are founding co-members of our law firm, Wyly-Rommel, PLLC. Mr. Rommel and I, along with David Crowe and John Arnold in Dallas, Texas (collectively "Class Counsel"), have represented Plaintiff Boyd Bryant ("Mr. Bryant") and the class certified in the Arkansas State Court ("the Class") throughout the entirety of the captioned

litigation, and have all worked on the case. Each of us has been appointed Class Counsel by the Arkansas State Court in connection with the Certification Order.

3. "Mr. Rommel and I have other class-action experience, and consider ourselves to be experienced class-action attorneys. We have been counsel of record for both plaintiffs and defendants in the following representative class action matters:

- *Smajlaj v. Brocade Communications, et al.*, Consolidated Case No. C05-02233, United States District Court for the Northern District of California, San Francisco Division;
- *In Re Salomon Analyst Metromedia Litigation*, Case No. 02CV7966, United States District Court for the Southern District of New York;
- *Bradford et al. v. Union Pacific Railroad Company*, Case No. 4:05CV4075, United States District Court for the Western District of Arkansas, Texarkana Division;
- *Vickers et al., v. Union Pacific Company*, Case No. CV-2005-5-2, Circuit Court of Lafayette County, Arkansas;
- *Whitehead et al., v. The Nautilus Group, Inc. et al.,* Case No. CV-2005-66-2, Circuit Court of Miller County, Arkansas;
- *Gene Leslie, et al. v. Champion Parts, Inc., et al.,* Case No. 08CV4024, United States District Court for the Western District of Arkansas, Texarkana Division;
- *Kenneth Luke and A.C. Brooks, et al. v. The Lincoln National Life Ins. Co., et al.,* Case No. 5:03CV0256, United States District Court for the Eastern District of Texas, Texarkana Division;
- *Lane's Gifts and Collectibles, L.L.C., et al. v. Yahoo! Inc., et al.,* Case No. CV-2005-52-1, Circuit Court of Miller County, Arkansas;
- *William Duffer, et al. v. TYCO Internation Ltd, et al.*, Case No. 4:07CV4070, United States District Court for the Western District of Arkansas, Texarkana Division;
- *Mystic Thompson, et al. v. Bayer Corp., et al.*, Case No. 4:07CV00017, United States District Court for the Eastern District of Arkansas, Western Division;
- *Bluetooth Headset Products Liability Litigation*, Case No. 2:07ML01822, United States District Court for the Central District of California; and
- *Terry Walker, et al. v. Rent-A-Center, Inc., et al.*, Case No. 5:02CV3, United States District Court for the Eastern District of Texas, Texarkana Division

4. "Class Counsel represents Mr. Bryant and the Class on a pure contingent-fee basis. Under the written contingent-fee agreement between Mr. Bryant and Class Counsel, the

latter is permitted to apply to the presiding court for an attorney fee to be evaluated either on a lodestar basis or calculated based on any common fund determined to exist. Mr. Bryant is not required to front any case expenses. Case expenses are also to be paid from any class recovery. Finally, Mr. Bryant, under the contingent-fee agreement, is not required to pay Class Counsel any fee or other form of reimbursement in the event he does not prevail in his class-action case. To date, Class Counsel have not received any compensation for labor in this matter and have not received reimbursement for any incurred expense.

5. "As described in the Settlement Agreement, ¶4.1, Class Counsel seeks a contingent-fee-based Attorney Fee Award of thirty-three percent (33%) of the benefit to the Settlement Class, which is the Allowed Claim of twelve million dollars ($12,000,000.00), or $4,000,000 cash, whichever is greater. As the Settlement Agreement procedure reflects, Class Counsel, first asks to be paid thirty-three percent (33%) of the Cash Settlement Fund. Following Parking Brake-repairs reimbursement payments to the Settlement Class Members, an analysis will be conducted to determine whether a Final Unclaimed Fund exists. If such a fund exists, then eligible Settlement Class Members not yet made whole will be paid additional monies, limited only by their being made completely whole. If, after these additional Final Unclaimed Fund payments, money still remains in the Final Unclaimed Fund, Class Counsel will then receive payment of the remaining Attorney Fee Award, capped at a total of four million dollars ($4,000,000).

6. "Based on a review of relevant case law, class action treatises, and other resources, the Attorney Fee Award, as proposed, is a commonly awarded fee and is an appropriate common-fund fee in this case. Moreover, in the event the Court wishes to perform a lodestar cross-check of the Attorney Fee Award, Class Counsel asserts that lawyers in their

respective firms have spent more than eight thousand (8,000) hours combined working on this matter since its inception in late 2004 - early 2005. On behalf of the members of Wyly~Rommel, PLLC, the total hours of attorney time for this litigation is 4,550.40 based upon the following calculations:

James C. Wyly	2,935.10 hours;
Sean F. Rommel	1,191.20 hours; and
Associates	424.10 hours.

The time reflected herein was time actually spent, in the exercise of reasonable judgment by the attorneys. The total lodestar amount for the attorneys' time based on the firm's hourly rates as submitted in other class action matters is $2,788,120 (without multiplier) and based upon the following calculations:

James C. Wyly	2,935.10 hours x $650[1] = $1,907,815
Sean F. Rommel	1,191.20 hours x $650[2] = $ 774,280
Associates	424.10 hours x $250 = $ 106,025

Even using a conservative lodestar calculation crosscheck, the fee to be requested is reasonable and should be approved at this stage. In addition, on behalf of the members of Wyly~Rommel, PLLC, a total of $120,754.25 has been incurred in unreimbursed expenses in connection with our work in this litigation. Among the incurred-expense items are: expert witness fees, travel expenses (hotel, air, and food), postage, facsimile, and Fed Ex charges, long-distance telephone charges, photocopy charges, electronic-research charges, mediation fees, and hourly fees paid to appellate counsel Cullen & Company and Kellog Huber. These expenses were incurred during

[1] Prior fee applications: *Smajlaj v. Brocade Communications, et al.*, Consolidated Case No. C05-02233, United States District Court for the Northern District of California, San Francisco Division; *In Re Salomon Analyst Metromedia Litigation*, Case No. 02CV7966, United States District Court for the Southern District of New York.

[2] *Id.*

the course of prosecuting the *Bryant* matter, are legitimate and were necessary, and were incurred based on the reasonable, professional judgment of Wyly~Rommel Class Counsel.

7. "To the extent the Court may need a general overview of what has occurred in the Bryant litigation during the past five (5) years, both to determine settlement fairness (procedural and substantive), and to determine whether Class Counsel's requested fee is appropriate, I will provide it in the next several paragraphs.

8. "Although this matter was originally filed in February 2005 before CAFA's[3] effective date, Mr. Bryant and Class Counsel were initially confronted with GMC removing on CAFA grounds to the United States District Court for the Western District of Arkansas. Following remand to the Arkansas State Court, which took approximately five (5) months to obtain, Class Counsel conducted extensive document discovery regarding the Parking Brake defect, retained and designated multiple engineer expert witnesses, and fully briefed the issue of class certification to the Arkansas State Court. Following a day-long certification hearing in September 2006, and entry of the Certification Order by the Arkansas State Court in January 2007, Class Counsel moved into a year-and-a-half long phase of successfully contesting appeals of the Certification Order by GMC both to the Arkansas Supreme Court and the United States Supreme Court.

9. "In October 2008, during the pendency of GMC's petition for writ of *certiorari*, Class Counsel and GMC participated in a two-day mediation in New Orleans, Louisiana. The mediation was conducted by the Hon. Edward Infante, an experienced class-action mediator. While unsuccessful in its entirety, the parties and Judge Infante were able to work through several substantive matters, including major elements of the Class reimbursement tier-structure and the notice plan provisions that are now, in large measure, contained in the Settlement

[3] Class Action Fairness Act of 2005. *See* 28 U.S.C. §§1332(d); 1453; and 1711-1715.

Agreement. A second mediation was conducted in San Francisco in early November 2008, again by Judge Infante. Despite the occurrence of these two mediations, no settlement was reached.

10. "In December 2008 and January 2009 Class Counsel drafted responsive briefing and attended a hearing regarding a motion for summary judgment filed by GMC. Further, because the Arkansas State Court was pressing to set the matter for trial on the merits in mid-to-late 2009, Class Counsel spent over four (4) different days in late 2008 and early 2009 deposing multiple employees of GMC at Renaissance Center, GMC's world headquarters in Detroit.

11. "During the spring of 2009, the Arkansas State Court appointed a new mediator, Mr. John Mercy of Texarkana, Texas. While Mr. Mercy entertained and relayed informal discussions between the parties in an attempt to hold settlement talks together, it was becoming increasingly evident to all involved that GMC was in dire financial straits, and that it would likely commence bankruptcy proceedings.

12. "Following the commencement of Debtors' bankruptcy on June 1, 2009, and the entry of the Court's Sale Order involving General Motors Company[4], Debtors removed the Arkansas Action to the Arkansas Bankruptcy Court. In response, Class Counsel retained bankruptcy counsel and moved for a remand to the Arkansas State Court under both mandatory and discretionary abstention principles. GMC then moved to transfer the removed action to this Court. On October 1, 2009, over stringent opposition from Mr. Bryant and the Class, the Arkansas Bankruptcy Court entered a transfer order. On October 14, 2009, the transfer to this Court occurred, resulting in the captioned adversary proceeding. Mr. Bryant's remand motion remains pending for resolution and an appeal of the transfer order has been filed with the United States District Court for the Western District of Arkansas.

[4] General Motors Company is referred to as "New GM" in the Settlement Agreement. *See* Settlement Agreement, ¶ 1.30.

13. "On November 27, 2009 Mr. Bryant filed the Bryant Proofs of Claim in this matter. That same date, Mr. Bryant filed the "Plaintiffs' Motion to Allow Plaintiffs to File a Class Proof of Claim and Alternative Motion, Subject to Motion for an Order Allowing Plaintiffs to File a Class Proof of Claim, For the Application of Federal Rule of Bankruptcy Procedure 7023 Pursuant to Federal Rule of Bankruptcy Procedure 9014." *See* Docket Entry No. 4560. Based upon the pre-petition Certification Order, Mr. Bryant, on the Class's behalf, asked this Court to allow Mr. Bryant and the Class to seek class-wide relief in Debtors' bankruptcy. *Id.*

14. "In September 2009, Class Counsel began to engage in discussions with Debtors' Counsel regarding the nature of Mr. Bryant's case, and whether there was interest in trying to resolve it. In January 2010, Class Counsel and Debtors' Counsel began more substantive and earnest settlement discussions and negotiations. Debtors, at that time, indicated that while they were interested in reaching a settlement, a strong argument existed to de-certify the Class in the context of challenging Mr. Bryant's Motion to Allow Plaintiffs to File a Class Proof of Claim. Class Counsel, of course, recognized and appreciated the time, costs, and risks associated with any de-certification fight, to include potential appeals that in probability would not conclude until well after Debtor's plan had been confirmed. In addition, we recognized that if Debtors were successful in their effort to de-certify, Class Members could be unable to obtain any Parking Brake reimbursements whatsoever, given potential enforcement of the Court's November 30, 2009 claims bar date. Accordingly, Class Counsel concluded the pursuit of a settlement was in the best interests of the Class.

15. "The settlement negotiations between Class Counsel and Debtors' Counsel initially dealt with the Class reimbursement components that had mostly been resolved in the pre-petition mediation sessions. As reflected in the Settlement Agreement, which now provides

a *pro rata* reimbursement to Settlement Class Members, the Class-reimbursement mechanism of any settlement has always been of paramount concern to Mr. Bryant and Class Counsel. While Class Counsel and Debtors' Counsel were, in general, able to resolve issues related to the Class-reimbursement, Debtors, in early 2010, indicated to Class Counsel that the only settlement consideration they could provide is an allowed, general unsecured claim in Debtors' bankruptcy proceedings. Due to this unique form of non-cash settlement consideration, Class Counsel began contemplating the creation of a cash settlement fund by assigning or selling any allowed claim received from Debtors to a third party, or *via* the receipt of plan distributions of New GM stock or other consideration in satisfaction of the allowed claim, and liquidation of same in the applicable markets, or otherwise.

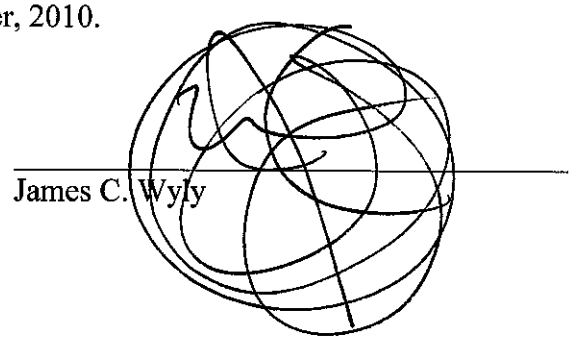
16. "To implement a settlement out of this contemplated cash settlement fund, it was thought Class Members would be reimbursed from the fund under the settlement-tier structure, and attorneys' fees, expenses, and an incentive award to Mr. Bryant would also be paid from the fund. To further implement the settlement, the costs of notice and administratively handling the settlement was also considered. Following lengthy conversations about all of these issues, Class Counsel and Debtors' Counsel eventually arrived at the Allowed Claim amount of twelve million dollars ($12,000,000), and the Cash Disbursement of one hundred thousand dollars ($100,000) to defray Administration Expenses and certain expenses associated with implementing the Plan of Notice.

17. "Now that the Settlement Agreement has been executed, Mr. Bryant and Class Counsel continue to believe it represents the best possible outcome for the Class in the circumstances, especially given the numerous difficulties presented by Debtors' bankruptcy.

18. "During the course of the *Bryant* litigation, Mr. Bryant has subjected his vehicle to multiple inspections and testing by different parties; has given his deposition; has attended a portion of the September 2006 class certification hearing in the Arkansas State Court; has participated in settlement talks, including those during mediation; and has maintained contact with Class Counsel and monitored the overall progress of this matter throughout the years of this litigation. Mr. Bryant deserves compensation both for his participation and service as Class representative and in light of the risks Mr. Bryant has incurred by becoming and continuing as a class-action litigant. The amount of ten thousand dollars ($10,000.00) awarded to Mr. Bryant is neither excessive nor unduly preferential.

19. "I, James C. Wyly, under penalty of perjury state that the foregoing is true and correct."

EXECUTED on this the 19th day of October, 2010.



James C. Wyly

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**
BOYD BRYANT, on behalf of himself and all others similarly situated, Plaintiffs,	:	**Adversary No. 09-00508 (REG)**
vs.	:	
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	
Defendant.	:	

DECLARATION OF RAKHEE V. PATEL IN SUPPORT OF CLASS ACTION PLAINTIFF BOYD BRYANT'S MOTION FOR, AND MEMORANDUM AND EVIDENCE IN SUPPORT OF, FINAL AWARD OF ATTORNEYS' FEES, INCENTIVE AWARD TO BOYD BRYANT, AND EXPENSES

STATE OF TEXAS §
§
COUNTY OF DALLAS §

1. "My name is Rakhee V. Patel. I am over the age of eighteen (18) years, of sound mind, and am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. "I am an attorney duly licensed in the State of Texas and a shareholder with the law firm of Pronske & Patel, P.C. ("PronskePatel"). PronskePatel serves as bankruptcy counsel

in the above-captioned bankruptcy cases for Plaintiff Boyd Bryant ("Mr. Bryant") and the class certified in the Arkansas State Court ("the Class," and together with Mr. Bryant, the "Plaintiffs").

3. "PronskePatel is well qualified to represent the Plaintiffs as bankruptcy counsel because PronskePatel possesses extensive knowledge and expertise in the areas of law relevant to the above captioned bankruptcy cases and adversary proceeding, including bankruptcy, reorganization, litigation and commercial issues."

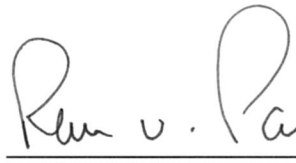
4. "PronskePatel represents the Plaintiffs on a contingency fee basis with PronskePatel advancing all costs incurred with PronskePatel's representation of the Plaintiffs."

5. "On behalf of PronskePatel, the total hours of attorney time for this litigation is 738.2 hours. The time reflected in these hourly numbers represents time actually spent on the *Bryant* matter, in the exercise of reasonable judgment by the attorneys."

6. "A total of $5,711.88 constitutes reimbursable expenses associated with the *Bryant* matter. Among the incurred-expense items are: court and discovery costs, travel and related expenses, courier service and delivery fees, electronic database research fees, long distance and facsimile charges, and postage and copying fees. These expenses were incurred during the course of prosecuting the *Bryant* matter, are legitimate and were necessary, and were incurred based on the reasonable, professional judgment of PronskePatel."

7. "I, Rakhee V. Patel, under penalty of perjury state that the foregoing is true and correct."

EXECUTED on this the 19th day of October, 2010.



Rakhee V. Patel