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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 In re: : Chapter 11
 MOTORS LIQUIDATION COMPANY, *et al.*, : Case No.: 09-50026 (REG)
 f/k/a General Motors Corp., *et al.*, :
 :
 Debtors. : (Jointly Administered)
 -----X

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW
 THE REFERENCE OF (I) MOTION BY GENERAL MOTORS LLC TO
 ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1,
 2015 AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY
 DESIGNATED COUNSEL, AND (II) THE IGNITION SWITCH
 PLAINTIFFS', CERTAIN NON-IGNITION SWITCH PLAINTIFFS' AND THE
 STATES' OBJECTION TO MOTION BY GENERAL MOTORS LLC TO ENFORCE
 THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST
THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL**

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The Ignition Switch Plaintiffs,¹ certain Non-Ignition Switch Plaintiffs,² the State of Arizona *ex rel.* Mark Brnovich, the Attorney General, and the People of the State of California, by and through Orange County District Attorney Tony Rackauckas, through the undersigned counsel, respectfully submit this *Memorandum of Law* in support of the *Motion to Withdraw the Reference for the (I) Motion By General Motors LLC To Enforce The Stay Imposed By The Judgment, Dated June 1, 2015, Against The States And Plaintiffs Represented By Designated Counsel and (II) The Ignition Switch Plaintiffs', Certain Non-Ignition Switch Plaintiffs' and the States' Objection to Motion to Withdraw the Reference of Motion By General Motors LLC To Enforce The Stay Imposed By The Judgment, Dated June 1, 2015, Against The States And Plaintiffs Represented By Designated Counsel* (the "Motion"). In support of the Motion, the Plaintiffs and the States respectfully state as follows:

PRELIMINARY STATEMENT

For the reasons set forth in the Objection,³ New GM's Motion to Compel,⁴ which seeks an order voiding the Plaintiffs' and the States' Motions to Withdraw the Reference,⁵ and

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Decision on Motion to Enforce Sale Order, In re Motors Liquidation Co.*, 529 B.R. 510 (Bankr. S.D.N.Y. 2015) (the "Decision") or in the *Judgment*, dated June 1, 2015 [ECF No. 13177] (the "Judgment"). The term "Ignition Switch Plaintiffs" shall mean those plaintiffs who own or lease a vehicle with the Ignition Switch Defect involved in the February and March 2014 Recalls (Recall No. 14-V-047). Thus, the term Ignition Switch Plaintiffs as used in this Memorandum of Law includes only Plaintiffs who own or lease those vehicles, and does not include those Plaintiffs who own or lease other vehicles with defective ignition switches (made by both Old and New GM) that were recalled in June and July of 2014. Except where otherwise indicated, references to "ECF No. _" are to docket entries in the Bankruptcy Court proceedings: *In re Motors Liquidation Co.*, Bankr. Case No. 09-50026 (REF).

² The term "Non-Ignition Switch Plaintiffs" shall mean all plaintiffs that have commenced a lawsuit against New GM asserting economic losses based on or arising from an alleged defect, other than the Ignition Switch in the vehicles subject to Recall No. 14-V-047, or based on or arising from economic losses and diminution in value of their GM-branded vehicles based on the Ignition Switch Defect or other alleged defects in Old and New GM vehicles. The Non-Ignition Switch Plaintiffs together with the Ignition Switch Plaintiffs are defined herein as the "Plaintiffs."

³ See *The Ignition Switch Plaintiffs', Certain Non-Ignition Switch Plaintiffs' and the States' Objection to Motion to Withdraw the Reference of (I) Motion By General Motors LLC To Enforce The Stay Imposed By The Judgment, Dated June 1, 2015, Against The States And Plaintiffs Represented By Designated Counsel*, dated August 5, 2015, filed contemporaneously herewith (the "Objection").

blocking their fundamental right to access an Article III Court, amounts to nothing more than a nuisance pleading lacking in merit. While Plaintiffs and the States believe the Bankruptcy Court would deny the Motion to Compel, case efficiency is better served by withdrawal of the reference of this contested matter so the District Court may decide the Motion to Compel in tandem with the Motions to Withdraw the Reference, fully briefed and pending before it.

As set forth below, withdrawal of the reference is appropriate here under each of the Orion Pictures factors and withdrawal of the reference promotes judicial economy by procedurally consolidating all proceedings with respect to the Omnibus Judgment Pleading and “No Strike” Pleadings in front of the District Court.⁶ The non-core nature of this dispute further supports withdrawal. By the Motion to Compel, New GM seeks an order blocking Plaintiffs’ and the States’ access to an Article III Court under a motion to withdraw the reference—a customary procedural vehicle for such access. As recently recognized by the Supreme Court in Wellness, bankruptcy courts hear matters solely on a district court’s reference, and accordingly,

⁴ See Motion By General Motors LLC To Enforce The Stay Imposed By The Judgment, Dated June 1, 2015, Against The States And Plaintiffs Represented By Designated Counsel, dated July 10, 2015 [ECF No. 13289] (the “Motion to Compel”).

⁵ See Motion to Withdraw the Reference for the Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ (I) Objection Pleading with Regard to the Second Amended Consolidated Complaint and (II) GUC Trust Asset Pleading, dated June 24, 2015 [ECF No. 13250] and the accompanying Memorandum of Law in Support of Motion to Withdraw the Reference for the Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ (I) Objection Pleading with Regard to the Second Amended Consolidated Complaint and (II) GUC Trust Asset Pleading, dated June 24, 2015 [ECF No. 13251] (collectively, the “Plaintiffs’ Motion to Withdraw the Reference”); Motion to Withdraw the Reference with Regard to No Strike Pleadings, dated June 16, 2015 [ECF No. 13213] and the accompanying Memorandum of Law in Support of Motion to Withdraw the Reference with Regard to No Strike Pleadings, dated June 16, 2015 [ECF No. 13214] (collectively, the “States’ Motion to Withdraw the Reference,” and, together with the Plaintiffs’ Motion to Withdraw the Reference, the “Motions to Withdraw the Reference”).

⁶ See People of the State of California’s “No Strike” Pleading, dated June 16, 2015 [ECF No. 13210]; State of Arizona’s “No Strike” Pleading, dated June 16, 2015 [ECF No. 13211] (collectively, the ““No Strike” Pleadings”); The Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ (I) Objection Pleading with Regard to the Second Amended Consolidated Complaint and (II) GUC Trust Asset Pleading, dated June 24, 2015 [ECF No. 13247] (the “Omnibus Judgment Pleading”).

the District Court has the inherent ability to withdraw the reference *sua sponte* and the Plaintiffs and the States have the absolute right to seek withdrawal under 28 U.S.C. § 157(d).⁷ The issue here—whether Plaintiffs and the States can access the District Court under the Motions to Withdraw the Reference—can have no possible impact on the administration of the bankruptcy estate of Old GM and thus cannot be “core.” Moreover, withdrawing the reference will not promote forum shopping or prevent the uniform administration of bankruptcy law because Plaintiffs and the States are seeking the most efficient forum for the resolution of a dispute unique to this case that does not raise any complex issues of bankruptcy law.

Accordingly, the Plaintiffs and the States respectfully request that the District Court withdraw the reference to the Bankruptcy Court of the Motion to Compel and Objection.

BACKGROUND

The bulk of the factual background underlying the Motion is set forth in the Omnibus Judgment Pleading and “No Strike” Pleadings, and for the sake of brevity, not restated herein.

On June 16, 2015, the States filed the “No Strike” Pleadings and the States’ Motion to Withdraw the Reference.

On June 24, 2015, the Plaintiffs filed the Omnibus Judgment Pleading and the Plaintiffs’ Motion to Withdraw the Reference.

On July 10, 2015, New GM filed its Opposition to the “No Strike” Pleadings.⁸

On July 23, 2015, New GM filed its Oppositions to the Omnibus Judgment Pleading⁹ and the Motions to Withdraw the Reference.¹⁰

⁷ See *Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1945 (2015); 28 U.S.C. § 157(d); Fed. R. Bankr. P. 5011; Local Bankr. R. 5011-1.

⁸ See *Omnibus Response by General Motors LLC to the No Strike Pleadings Filed by the States of Arizona and California*, dated July 10, 2015 [ECF No. 13286].

On July 30, 2015, the Plaintiffs and the States filed their Replies in support of the Motion to Withdraw the Reference.¹¹ The Motions to Withdraw the Reference are fully briefed in front of the District Court with any hearing date to be determined.

On July 10, 2015, New GM filed the Motion to Compel with the Bankruptcy Court, asserting that the Motions to Withdraw the Reference are prohibited by the Judgment because any actions taken outside of the express procedures set forth in the Judgment are allegedly stayed or void. See Motion to Compel ¶ 26.

STATEMENT OF JURISDICTION

28 U.S.C. § 1334(b) vests in the district courts “original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334.

Under 28 U.S.C. § 157(a), a district court may refer actions within its bankruptcy jurisdiction to the bankruptcy courts within its district. See 28 U.S.C. § 157(a). Under the *Amended Standing Order of Reference* signed by Acting Chief Judge Loretta A. Preska, dated

⁹ See *Response by General Motors LLC to the Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ Objection Pleading with Regard to The Second Amended Consolidated Complaint*, dated July 23, 2015 [ECF No. 13316].

¹⁰ See *Memorandum of Law by General Motors LLC in Opposition to Motion to Withdraw the Reference for the Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ (I) Objection Pleading with Regard to the Second Amended Consolidated Complaint and (II) GUC Trust Asset Pleading*, Case No. 1:15-cv-05056-JMF (S.D.N.Y. July 23, 2015) [ECF No. 7] (the “Opposition to the Plaintiffs’ Motion to Withdraw the Reference”); *Memorandum of Law by General Motors LLC in Opposition to Motion to Withdraw the Reference with Regard to No Strike Pleadings Filed by the States of California and Arizona*, Case No. 1:15-cv-04685-JMF (S.D.N.Y. July 23, 2015) [ECF No. 5] (the “Opposition to the States’ Motions to Withdraw the Reference”).

¹¹ See *Reply in Support of Motion to Withdraw the Reference for the Ignition Switch Plaintiffs’ No Strike Pleading with Regard to the Second Amended Consolidated Complaint; and the Non-Ignition Switch Plaintiffs’ (I) Objection Pleading with Regard to the Second Amended Consolidated Complaint and (II) GUC Trust Asset Pleading*, Case No. 1:15-cv-05056-JMF (S.D.N.Y. July 30, 2015) [ECF No. 11]; *Reply in Support of Motion to Withdraw the Reference with Regard to No Strike Pleadings Filed by the States of California and Arizona*, Case No. 1:15-cv-04685-JMF (S.D.N.Y. July 23, 2015) [ECF No. 7].

January 31, 2012, actions within the District Court's bankruptcy jurisdiction are automatically referred to the Bankruptcy Court for the Southern District of New York.

28 U.S.C. § 157(d) permits a district court to withdraw cases or proceedings from the bankruptcy court "for cause shown," and mandates withdrawal of the reference when "resolution of the proceeding requires consideration of both [the Bankruptcy Code] and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d).

ARGUMENT

I. Legal Standard For Withdrawal Of The Reference.

The District Court has broad authority to withdraw the automatic reference to the Bankruptcy Court of any proceeding "in whole or in part . . . on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d).¹²

Timeliness is a fact-specific inquiry that has been interpreted to mean "as soon as possible after the moving party has notice of the grounds for withdrawing the reference." See Secs. Inv. Protection Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff), 454 B.R. 307, 316-17 (S.D.N.Y. 2011). The Plaintiffs and the States have timely moved to withdraw the reference by filing the Motion within the deadline for responding to the Motion to Compel.

Whether "cause" exists is determined by weighing various factors, known as the Orion Pictures factors, including: (1) whether the bankruptcy court has final power to adjudicate the matter, including the core or non-core nature of the claim; (2) what will promote the efficient use of judicial resources; (3) what will prevent delay and costs to the parties; (4) whether withdrawal

¹² 28 U.S.C. § 157(d) requires withdrawal of the reference when "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." The Plaintiffs and the States do not assert that withdrawal of the reference for the Motion to Compel and Objection is mandatory under 28 U.S.C. § 157(d).

of the reference will interfere with the uniformity of bankruptcy administration; (5) what will prevent forum shopping; and (6) other related factors. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1101 (2d Cir. 1993); ResCap Liquidating Trust v. PHH Mortg. Corp., 518 B.R. 259, 263, 266 (S.D.N.Y. 2014).

These factors all favor withdrawal of the Motion to Compel and the Objection, as set forth below.

II. The District Court Should Exercise Its Discretion To Withdraw The Reference For The Motion To Compel And The Objection.

A. Withdrawal Of The Reference For The Motion To Compel And The Objection Promotes The Efficient Use Of Judicial Resources And Minimizes Cost And Delay.

Good cause to withdraw the reference exists when it leads to the efficient use of judicial resources. See Grant Thornton Int'l v. Parmalat Finanziaria S.p.A. (In re Parmalat Finanziaria S.p.A.), 320 B.R. 46, 50 (S.D.N.Y. 2005) (holding that the “higher interest . . . of judicial efficiency” justified withdrawal of core proceeding under predecessor statute to Chapter 15). Issues of efficiency strongly favor withdrawal where, as here, the proceeding to be withdrawn shares common issues of fact or law with actions pending in the District Court. See Wedtech Corp. v. London (In re Wedtech Corp.), 81 B.R. 237, 239 (S.D.N.Y. 1987) (finding “good cause” to withdraw in the interests of fairness and judicial economy based on the “overlapping of facts, transactions, and issues” with on-going District Court actions).

The Motions to Withdraw the Reference have been fully briefed and are before the District Court. In its Oppositions to the Motions to Withdraw the Reference, New GM reasserts its argument in the Motion to Compel regarding the impropriety of the Motions to Withdraw the

Reference based on an alleged stay violation.¹³ It is more efficient for the District Court to decide the Motions to Withdraw the Reference and the Motion to Compel as each raise the same issue in opposition by New GM. Further, withdrawal of the reference of the Motion to Compel and Objection promotes efficiencies given the strong likelihood of an appeal of any ruling by the Bankruptcy Court on the Motion to Compel. See ResCap Liquidating Trust, 518 B.R. at 265-66 (finding that withdrawal of the reference was warranted to, *inter alia*, prevent duplicative work).

Accordingly, this Orion Pictures factor favors withdrawal of the Motion to Compel and Objection.

B. Resolution Of The Motion To Compel And The Objection Can Have No Possible Effect On The Administration Of Old GM's Bankruptcy Estate.

Under Orion Pictures, whether a claim is “core” or “non-core” under title 28 and thus whether the bankruptcy court has final power to adjudicate the matter is often determinative of permissive withdrawal since it is generally most efficient to proceed before the district court in the first instance if the bankruptcy court cannot issue a final determination.¹⁴ See Orion Pictures, 4 F.3d at 1101 (noting that when a proceeding is non-core, “unnecessary costs could be avoided by a single proceeding” before the District Court).

The Motion to Compel seeks to prevent Plaintiffs and the States (without their consent) from accessing an Article III Court. New GM fails to provide any statutory basis for, or case law in support of, such an extraordinary restriction of Plaintiffs’ and the States’ fundamental right to

¹³ See Opposition to the Plaintiffs’ Motion to Withdraw the Reference at 12-13; Opposition to the States’ Motion to Withdraw the Reference at 13.

¹⁴ Bankruptcy judges may enter final judgment on non-core issues only where all parties have consented to final determination. See 28 U.S.C. § 157(c)(2); see also Wellness Int’l Network, 135 S. Ct. at 1944-49 (finding that bankruptcy courts have authority to finally adjudicate claims for which litigants are constitutionally entitled to an Article III adjudication upon “knowing and voluntary” consent). Absent consent, bankruptcy judges are limited to issuing proposed findings of fact and conclusions of law to the District Court, and any final order or judgment must be entered by the District Court. See 28 U.S.C. § 157(c)(1). Upon timely and specific objection of any party, the District Court shall review proposed findings of fact and conclusions of law *de novo*. See id.; see also Fed. R. Bankr. P. 9033.

seek to withdraw the reference. This absence of authority is unsurprising because, as recently recognized by the Supreme Court in Wellness, bankruptcy courts hear matters solely on a district court's reference, and the District Court has the inherent ability to withdraw the reference *sua sponte* and the Plaintiffs and the States have the absolute right to seek withdrawal under 28 U.S.C. § 157(d).¹⁵ Determining whether the Plaintiffs' and the States' access to the District Court through a customary procedural device could be curtailed under the Motion to Compel does not require the interpretation of the Sale Order, rely on bankruptcy law or invoke rights under the Bankruptcy Code. The resolution of this dispute will not restructure debtor/creditor rights or have any impact on the Old GM bankruptcy. The Motion to Compel is, accordingly, not "unique" to bankruptcy and is a non-core matter under 28 U.S.C. § 157(c)(1). Cf. Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.), 419 F.3d 83, 97 (2d Cir. 2005). Indeed, none of the statutorily identified "core" proceedings under 28 U.S.C. § 157(b)(2) are present here. See 28 U.S.C. § 157(b)(2).¹⁶

¹⁵ See Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1945 (2015) ("Just as [t]he 'ultimate decision' whether to invoke [a] magistrate [judge]'s assistance is made by the district court, bankruptcy courts hear matters solely on a district court's reference, which the district court may withdraw *sua sponte* or at the request of a party, [under 28 U.S.C.] § 157(d). [S]eparation of powers concerns are diminished when, as here, the decision to invoke [a non-Article III] forum is left entirely to the parties and the power of the federal judiciary to take jurisdiction remains in place.") (internal quotation marks and citations omitted); 28 U.S.C. § 157(d); Fed. R. Bankr. P. 5011; Local Bankr. R. 5011-1.

¹⁶ "Core proceedings include, but are not limited to – (A) matters concerning the administration of the estate; (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purpose of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11; (C) counterclaims by the estate against persons filing claims against the estate; (D) orders in respect to obtaining credit; (E) orders to turn over property of the estate; (F) proceedings to determine, avoid, or recover preferences; (G) motions to terminate, annul, or modify the automatic stay; (H) proceedings to determine, avoid, or recover fraudulent conveyances; (I) determinations as to the dischargeability of particular debts; (J) objections to discharges; (K) determinations of the validity, extent, or priority of liens; (L) confirmations of plans; (M) orders approving the use or lease of property, including the use of cash collateral; (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and (P) recognition of foreign proceedings and other matters under chapter 15 of title 11." 28 U.S.C. § 157(b)(2).

New GM's strained efforts to read into the Judgment a non-existent prohibition on motions to withdraw the reference do not invoke a core bankruptcy function or otherwise transform this dispute into a core matter. See Residential Funding Co., LLC v. Greenpoint Mortg. Funding, Inc. (In re Residential Cap. LLC), 519 B.R. 593, 601 (S.D.N.Y. 2014) (noting that the bankruptcy court's retention of jurisdiction to interpret and enforce its own orders is irrelevant to the core/non-core determination).

Finally, the Plaintiffs and the States have not and will not consent to the Bankruptcy Court's final adjudication of this non-core dispute. See Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1948 (2015) ("litigant's consent—whether express or implied—must still be knowing and voluntary" and is determined by inquiring into "whether 'the litigant or counsel were made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case' before the non-Article III adjudicator") (citation omitted).

Accordingly, this Orion Pictures factor favors withdrawal of the reference.

C. Withdrawal Of The Reference Will Not Interfere With The Uniform Administration Of Bankruptcy Law.

In determining whether withdrawal of the reference is appropriate, courts consider whether withdrawal will undermine the uniform administration of bankruptcy law. See Orion Pictures, 4 F.3d at 1101. This factor is not implicated here because the Motion to Compel and Objection raise no complex issues of bankruptcy law. See ResCap Liquidating Trust, 518 B.R. at 266-67 (withdrawing the reference because, *inter alia*, the claims did not involve "complicated questions of bankruptcy law"). The Motion to Compel alleges that the Motions to Withdraw the Reference must be void. The inquiry requires consideration of the District Court's right to withdraw the reference, the Plaintiffs' and the States' right to seek withdrawal of the reference

under 28 U.S.C. § 157(d) and a common sense reading of the Judgment—issues that do not raise complex or novel issues of bankruptcy law.

While some courts consider the impact on the uniform administration of a particular bankruptcy proceeding under this factor, such concerns are irrelevant here because resolution of the Plaintiffs’ and the States’ right to seek withdrawal of the reference has no impact on the available assets of the bankruptcy estate. See Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP, 462 B.R. 457, 473 (S.D.N.Y. 2011) (resolution of claims that will not deplete the bankruptcy estate, “ha[s] no impact that would require uniform, coordinated adjudication before the Bankruptcy Court”).

Accordingly, withdrawal of the reference for the Motion to Compel and Objection is appropriate under this Orion Pictures factor.

D. The Plaintiffs And The States Are Not Forum Shopping.

Finally, in determining whether withdrawal of the reference is appropriate, courts seek to prevent forum shopping by considering whether withdrawal of the reference is sought for legitimate reasons, such as promoting efficiency. See Pan Am. Corp. v. Delta Air Lines, Inc. (In re Pan Am. Corp.), 163 B.R. 41, 44 (S.D.N.Y. 1993) (finding no forum shopping when party sought withdrawal of the reference to “promot[e] judicial economy and lessen duplicative efforts on the part of the parties”). There are no forum shopping concerns here as the Plaintiffs and the States are seeking to streamline these proceedings and prevent duplicative work.

The notion that Plaintiffs are seeking a “more favorable” forum following a perceived “loss” is outlandish in light of the Bankruptcy Court’s ruling in Plaintiffs’ favor that Independent Claims asserting approximately \$10 billion in damages against New GM may go forward. See In re Motors Liquidation Co., 529 B.R. at 598. Moreover, any argument that the Plaintiffs or States are seeking a more favorable venue for resolution of this dispute is eclipsed by the

Bankruptcy Court's recent comments suggesting agreement with Plaintiffs' and the States' view that the Judgment does not interfere with the inviolate right to seek withdrawal of the reference.¹⁷

Accordingly, this Orion Pictures factor favors withdrawal.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Plaintiffs and the States respectfully request that the District Court enter an Order withdrawing the reference for the Motion to Compel and Objection and granting such other and further relief and is just and proper.

¹⁷ The Bankruptcy Court recently noted that the determination of which court will decide the Plaintiffs' and the States' "No-Stay Pleading" is dependent on the outcome of the Motion to Withdraw the Reference, without suggestion that the Motion violated the Judgment. *See Decision and Order on Bledsoe Plaintiffs' Reargument and Other Post-Judgment Motions*, dated July 22, 2015 [ECF No. 13313] at 6 n.16; *see also* July 16, 2015 Hr'g. Tr., Bankr. Case No. 09-50026 (REG) at 31:13-23; 49:19-51:10; 54:4-15 (noting that procedural relief with respect to the Plaintiffs' Motion to Withdraw the Reference "is properly to be made by Judge Furman" and acknowledging that a motion to withdraw the reference "calls on District Judges to make the decisions."). Relevant portions of the hearing transcript are attached hereto as Exhibit A.

Dated: New York, New York
August 5, 2015

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-and-

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-LAS

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In the Matter of:

MOTORS LIQUIDATION COMPANY

Debtor.

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United States Bankruptcy Court

One Bowling Green

New York, New York 10004-1408

July 16, 2015

9:48 AM

B E F O R E:

HONORABLE ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

ECRO: K. HARRIS

1 Hearing Re: No Stay Pleading

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3 Hearing Re: Motion to Strike Certain Documents Contained in
4 Appellants' Designation of Items to be Included in the Record
5 on Appeal

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25 Transcribed by: Theresa Pullan

1 As Your Honor knows, designated counsel on behalf of
2 plaintiffs filed what I'll refer to as an omnibus no strike
3 objection pleading, and also sought relief with respect to the
4 GUC Trust. And with regard to that omnibus pleading, we had
5 sought through a motion to have it, to have the reference
6 withdrawn. We are working with the GUC Trust and the GUC unit
7 holders on a potential resolution of issues that separate the
8 two of us, that being the plaintiffs on the one hand, the GUC
9 trust and unit holders on the other hand. And because we are
10 still working towards that resolution, the GUC Trust and the
11 unit holders have asked for the following form of relief that
12 we have no opposition to.

13 One is they want, they don't want to have to respond
14 to our motion to withdraw the reference, and have asked us to
15 modify that portion of our motion that would seek to have the
16 GUC Trust pleadings removed. And we are prepared to cede to
17 that request. We are likewise --

18 THE COURT: Pause please, Mr. Weisfelner.
19 Temporarily or the possibility that you won't have to revisit
20 the issue if the settlement goes through or for a longer
21 period?

22 MR. WEISFELNER: Your Honor, it would be our
23 intention to have our ability to withdraw the reference on the
24 GUC Trust pleadings spring back into effect if and only if
25 we're unable to reach a settlement between the parties. And

1 otherwise, the settlement that we're working on would resolve
2 the issue once and for all. So I'll let the GUC Trust counsel
3 address it, but again what we're looking for is merely a
4 stipulation that this Court would approve that would extend the
5 time for the GUC Trust holders to respond to our motion to
6 withdraw the reference and on the merits with regard to the GUC
7 Trust. And on the merits with regard to the GUC Trust
8 pleadings, it would be our intention and we'll obviously
9 document all this in a proposed stipulation to present to the
10 Court, but since the deadlines are coming up so quickly, wanted
11 Your Honor to be generally aware of what's developing between
12 us and the GUC Trust.

13 THE COURT: Mr. Weisfelner, that's a common sense
14 approach variance of which of has been a zillion times in this
15 Court. I have only a technical question which is the one that
16 you may have thought about already which is that on a motion of
17 this character we have a shift over from my jurisdiction to
18 Jesse Furman's (phonetic) and the rules are pretty plain that
19 your first finding is done in this Court, which is I guess why
20 you came to me. But I would have thought that further findings
21 would be before Jesse Furman and in essence I'm tolling the
22 deadline before him. Do we need Jesse Furman's okay on this as
23 well?

24 MR. WEISFELNER: I think we do and it would be the
25 parties' intention to likewise present to Judge Furman a

1 similar stipulation indicating that pending resolution or the
2 filing of an appropriate motion to approve a settlement between
3 the parties should we be able to reach one which I expect we'll
4 be able to do, that the time periods to respond to pleadings
5 either in this Court or before Judge Furman would be affected.

6 Now the reason for some of the confusion among the
7 parties is we not only have pending motions to withdraw the
8 reference, but only recently have had filed by New GM a motion
9 to compel us to withdraw our motions to withdraw the reference,
10 which have its own responsive and return dates. I think it's
11 August 12th. Your Honor may be asked to consider --

12 THE COURT: On August 12th in the New GM motion to
13 stop you from going to the District Court?

14 MR. WEISFELNER: Right. And frankly, Your Honor, I
15 should tell you and this will seem a lot like the old Atari
16 game of ping pong, my client's lead counsel in the MDL are
17 contemplating filing a motion to withdraw the reference on GM's
18 motion to compel us to withdraw our motion, to withdraw the
19 reference. So the ball has yet to stop bouncing, but ought to
20 shortly. All we're looking to accomplish today, Your Honor, is
21 to advise Your Honor that we intend that the GUC Trust not be
22 put to the test of filing a response to our motion to withdraw
23 the reference, and for that matter not be put to the test to
24 respond to our GUC Trust pleadings in a scenario where the
25 parties are in my view very close to resolving their issues,

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1 whatever omnibus pleading they filed, is the issue about
2 whether the New GM can argue that what they filed in the, on
3 the second amended complaint violated Your Honor's judgment
4 then focus on that aspect of it, then we can file our response
5 and do that as well too.

6 So Mr. Martorana says we're mixing apples and oranges
7 because he's essentially arguing a bifurcation which he says
8 exists based on the names of the pleadings, and if that's the
9 case then that's fine. And I don't care, I just don't want to
10 be in a position where I have to file a pleading on the 20th
11 which we're prepared to do.

12 And for Your Honor with regard to the second amended
13 complaint and I don't know whether the GUC Trust aspect is part
14 of the thing that I have to respond to or not, as of this
15 moment I still think I have to, if they are bifurcating it, if
16 they are excluding it for me as well as them I don't have to
17 consider it, either they withdraw it or bifurcate it, then
18 that's okay.

19 THE COURT: All right. Folks, it seems to me that
20 although I would have been offended if requests had been made
21 of this character to Judge Furman without bringing it to my
22 attention first, ultimately the decision is properly to be made
23 by Judge Furman. To the extent that the GUC Trust and the
24 plaintiffs are asking me to say to Judge Furman that to the
25 extent if any to which I have the right to be heard on this,

1 I'm authorizing you to say that if it's okay with him it's okay
2 with me. The second and more important issue is how any
3 standstill between the plaintiffs on the one hand and the GUC
4 Trust on the other or any deal that might thereafter be made
5 could adversely affect New GM presents a slightly harder issue
6 or perhaps a materially harder issue. But it is again one in
7 which I think I can and should cede whatever residual
8 jurisdiction I have over that over to Judge Furman, although
9 frankly I think it's solely a Judge Furman issue. He may
10 conclude that he needs to know with greater clarity what the
11 GUC Trust and the plaintiffs propose to agree on matters that
12 might affect New GM or he might conclude what is before him
13 doesn't require him to know that. That's a decision that is
14 appropriately to be decided by him without me stepping on his
15 toes.

16 Related to that is a first cousin of that which is
17 whether New GM would be impaired in its ability to address
18 these matters by not knowing yet what the deal might be with
19 respect to the plaintiffs on the one hand and the GUC Trust on
20 the other or a variant of that knowing a broad outline what the
21 concept might be, but where the devil might be in the details.
22 Ultimately by reason of the withdraw of the reference structure
23 which requires that motions for withdraw of the reference be
24 filed in the first instance by the Bankruptcy Court when then
25 calls on District Judges to make the decisions. And by reason

1 of that provisions in I think it's rule 9055 that says that on
2 motions to withdraw the reference proceedings in the court
3 below which is of course the Bankruptcy Court are not stayed in
4 the absence of the contrary order. And I'm not of a mind at
5 this point if ever to issue a contrary order on matters that
6 are before Jesse Furman as a matter of judicial courtesy, and a
7 comity with a T, tango. I think I should let Jesse Furman deal
8 with that issue as well, what I'll call the fairness issue to
9 New GM, assuming arguendo that I have the ability to tell Jesse
10 Furman what to do in that regard. To the extent I have that
11 power, I decline to exercise it.

12 So the bottom line is that I'm in substance allowing
13 you all to say that if it's okay with Jesse Furman, it's okay
14 with me. I assume he will consider issues of fairness to New
15 GM in terms of when New GM's response should be done if it
16 can't be consensually addressed, and if he thinks an adjustment
17 should be made that of course is also fine with me.
18 Conversely, if he decides that the existing schedule is
19 sufficient, that is also fine with me.

20 I gather from what Mr. Weisfelner said that I will
21 have at least initially before me not just New GM's motion to
22 block the plaintiffs from trying to withdraw the reference, but
23 some motion of some type to the plaintiffs to block New GM's
24 attempt to block that. And I gather from the way both you guys
25 are talking that there's no consensual resolution of that

1 standoff in sight. And I'll decide after all the papers are in
2 what I should be doing in that connection. But I'm expressing
3 no view on that now.

4 What else Mr. Steinberg?

5 MR. STEINBERG: Your Honor, I --

6 THE COURT: Come to the main mike if you please.

7 MR. STEINBERG: I understood your ruling about
8 deferring to Judge Furman with regard to the motions to
9 withdraw the reference. But there are, and I just want to make
10 sure I understood the ruling, there are the no strike pleadings
11 that are before Your Honor, and I thought the request that was
12 being made was something to do with adjourning the GUC Trust
13 response to respond to that. And I wasn't sure how Judge
14 Furman would deal with something that's before Your Honor on
15 the no strike pleading.

16 THE COURT: Then we have a misunderstanding because I
17 thought I was only talking about the plaintiff's motion to
18 withdraw the reference. If there are no strike motions that
19 are before me that are not the subject of a motion to withdraw
20 the reference, I think under 9055 I've got to deal with them.

21 MR. STEINBERG: Your Honor, just to clarify, the no
22 strike pleading is before Your Honor. The motion to withdraw
23 the reference with regard to the no strike pleading is before
24 Judge Furman. The request that Mr. Weisfelner was making was
25 to ask you to adjourn to allow the GUC Trust ability to respond

1 to the motion to withdraw the reference which is before Judge
2 Furman to be adjourned. I understood you saying that that's a
3 Judge Furman call, but under rule 9055, that is the rule, the
4 no strike pleading because the motion hasn't been withdrawn is
5 before Your Honor. And there's a time for both New GM and the
6 GUC trust to respond to that no strike pleading which is I
7 think July 20th. They were asking you to allow the adjournment
8 of that pleading in a, which is before Your Honor at that point
9 in time because there is no stay caused by the motion to
10 withdraw the reference.

11 THE COURT: Then I'm confused because what we were
12 talking about is something that required the GUC trust to
13 respond to Judge Furman. Are we talking about a response that
14 GUC trust also has to make before me?

15 MR. STEINBERG: Without, I will say yes, but I will
16 ask him to confirm that, I think it is, yes. There are two
17 different deadlines, the motion to withdraw the reference
18 deadline, the extension is now through July 23rd, that's a
19 Judge Furman District Court issue, and then in the Bankruptcy
20 Court, the no strike pleading, the deadline is July 20th, and
21 that's a bankruptcy --

22 UNIDENTIFIED: [indiscernible]

23 MR. STEINBERG: 20th, and that's a Bankruptcy Court
24 issue. So I think I understood, I understood deferring to
25 Judge Furman on something that is before him but I don't, I

1 wasn't sure whether you were actually saying that he should
2 decide the pleading of the time limit to, that is before you at
3 this point in time.

4 THE COURT: I didn't understand myself to be saying
5 that because I was not then sensitive to the fact there were
6 two separate deadlines imposed upon the GUC Trust. I think I
7 need a little more discussion on this, but I want you to talk
8 about the tentative which would be to toll the GUC Trust time
9 for both until Jesse Furman has decided what he wants to do on
10 the motion to withdraw the reference without prejudice to my
11 ability to decide what I need to do on mine after he's had a
12 chance to think about it in terms of what goes on in his court.
13 I don't want to step on his toes by issuing a substantive
14 ruling on something that is primarily before him in the first
15 instance.

16 MR. STEINBERG: Right. And I think what I was saying
17 in my prior presentation to Your Honor which is that if what's
18 before you now with regard to the GUC Trust is withdrawn then I
19 have no issue with that. If they want to give them an
20 adjournment then I think they really have to bifurcate the
21 issue because I don't want to be responding to that GUC Trust
22 issue while they're not responding to that issue, and Your
23 Honor won't have a complete record when this thing is argued.

24 THE COURT: My tentative, and I'm going to give both
25 Mr. Weisfelner and Mr. Martorana a chance to comment on this

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CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Theresa Pullan

Digitally signed by Theresa Pullan
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AAERT Certified Electronic Transcriber CET00650**

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