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

-----X

In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

-----X

MOTORS LIQUIDATION COMPANY AVOIDANCE
ACTION TRUST, by and through the Wilmington Trust
Company, solely in its capacity as Trust Administrator and
Trustee,

Adversary Proceeding

Plaintiff,

Case No. 09-00504 (REG)

against

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

-----X

**NOTICE OF HEARING ON MOTION OF
MOTORS LIQUIDATION COMPANY AVOIDANCE
ACTION TRUST FOR AN ORDER FURTHER EXTENDING
TIME TO SERVE SUMMONS AND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that on July 17, 2015, the Motors Liquidation Company Avoidance Action Trust (the “**Trust**”), by and through Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee, filed a motion (the “**Motion**”) for an order, pursuant to Rules 7004(a) and 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, further extending the Trust’s time to serve a summons and Amended Complaint (as defined in the Motion) in the above-captioned adversary proceeding.

PLEASE TAKE FURTHER NOTICE that a hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004 on **August 13, 2015 at 9:45 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to this Motion must be made in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court’s filing system, and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF), with a hard copy delivered directly to Chambers, in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and on Dickstein Shapiro LLP, attorneys for the Trust, 1633 Broadway, New York, New York, 10019-6708 (Attn: Eric B. Fisher, Esq. and Evan J. Zucker, Esq.), so as to be received no later than **August 6, 2015 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, the Trust may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be signed and entered with no further notice or opportunity to be heard.

Dated: New York, New York
July 17, 2015

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**MOTION OF MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST FOR AN ORDER FURTHER
EXTENDING TIME TO SERVE SUMMONS AND AMENDED COMPLAINT**

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

Pursuant to Rules 7004(a) and 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Motors Liquidation Company Avoidance Action Trust (the “**Trust**”)¹ files this motion (the “**Motion**”), seeking entry of an Order, in the form attached hereto as Exhibit A (the “**Order**”), extending until September 30, 2015 (the “**Service Deadline**”) the time for service of a summons and the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* (the “**Amended Complaint**”) [Adv. Pro. Dkt. No. 91] upon certain defendants (the “**Non-JPM Transferees**”) other than JPMorgan Chase Bank, N.A. (“**JPMorgan**” and together with the Non-JPM Transferees, the “**Defendants**”).

PRELIMINARY STATEMENT

1. This action seeks the return of approximately \$1.5 billion in postpetition and preferential transfers from more than 500 defendants. By this Motion, the Trust seeks an approximately two-month extension of time to complete service upon a small number of domestic defendants as to which service may not have been accomplished. There is good cause for this request and no party will be prejudiced.

2. Since the return of this action to this Court upon remand from the United States Court of Appeals for the Second Circuit, the Trust has diligently attempted to serve a summons and the Amended Complaint on all of the Defendants. Before attempting service, the Trust used

¹ On March 29, 2011, the Court confirmed the Debtors’ Second Amended Joint Chapter 11 Plan dated as of March 18, 2011 [Bankr. Dkt. No. 9836] (as confirmed, the “**Plan**”). In connection with the Plan, the Trust was established to pursue this action. As a result, the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “**Committee**”) transferred its interest in this action to the Trust.

various research tools to identify service addresses for each Defendant. Based upon this research, between May 27, 2015 and June 8, 2015, the Trust sent the summons and Amended Complaint to 541 Defendants at more than 1300 addresses.²

3. A number of those mailed packages were returned as undelivered. As to 16 defendants, it appears that service was not accomplished upon any address the Trust had identified for those Defendants. With regard to another 27 Defendants, the returned mail raised questions as to whether or not service was accomplished. On July 9, 2015, the Trust served these 43 Defendants again based upon additional research into the addresses for these Defendants.

4. In sum, the Trust has been diligent in attempting to complete service upon all Defendants, a factor that strongly supports a finding of good cause for the requested extension. Further, no party will be prejudiced by this extension of time to complete service, another factor weighing in favor of a finding of good cause.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11*, dated July 10, 1984 (Ward, Acting C.J.), as amended by *Standing Order M-431*, filed on February 1, 2012 (Preska, C.J.). This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(A), (B) and (O). Venue is proper in this court pursuant to 28 U.S.C. § 1409(a), as this adversary proceeding arises under title 11 of the United States Code (the “**Bankruptcy Code**”) or arises under or relates to a case under the Bankruptcy Code which is pending in this district.

² Where the Trust was able to identify multiple potential addresses for service of a defendant, the Trust sent the summons and Amended Complaint to all known addresses.

BACKGROUND

I. The Filing And Service Of The Complaint Upon JPMorgan

6. On July 31, 2009, the Committee commenced this adversary proceeding by filing a complaint (the “**Complaint**”) against the Defendants seeking the return of certain post-petition and preferential transfers made in connection with their interest in a certain term loan, dated as of November 29, 2006 (the “**Term Loan**”). The Complaint, along with the summons, was timely served upon JPMorgan, which was both the administrative agent on the Term Loan and a lender.

7. Thereafter, this Court entered orders extending the Trust’s time to serve the Non-JPM Transferees. [Adv. Pro. Dkt. Nos. 10, 17 and 82]. By agreement of the parties and with this Court’s approval, these extensions allowed JPMorgan and the Committee to litigate to resolution the question of whether the October 2008 filing of a UCC-3 termination statement related to the Term Loan collateral was legally effective (the “**UCC Issue**”) before litigating other issues, such as collateral valuation. Judicial efficiency favored this bifurcated approach because resolution of the UCC Issue in favor of JPMorgan would have ended the action without the need to litigate any of the remaining issues and without the need to involve the hundreds of Non-JPM Transferees in the action. *See* Tr. of Oct. 6, 2009 Hr’g, at 10-12.

8. In July 2010, the Committee and JPMorgan filed cross-motions for summary-judgment to resolve the UCC Issue. [Adv. Pro. Dkt. Nos. 24 and 28]. On March 1, 2013, this Court entered its *Decision on Cross-Motions for Summary Judgment* [Adv. Pro. Dkt. No. 71], a *Judgment* [Adv. Pro. Dkt. No. 73] and an *Order on Cross Motions for Summary Judgment* [Adv. Pro. Dkt. No. 72], denying the Committee’s motion for partial summary judgment and granting JPMorgan’s cross-motion for summary judgment. The Trust successfully petitioned for a direct appeal to the Second Circuit and pursued its appeal from this Court’s judgment.

9. On January 21, 2015, the Second Circuit reversed this Court's judgment and directed entry of partial summary judgment in favor of the Trust. [2d Cir. Dkt. Nos. 139 and 145]. On April 20, 2015, the Second Circuit's mandate issued [2d Cir. Dkt. No. 183], and this action was returned to this Court for further proceedings.

II. The Filing And Service Of The Amended Complaint On The Non-JPM Transferees

10. On May 19, 2015 the Court entered a stipulated-to scheduling order (the "**Scheduling Order**") that, among other provisions, authorized the Trust to file its amended complaint and extended the Trust's deadline to serve the Non-JPM Transferees until 60 days following the filing of the amended complaint. [Adv. Pro. Dkt. No. 90].

11. On May 20, 2015 the Trust filed its Amended Complaint. Accordingly, under the Scheduling Order, the Trust's current deadline to serve the Amended Complaint is July 20, 2015.

12. On May 26, 2015 the Court issued a summons for service, along with the Amended Complaint, upon the Non-JPM Transferees. [Adv. Pro. Dkt. No. 92].

13. Between May 27, 2015, and June 8, 2015, the Trust sent the summons, Amended Complaint and Scheduling Order to 541 out of the 544 Defendants. [See Adv. Pro. Dkt. Nos. 94 and 95]. Thereafter, the Trust received returned mail with respect to some of the addresses for the Non-JPM Transferees, indicating that the Trust did not accomplish service as to 16 Non-JPM Transferees and raising questions about whether service was accomplished as to 27 others.

14. On July 9, 2015, at the request of the Trust, the Court issued a new summons for service, along with the Amended Complaint, upon the Non-JPM Transferees. [Adv. Pro. Dkt. No. 115]. The Trust then re-sent the new summons and the other documents for service to the 43 Non-JPM Transferees as to which service is in doubt. In this second attempt at service, the Trust served the 43 Non-JPM Transferees at alternative addresses identified as the result of further research. [Adv. Pro. Dkt. No. 117].

15. The Trust continues to research addresses for those Defendants as to which further attempts at service may be required, in order to complete service on all domestic Non-JPM Transferees.

RELIEF REQUESTED

16. In order to complete service on the Non-JPM Transferees, as to which service may not yet have been completed, the Trust seeks entry of the Order extending the time within which to serve a summons and the Amended Complaint on the Non-JPM Transferees, located within the United States, to and including the Service Deadline,³ without prejudice to the Trust's right to seek a further extension in the future.

ARGUMENT

I. There Is Good Cause For Extending The Service Deadline

17. Rule 4(m) of the Federal Rules of Civil Procedure, made applicable here by Rule 7004(a)(1) of the Bankruptcy Rules, provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, *the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).*

³ The Trust is proceeding with service of a summons and the Amended Complaint upon the Non-JPM Transferees that are located abroad in accordance with Rule 4(f) of the Federal Rules of Civil Procedure. Rule 4(m) of the Federal Rules of Civil Procedure exempts service on a foreign defendant from the 120-day service period deadline. *See, e.g., Picard v. Cohmad Sec. Corp. (In re Bernard Madoff Inv. Sec. LLC)*, 418 B.R. 75, 83 (Bankr. S.D.N.Y. 2009) (Rule 4(m)'s 120 day time limitation "'does not apply to service in a foreign country under Rule 4(f).'"); *Savage & Assocs., P.C. v. Banda 26, S.A. (In re Teligent Inc.)*, Case No. 01-12974 (SMB), Adv. Pro. Case No. 03-3577, 2004 WL 724945, at *3 (Bankr. S.D.N.Y. Mar. 30, 2004) (same). Pursuant to Rule 7012(a) of the Bankruptcy Rules, the Court prescribes "the time for service of the answer when service of a complaint is made . . . upon a party in a foreign country." Fed. R. Bankr. P. 7012(a). In this adversary proceeding, no deadline has been fixed for the service upon foreign defendants. Thus, the relief sought in this motion does not affect the Trust's time to effectuate service upon the Non-JPM Transferees located abroad.

Fed. R. Civ. P. 4(m) (emphasis added); *see also* Fed. R. Bankr. P. 7004(a).

18. Thus, upon a showing of good cause, the time for service must be extended for an appropriate period. Fed. R. Civ. P. 4(m). In determining whether the plaintiff has demonstrated good cause, courts consider “(1) the plaintiff’s reasonable efforts to effect service, and (2) the prejudice to the defendant[s] from the delay.” *U.S. Fid. & Guar. Co. v. Appelbaum*, No. 06 CIV. 15537 (CLB), 2007 WL 1484023, at *1 (S.D.N.Y. May 18, 2007) (citing *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Barney Assocs.*, 130 F.R.D. 291, 293 (S.D.N.Y. 1990)); *Scott v. Ramson (In re Ramson)*, Bankr. Case No. 09-17073 (MG), Adv. Pro. No. 10-02791 (MG), 2010 WL 3219732, at *2 (Bankr. S.D.N.Y. Aug. 11, 2010); *see also* *AIG Managed Mkt. Neutral Fund v. Askin Capital Mgmt., L.P.*, 197 F.R.D. 104, 111 (S.D.N.Y. 2000) (noting that defendant’s “actual notice that an action was filed against it militates against a finding of prejudice”). Courts consider “whether ‘the plaintiff was diligent in making reasonable efforts to effect service, including but not limited to whether plaintiff moved’” for an extension of time in which to effectuate service. *AIG Managed Mkt. Neutral Fund*, 197 F.R.D. at 108; *see also* *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 130 F.R.D. at 293 (moving “for an enlargement of time weighs in favor of a showing of diligence.”); *In re Motel 6 Sec. Litig.*, Nos. 93 CIV 2183 (JFK), 93 CIV 2866 (JFK), 1995 WL 431326, at *2 (S.D.N.Y. July 20, 1995).

19. Courts have wide latitude in deciding when to grant extensions of time to serve and may do so even absent a showing of good cause. *See Mejia v. Castle Hotel, Inc.*, 164 F.R.D. 343, 345 (S.D.N.Y. 1996) (although a showing of good cause mandates extension of the service period, courts have discretion to extend the service period in the absence of such showing); *AIG Managed Mkt. Neutral Fund*, 197 F.R.D. at 112 (S.D.N.Y. 2000) (finding that “discretionary extension is warranted” despite lack of good cause).

20. Rule 9006(b)(1) of the Bankruptcy Rules also provides the Court with discretion to enlarge the time to effect service under the Bankruptcy Rules:

[W]hen an act is required or allowed to be done at or within a specified period by these rules . . . the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed. . . .

Fed. R. Bankr. P. 9006(b)(1).

21. The Trust needs additional time to complete service of process upon all of the Non-JPM Transferees. As part of its efforts to serve all Defendants, the Trust has painstakingly researched and compiled addresses for the 541 Non-JPM Transferees, as well as the names of the corresponding officers or agents for each of those defendants. As part of this effort, the Trust has (1) asked counsel to JPMorgan for a list of addresses for all entities that received payments under the Term Loan, (2) reviewed documents produced in the course of discovery, and (3) extensively researched publicly available information.

22. In addition to researching the location and names of the corresponding officers or agents for each of the Non-JPM Transferees, the Trust conducted further research to determine, among other things, the proper name for each of the Non-JPM Transferees, their respective operating status, and as applicable, their respective successors, assignees, transferees or affiliates.

23. After sending a summons and the Amended Complaint to the Non-JPM Transferees on May 27, 2015 and June 8, 2015, the Trust received returned mail with respect to some of the addresses identified for the Non-JPM Transferees, indicating that service likely had not been effected as to approximately 16 Non-JPM Transferees and raising questions about service on another that 27 of the Non-JPM Transferees. In response to this returned mail, the

Trust further researched the location of these Non-JPM Transferees and, on July 9, 2015, again attempted to serve these 43 Non-JPM Transferees.

24. The Trust is continuing its efforts to research the location of each of the Non-JPM Transferees to confirm that service has been effectuated upon the Defendants and, where necessary, to make further attempts at service upon Defendants at alternative addresses. The Trust requests that the time to serve a summons and Amended Complaint be extended to and including September 30, 2015 to complete its research and effectuate service on all of the Non-JPM Transferees.

25. No party will be prejudiced by the granting of the relief requested in this Motion.

26. Accordingly, there is good cause for extending the Trust's time to serve a summons and the Amended Complaint upon the Non-JPM Transferees.

NOTICE

27. The Trust has served notice of this Motion on JPMorgan and, using the best information currently available to it, the Non-JPM Transferees. The Trust respectfully submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Trust respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A, granting this Motion and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
July 17, 2015

DICKSTEIN SHAPIRO LLP

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Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
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Defendants.

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**ORDER FURTHER EXTENDING TIME
TO SERVE SUMMONS AND AMENDED COMPLAINT**

Upon the filing of a motion (the “**Motion**”),¹ dated July 17, 2015, by the Motors Liquidation Company Avoidance Action Trust (the “**Trust**”), by and through Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee, for an order, pursuant to Rules 7004(a) and 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), extending the time for service of a summons and the Amended Complaint in the above-captioned adversary proceeding upon the defendants (the “**Non-JPM Transferees**”), other than JPMorgan Chase Bank, N.A., located within the United States, to and including September 30, 2015; and due and proper notice of the Motion having been provided, and it appearing that no

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED that, pursuant to Rule 9006(b) of the Bankruptcy Rules, the time by which the Trust shall serve a summons and the Amended Complaint upon the Non-JPM Transferees that are located in the United States is extended to and including September 30, 2015 (the “**Service Deadline**”), without prejudice to the right of the Trust to seek additional extensions thereof; and it is further

ORDERED that, the time by which the Trust shall effectuate service of a summons and the Amended Complaint upon the Non-JPM Transferees that are located abroad in accordance with Rule 4(f) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7004 of the Bankruptcy Rules, is unaffected by the Service Deadline; and it is further

ORDERED that, the Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
August , 2015

Hon. Robert E. Gerber
United States Bankruptcy Judge