

Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

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

-----X
In re:

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

Debtors.

Chapter 11

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

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

Plaintiff,

Adversary Proceeding

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 REMOVING
THE CONFIDENTIALITY DESIGNATION FROM CERTAIN DOCUMENTS
AND UNSEALING EXHIBITS 3 AND 4 TO THE AMENDED COMPLAINT**

PLEASE TAKE NOTICE that on October 7, 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 sections 105(a) and 107 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9037(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to: (i) remove the confidentiality designation from the Documents (as defined in the Motion); and (ii) unseal Exhibits 3 and 4 to the Amended Complaint (as defined in the Motion), which were previously filed under seal 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 **November 5, 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 counsel of record, 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), so as to be received no later than **October 29, 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
October 7, 2015

DICKSTEIN SHAPIRO LLP

By: /s/ Eric B. Fisher
Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6500
Facsimile: (212) 277-6501
Email: fishere@dicksteinshapiro.com

and

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
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Telephone: (202) 420-3150

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**MOTION OF MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST FOR AN ORDER REMOVING THE
CONFIDENTIALITY DESIGNATION FROM CERTAIN DOCUMENTS AND
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**TO: THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE**

The Motors Liquidation Company Avoidance Action Trust (the “**Trust**”) files this motion (the “**Motion**”), pursuant to sections 105(a) and 107 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9037(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking entry of an Order, in the form attached hereto as Exhibit A (the “**Order**”): (i) removing the confidentiality designation from the Documents (as defined below); and (ii) unsealing Exhibits 3 and 4 attached to the amended complaint, filed on May 20, 2015 (Dkt. No. 91) (the “**Amended Complaint**”).

As explained in detail below, the Documents, and Exhibits 3 and 4, contain basic information about the transfers at issue in this action – namely: transferee, address, date and amount. There is no valid basis for this information to have been designated as confidential by JPMorgan Chase Bank, N.A. (“**JPMorgan**”). Accordingly, the confidentiality designation should be removed, and the exhibits should be unsealed.

BACKGROUND

1. On June 1, 2009 (the “**Petition Date**”), Motors Liquidation Company f/k/a/ General Motors Corporation (“**Old GM**”) filed for bankruptcy protection. Declaration of Eric B. Fisher in Support of the Motion of Motors Liquidation Company Avoidance Action Trust for an Order Removing the Confidentiality Designation from Certain Documents and Unsealing Exhibits 3 and 4 to the Amended Complaint, dated October 7, 2015 (the “**Fisher Declaration**”) ¶ 3. Soon thereafter, on June 30, 2009, Old GM repaid a secured loan (the “**Term Loan**”) of approximately \$1.5 billion made pursuant to a term loan agreement, dated as of November 29, 2006, as amended on March 4, 2009 (the “**Term Loan Agreement**”). *Id.* ¶ 4. The Term Loan

was a loan made to Old GM by a syndicate of more than 400 lenders (the “**Term Loan Lenders**”) that included JPMorgan, as administrative agent and as a lender. *Id.*

2. To secure repayment of the Term Loan, the Term Loan Lenders took security interests in a large number of Old GM’s assets, including all of Old GM’s equipment and fixtures at forty-two facilities throughout the United States (the “**Collateral**”). Fisher Decl. ¶ 5. JPMorgan, as administrative agent of the Term Loan, caused the filing of twenty-eight UCC-1 financing statements throughout the United States to perfect the Term Loan Lenders’ security interests in the Collateral. *Id.* One of the twenty-eight UCC-1 financing statements covered all the equipment and fixtures at the forty-two Old GM facilities and was filed with the Delaware Secretary of State and designated as file number 6416808 4 (the “**Main Lien**”). *Id.*

3. Old GM repaid the Term Loan Lenders in full, ahead of other creditors of Old GM, on the assumption that, as of the Petition Date, their claims arising under the Term Loan Agreement were fully secured. Fisher Decl. ¶ 6.

4. Days before entry of the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* (the “**DIP Order**”), the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “**Committee**”) learned that the Term Loan Lenders’ security interests, in fact, may not all have been perfected as of the Petition Date due to the filing of a termination statement relating to the Main Lien (the “**2008 Termination Statement**”) months before the Petition Date. Fisher Decl. ¶ 7. Accordingly, the DIP Order, while

conditionally approving Old GM's repayment of the Term Loan, expressly preserved the right of the Committee to investigate and bring actions based upon the purported perfection of the security interests related to the Term Loan. *Id.*

5. Following its investigation, the Committee determined that, in 2008, in connection with the payoff of an unrelated synthetic lease, JPMorgan had authorized the filing of the 2008 Termination Statement, and that, as a result, the Term Loan Lenders' security interest with respect to the Main Lien was not perfected as of the Petition Date and therefore, the claims of the Term Loan Lenders arising under the Term Loan Agreement were substantially undersecured. Fisher Decl. ¶ 8. In order to recover amounts improperly paid to JPMorgan and the Term Loan Lenders based on the erroneous assumption that their security interests were perfected, and the claims were fully secured, the Committee filed this adversary proceeding. *Id.*¹

6. On March 1, 2013, this Court denied the Committee's motion for partial summary judgment and granted summary judgment in favor of JPMorgan, ruling that the filing of the 2008 Termination Statement was not effective and that the Main Lien was therefore perfected as of the Petition Date. (Dkt. No. 71).

7. On January 21, 2015, the United States Court of Appeals for the Second Circuit issued a decision reversing the Bankruptcy Court's grant of summary judgment in favor of JPMorgan, and remanding the matter to this Court with instructions to enter partial summary judgment for the Plaintiff. *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100 (2d Cir. 2015) (*per curiam*).

¹ On March 29, 2011, the Court confirmed the Debtors' Second Amended Joint Chapter 11 Plan dated as of March 18, 2011 (as confirmed, the "**Plan**"). In connection with the Plan, the Trust was established to pursue this action and the Committee transferred its interest in this action to the Trust. Fisher Decl. ¶ 8 n.1.

8. On June 12, 2015, following issuance of the Second Circuit's mandate, the Bankruptcy Court entered partial summary judgment in favor of the Plaintiff as to the termination of the Main Lien. (Dkt. No. 96).

9. The Defendants in this action are the entities that received payments from Old GM (the "**Transfers**") during the ninety-day preference period and/or after the Petition Date, relating to the Term Loan. Fisher Decl. ¶ 9. Because the perfected security interest with respect to the Main Lien was terminated, the Defendants should not have been paid as fully secured creditors, and the Transfers should be avoided and recovered for the benefit of the estate under 11 U.S.C. §§ 547, 549 and 550.

10. Exhibits 3 and 4 to the Amended Complaint identify the entities that received Transfers under the Term Loan Agreement (all of which are named Defendants herein), and the amount of each such Transfer. Fisher Decl. ¶ 9. The information contained in these exhibits is derived from documents that JPMorgan has designated as Confidential under the terms of the November 30, 2009 Agreed Protective Order (Dkt. No. 15) (the "**Protective Order**") in this action – specifically, JPMCB-1-00000298-304; JPMCB-1-00000027-31; and JPMCB-1-00000017-26 (the "**Documents**"). *Id.* ¶ 10. The Documents are charts that list the Defendants, their addresses, and the dates and amounts of the Transfers. *Id.*

11. The Protective Order specifies the protocol pursuant to which a party may object to a confidentiality designation. The objecting party must serve written notice upon the designating party "stating with particularity the grounds of the objection." Protective Order ¶ 11. Thereafter, the parties must confer in good faith regarding the disputed designation. *Id.* If agreement cannot be reached within ten (10) business days following receipt of the written

notice, the objecting party may seek a ruling from the Court that such Discovery Material (as defined in the Protective Order) should not be designated as confidential. *Id.*

12. On April 14, 2015, prior to the filing of the Amended Complaint, the Trust provided JPMorgan with written notice of its request to have the confidential designation removed from the Documents on the basis that the information set forth in the Documents (i.e., the amount of each Transfer to the Defendants) was not confidential within the meaning of the Protective Order or applicable law. Fisher Decl. ¶ 11.

13. The parties met and conferred on April 30, 2015, in an effort to resolve the dispute regarding JPMorgan's designation of the Documents as confidential. Fisher Decl. ¶ 12.

14. The parties were unable to reach an agreement, and, on May 4, 2015, counsel for the Trust sent a letter to the Court (Dkt. No. 87) requesting a conference regarding the parties' dispute. Fisher Decl. ¶ 12.

15. Thereafter, on May 6, 2015, the parties met and conferred again in an effort to resolve the dispute without unnecessary motion practice, and provisionally agreed to file Exhibits 3 and 4 to the Amended Complaint under seal, and disclose the amount of the Transfer to each Defendant upon its appearance in the action and upon request. Fisher Decl. ¶ 13.

16. On May 7, 2015, counsel for the Trust notified the Court by letter (Dkt. No. 88) that a conference on the dispute was not necessary because the issue had been consensually resolved. Fisher Decl. ¶ 13.

17. Following the filing of the Amended Complaint, in calls leading up to an in-person meeting on July 29, 2015, the Trust again asked JPMorgan to consent to the unsealing of Exhibits 3 and 4 to the Amended Complaint. Fisher Decl. ¶ 14. JPMorgan indicated that it would not consent because the information contained in the Documents and Exhibits could

implicate confidentiality concerns relating to the other Defendants, but JPMorgan agreed that the most efficient way to resolve this issue was through the Trust's filing of this motion. *Id.*

18. Accordingly, the Trust now seeks a ruling from the Court that the Documents are not properly designated as confidential. The Documents, along with Exhibits 3 and 4 to the Amended Complaint, do not contain confidential information within the meaning of the applicable rules. Further, keeping Exhibits 3 and 4 under seal is contrary to the statutory presumption and strong public policy in favor of open access to documents filed in bankruptcy cases. Finally, unsealing Exhibits 3 and 4 to the Amended Complaint will further the goal of allowing Defendants to coordinate the defense of this action and will also assist the Trust in efficiently litigating this dispute. Accordingly, the Trust seeks an order (i) removing the confidentiality designation from the Documents; and (ii) unsealing Exhibits 3 and 4 attached to the Amended Complaint.

JURISDICTION AND VENUE

19. 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 the Bankruptcy Code or arises under or relates to a case under the Bankruptcy Code which is pending in this district.

RELIEF REQUESTED

20. The Trust respectfully requests that this Court enter an order substantially in the form attached hereto as Exhibit A: (i) removing the confidentiality designation from the Documents; and (ii) unsealing Exhibits 3 and 4 to the Amended Complaint.

ARGUMENT

I. JPMorgan Has Not Met Its Burden Of Showing That The Documents Contain Confidential Information Within The Meaning of The Protective Order

21. JPMorgan bears the burden of justifying the confidentiality designation on the Documents. *See* Protective Order ¶ 11 (“[T]he burden shall be on the designating party . . . to justify the claim that the disputed Discovery Material has been properly designated.”); *see also U2 Home Entm’t, Inc. v. Kylin TV, Inc.*, No. 06-CV-2770 (DLI), 2008 WL 1771913, at *2 (E.D.N.Y. Apr. 15, 2008) (“[T]he party seeking to maintain confidential treatment for the challenged document will have the burden of establishing good cause for the continuation of that treatment.”) (quotation marks and citation omitted).

22. The Protective Order only permits confidential designations for:

[P]roprietary or non-public information of a commercially, financially or personally sensitive nature such as confidential trade secrets, unpublished financial data, confidential business or products plans, or confidential customer information, or [information that] would pose a very high risk of competitive harm to that party or non-party or [information that] the party or non-party is required by law, court order, regulation or contract to protect . . . from disclosure.

Protective Order ¶ 2.

23. The Documents, which show the amount of the Transfers to the Defendants, do not contain information that qualifies as confidential under the terms of the Protective Order or applicable law.

24. Accordingly, JPMorgan has not, and cannot, meet its burden to show that the Documents contain confidential information, and the designation should be removed. *See New Colt Holding Corp. v. RJG Holdings of Fla., Inc.*, No. Civ. 3:02CV173(PCD), 2003 WL 23508131, at *1 (D. Conn. Aug. 11, 2003) (removing confidentiality designation where it was “not apparent” how information constituted “sensitive commercial information”); *see also Koch v. Greenberg*, No. 07 Civ. 9600 BSJ DF, 2012 WL 1449186, at *3-14 (S.D.N.Y. Apr. 13, 2012) (granting, in part, motion to remove confidentiality designations).

II. The Bankruptcy Code And Public Policy Require That Exhibits 3 and 4 Be Publicly Filed

25. Section 107(a) of the Bankruptcy Code provides, subject to specific enumerated exceptions, that “a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.” 11 U.S.C. § 107(a). The “policy of open inspection” embraced in section 107 of the Bankruptcy Code “evidences Congress’s strong desire to preserve the public’s right of access to judicial records in bankruptcy proceedings.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 26 (2d Cir. 1994). As the Second Circuit observed in *Orion*, the “firmly entrenched and well supported” right of public access to court records “is rooted in the public’s first amendment right to know about the administration of justice.” *Id.* at 26-27; *see also Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto/Global Corp.)*, 422 F.3d 1, 8 (1st Cir. 2005) (“[T]he plain language of § 107(a) evinces a clear congressional intent that papers filed in bankruptcy cases be available to the public.”); *Ferm v. U.S. Tr. (In re Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999) (“Section 107(a) is rooted in the right of public access to judicial proceedings, a principle long-recognized in the common law and buttressed by the First Amendment.”).

26. Section 107(b) of the Bankruptcy Code provides limited exceptions to “the general right of access where under compelling or extraordinary circumstances an exception is necessary.” *In re Food Mgmt. Grp., LLC*, 359 B.R. 543, 554 (Bankr. S.D.N.Y. 2007) (internal quotation marks omitted); *see also In re FiberMark, Inc.*, 330 B.R. 480, 503 (Bankr. D. Vt. 2005) (“In the Second Circuit, documents which are part of the court record should not remain under seal absent the most compelling reasons.”).

27. The limited statutory exceptions – which the Court may, on its own motion, and must, at the request of a party in interest, protect – are for (1) “trade secret or confidential research, development, or commercial information,” and (2) “scandalous or defamatory matter.” 11 U.S.C. § 107(b). These exceptions must be construed narrowly. *See Ferm*, 194 F.3d at 960 n.8; *FiberMark*, 330 B.R. at 506 (“The courts have zealously upheld the public’s right to access and narrowly construed the exceptions.”). “If the § 107(b) exceptions do not apply, the inquiry is complete and the Court’s decision will favor public access.” *Id.*

28. The Documents do not fall within the limited statutory exceptions to the “general right” of public access to court documents. Accordingly, the confidentiality designation on the Documents should be removed, and Exhibits 3 and 4 to the Amended Complaint should be unsealed.

NOTICE

29. The Trust has served notice of this Motion, via first class mail, on the Defendants using the best information currently available to it. The Trust has also served notice of this Motion, via e-mail, on all counsel of record in this action. 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
October 7, 2015

DICKSTEIN SHAPIRO LLP

By: /s/ Eric B. Fisher
Barry N. Seidel
Eric B. Fisher
Katie L. Weinstein
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6500
Facsimile: (212) 277-6501
Email: fishere@dicksteinshapiro.com

and

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

Exhibit A

Proposed Order

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

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In re:

MOTORS LIQUIDATION COMPANY, f/k/a
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Chapter 11

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Debtors.

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ACTION TRUST, by and through the Wilmington Trust
Company, solely in its capacity as Trust Administrator and
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Adversary Proceeding

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Defendants.
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**ORDER REMOVING THE CONFIDENTIAL DESIGNATION FROM CERTAIN
DOCUMENTS AND UNSEALING EXHIBITS 3 AND 4 TO THE AMENDED
COMPLAINT**

Upon the filing of a motion (the “**Motion**”),¹ dated October 7, 2015, by the Motors Liquidation Company Avoidance Action Trust (the “**Trust**”), for an order, pursuant to sections 105(a) and 107 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9037(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (i) removing the confidentiality designation from the Documents; and (ii) unsealing Exhibits 3 and 4 attached to the Amended Complaint; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and

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

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 the Protective Order, and sections 105(a) and 107 of the Bankruptcy Code, the confidentiality designation on the Documents shall be removed; and it is further

ORDERED that, pursuant to the Protective Order, and sections 105(a) and 107 of the Bankruptcy Code, and Bankruptcy Rule 9037(c), Exhibits 3 and 4 to the Amended Complaint shall be unsealed; 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
_____, 2015

Hon. Robert E. Gerber
United States Bankruptcy Judge

Barry N. Seidel
Eric B. Fisher
Katie L. Weinstein
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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Chapter 11

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

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OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF MOTORS LIQUIDATION COMPANY,

Plaintiff,

against

Adversary Proceeding

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

Case No. 09-00504 (REG)

Defendants.
-----X

**DECLARATION OF ERIC B. FISHER IN
SUPPORT OF MOTION OF MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST FOR AN ORDER REMOVING THE
CONFIDENTIALITY DESIGNATION FROM CERTAIN DOCUMENTS
AND UNSEALING EXHIBITS 3 AND 4 TO THE AMENDED COMPLAINT**

Pursuant to 28 U.S.C. § 1746, ERIC B. FISHER declares as follows:

1. I am a partner at Dickstein Shapiro LLP, attorney for the Motors Liquidation Company Avoidance Action Trust (the “**Trust**”), acting by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee.

2. I respectfully submit this Declaration in support of the Motion of Motors Liquidation Company Avoidance Action Trust for an Order Removing the Confidentiality Designation from Certain Documents and Unsealing Exhibits 3 and 4 to the Amended Complaint filed in the above-captioned proceeding.

I. Background

3. On June 1, 2009 (the “**Petition Date**”), Motors Liquidation Company f/k/a/ General Motors Corporation (“**Old GM**”) filed for bankruptcy protection.

4. Soon thereafter, on June 30, 2009, Old GM repaid a secured loan (the “**Term Loan**”) of approximately \$1.5 billion made pursuant to a term loan agreement, dated as of November 29, 2006, as amended on March 4, 2009 (the “**Term Loan Agreement**”). The Term Loan was a loan made to Old GM by a syndicate of more than 400 lenders (the “**Term Loan Lenders**”) that included JPMorgan Chase Bank, N.A., as administrative agent and as a lender (“**JPMorgan**”).

5. To secure repayment of the Term Loan, the Term Loan Lenders took security interests in a large number of Old GM’s assets, including all of Old GM’s equipment and fixtures at forty-two facilities throughout the United States (the “**Collateral**”). JPMorgan, as administrative agent of the Term Loan, caused the filing of twenty-eight UCC-1 financing statements throughout the United States to perfect the Term Loan Lenders’ security interests in the Collateral. One of the twenty-eight UCC-1 financing statements covered all the equipment

and fixtures at the forty-two Old GM facilities and was filed with the Delaware Secretary of State and designated as file number 6416808 4 (the “**Main Lien**”).

6. Old GM repaid the Term Loan Lenders in full, ahead of other creditors of Old GM, on the assumption that, as of the Petition Date, their claims arising under the Term Loan Agreement were fully secured.

7. Days before entry of the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* (the “**DIP Order**”), the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “**Committee**”) learned that the Term Loan Lenders’ security interests, in fact, may not all have been perfected as of the Petition Date due to the filing of a termination statement relating to the Main Lien (the “**2008 Termination Statement**”) months before the Petition Date. Accordingly, the DIP Order, while conditionally approving Old GM’s repayment of the Term Loan, expressly preserved the right of the Committee to investigate and bring actions based upon the purported perfection of the security interests related to the Term Loan.

8. Following its investigation, the Committee determined that, in 2008, in connection with the payoff of an unrelated synthetic lease, JPMorgan had authorized the filing of the 2008 Termination Statement, and that, as a result, the Term Loan Lenders’ security interest with respect to the Main Lien was not perfected as of the Petition Date and therefore, the claims of the Term Loan Lenders arising under the Term Loan Agreement were substantially

undersecured. In order to recover amounts improperly paid to JPMorgan and the Term Loan Lenders based on the erroneous assumption that their security interests were perfected, and the claims were fully secured, the Committee filed this adversary proceeding.¹

II. The Documents And Information Designated As Confidential

9. The Defendants in this action are the entities that received payments from Old GM (the “**Transfers**”) during the ninety-day preference period and/or after the Petition Date, relating to the Term Loan. Exhibits 3 and 4 to the Amended Complaint identify the amount of the Transfers to the Defendants.

10. The information contained in these exhibits is derived from documents that JPMorgan has designated as Confidential under the terms of the November 30, 2009 Agreed Protective Order (Dkt. No. 15) (the “**Protective Order**”) in this action – specifically, JPMCB-1-00000298-304; JPMCB-1-00000027-31; and JPMCB-1-00000017-26 (the “**Documents**”). The Documents are charts that list the Defendants, their addresses, and the dates and amounts of the Transfers.

11. On April 14, 2015, prior to the filing of the Amended Complaint, the Trust provided JPMorgan with written notice of its request to have the confidential designation removed from the Documents on the basis that the information set forth in the Documents (i.e., the amount of each Transfer to the Defendants) was not confidential within the meaning of the Protective Order or applicable law.

12. The parties met and conferred on April 30, 2015, in an effort to resolve the dispute regarding JPMorgan’s designation of the Documents as confidential. The parties were

¹ On March 29, 2011, the Court confirmed the Debtors’ Second Amended Joint Chapter 11 Plan dated as of March 18, 2011 (as confirmed, the “**Plan**”). In connection with the Plan, the Trust was established to pursue this action and the Committee transferred its interest in this action to the Trust.

unable to reach an agreement, and, on May 4, 2015, counsel for the Trust sent a letter to the Court (Dkt. No. 87) requesting a conference regarding the parties' dispute.

13. Thereafter, on May 6, 2015, the parties met and conferred again in an effort to resolve the dispute without unnecessary motion practice, and provisionally agreed to file Exhibits 3 and 4 to the Amended Complaint under seal, and disclose the amount of the Transfer to each Defendant upon its appearance in the action and upon request. On May 7, 2015, counsel for the Trust notified the Court by letter (Dkt. No. 88) that a conference on the dispute was not necessary because the issue had been consensually resolved.

14. Following the filing of the Amended Complaint, in calls leading up to an in-person meeting on July 29, 2015, the Trust again asked JPMorgan to consent to the unsealing of Exhibits 3 and 4 to the Amended Complaint. JPMorgan indicated that it would not consent because the information contained in the Documents and Exhibits could implicate confidentiality concerns relating to the other Defendants, but JPMorgan agreed that the most efficient way to resolve this issue was through the Trust's filing of this motion. Accordingly, the Trust now seeks a ruling from the Court that the Documents are not properly designated as confidential, and that Exhibits 3 and 4 to the Amended Complaint should be unsealed and publicly filed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2015

/s/ Eric B. Fisher
Eric B. Fisher

Barry N. Seidel
Eric B. Fisher
Evan J. Zucker
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
Telephone: (212) 277-6500
Facsimile: (212) 277-6501

Jeffrey Rhodes (*admitted pro hac vice*)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 420-3150

Attorneys for Plaintiff

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

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In re:

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

Chapter 11
Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

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

Plaintiff, Adversary Proceeding
Case No. 09-00504 (REG)

against

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

Defendants.

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CERTIFICATE OF SERVICE

I, Eric B. Fisher, hereby certify that on October 7, 2015, I caused to be served a true and

correct copy of the *Motion of Motors Liquidation Company Avoidance Action Trust for an Order Removing the Confidentiality Designation from Certain Documents and Unsealing Exhibits 3 and 4 to the Amended Complaint* (the “**Motion**”) and the *Declaration of Eric B. Fisher in Support of the Motion* via electronic mail on the following:

John Callagy	jcallagy@kelleydrye.com
Martin Krolewski	mkrolewski@kelleydrye.com
Nicholas Panarella	npanarella@kelleydrye.com
Sean Flanagan	sflanagan@kelleydrye.com
Harold Novikoff	HSNovikoff@wlrk.com
Marc Wolinsky	MWolinsky@wlrk.com
Douglas Mayer	DKMayer@WLRK.com
William Savitt	WDSavitt@wlrk.com
Emil Kleinhaus	EAKleinhaus@wlrk.com
Gary Marsh	gary.marsh@dentons.com
Oscar Pinkas	oscar.pinkas@dentons.com
Gordon Toering	gtoering@wnj.com
Heather Crockett	Heather.Crockett@atg.in.gov
Joan Blackwell	Joan.Blackwell@atg.in.gov
Maricel Skiles	Maricel.Skiles@atg.in.gov
Michael Krauss	michael.krauss@faegrebd.com
R. David Lane Jr.	rdlane@mdwcg.com
Denis Dice	dcdice@MDWCG.com
Joel Wertman	JMWertman@MDWCG.com
Mark Indelicato	mindelicato@hahnhausen.com
Mark Power	mpower@hahnhausen.com
John Spiegel	John.Spiegel@mto.com
George Garvey	George.Garvey@mto.com
Marc Dworsky	Marc.Dworksy@mto.com
Todd Rosen	Todd.Rosen@mto.com
Matthew Macdonald	Matthew.Macdonald@mto.com
Kristin Myles	Kristin.Myles@mto.com
Bruce Bennett	bbennett@jonesday.com
Erin Burke	eburke@JonesDay.com
Gregory Shumaker	gshumaker@jonesday.com
Christopher DiPompeo	cdipompeo@jonesday.com
Benjamin Rosenblum	brosenblum@jonesday.com
Kevin Finger	kevin.finger@dlapiper.com
Bevin Brennan	bevin.brennan@dlapiper.com
Edward Haber	ehaber@shulaw.com
Elliot Moskowitz	elliott.moskowitz@davispolk.com
Damian Schaible	damian.schaible@davispolk.com

Marc Tobak	marc.tobak@davispolk.com
Stewart Aaron	stewart.aaron@aporter.com
Daniel Swetnam	Daniel.Swetnam@icemiller.com

Notice of filing of the documents referenced above were provided by operation of the Case Management/Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York (the “**CM/ECF System**”) upon registered users of the CM/ECF System.

Dated: New York, New York
October 7, 2015

/s/ Eric B. Fisher
Eric B. Fisher